

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 June 30, 2023.
- 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

THE SHYFT GROUP, INC.
(Exact Name of Registrant as Specified in Its Charter)

Michigan
(State or Other Jurisdiction of
Incorporation or Organization)
41280 Bridge Street
Novi, Michigan
(Address of Principal Executive Offices)

38-2078923
(I.R.S. Employer Identification No.)

48375
(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	SHYF	The NASDAQ Stock Market LLC

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 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 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

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

<u>Class</u>	<u>Outstanding at July 21, 2023</u>
Common Stock	34,961,090 shares

THE SHYFT GROUP, INC.

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FORWARD-LOOKING STATEMENTS

This Form 10-Q contains some statements that are not historical facts. These statements are called “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements involve important known and unknown risks, uncertainties and other factors and generally can be identified by phrases using “estimate,” “anticipate,” “believe,” “project,” “expect,” “intend,” “predict,” “potential,” “future,” “may,” “will,” “should” or similar expressions or words. The Shyft Group, Inc.'s (the “Company,” “we,” “us” or “our”) future results, performance or achievements may differ materially from the results, performance or achievements discussed in the forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions (“Risk Factors”) that are difficult to predict with regard to timing, extent, likelihood and degree of occurrence. Therefore, actual results and outcomes may materially differ from what may be expressed or forecasted in such forward-looking statements.

Risk Factors include the risk factors listed and more fully described in Item 1A – Risk Factors of our Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on February 23, 2023, subject to any changes and updates disclosed in Part II, Item 1A – Risk Factors below, “Risk Factors”, as well as risk factors that we have discussed in previous public reports and other documents filed with the Securities and Exchange Commission. Those risk factors include the primary risks our management believes could materially affect the potential results described by forward-looking statements contained in this Form 10-Q. However, these 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 to be immaterial to our operations. In addition, new Risk Factors may emerge from time to time that may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, although we believe that the forward-looking statements contained in this Form 10-Q are reasonable, we cannot provide you with any guarantee that the results described in those forward-looking statements will be achieved. All forward-looking statements in this Form 10-Q are expressly qualified in their entirety by the cautionary statements contained in this section, and investors should not place undue reliance on forward-looking statements as a prediction of actual results. The Company undertakes no obligation to update or revise any forward-looking statements to reflect developments or information obtained after the date this Form 10-Q is filed with the Securities and Exchange Commission.

Trademarks and Service Marks

We own or have rights to trademarks, service marks or trade names that we use in connection with the operation of our business. Solely for convenience, some of the copyrights, trademarks, service marks and trade names referred to in this Quarterly Report on Form 10-Q are listed without the ©, ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our copyrights, trademarks, service marks, trade names and domain names. The trademarks, service marks and trade names of other companies appearing in this Quarterly Report on Form 10-Q are, to our knowledge, the property of their respective owners.

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

THE SHYFT GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)
(In thousands)

	June 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 7,808	\$ 11,548
Accounts receivable, less allowance of \$270 and \$246	93,442	115,742
Contract assets	41,230	86,993
Inventories	101,303	100,161
Other receivables – chassis pool agreements	9,312	19,544
Other current assets	7,078	11,779
Total current assets	260,173	345,767
Property, plant and equipment, net	77,393	70,753
Right of use assets – operating leases	49,132	53,386
Goodwill	48,880	48,880
Intangible assets, net	47,173	49,078
Net deferred tax assets	10,390	10,390
Other assets	2,705	2,227
TOTAL ASSETS	\$ 495,846	\$ 580,481
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 85,733	\$ 124,309
Accrued warranty	6,018	7,161
Accrued compensation and related taxes	14,770	14,434
Contract liabilities	4,198	5,255
Operating lease liability	11,378	10,888
Other current liabilities and accrued expenses	8,549	19,452
Short-term debt – chassis pool agreements	9,312	19,544
Current portion of long-term debt	179	189
Total current liabilities	140,137	201,232
Other non-current liabilities	9,826	10,033
Long-term operating lease liability	39,501	44,256
Long-term debt, less current portion	45,184	56,266
Total liabilities	234,648	311,787
Commitments and contingent liabilities		
Shareholders' equity:		
Preferred stock, no par value: 2,000 shares authorized (none issued)	-	-
Common stock, no par value: 80,000 shares authorized; 34,956 and 35,066 outstanding	90,606	92,982
Retained earnings	170,523	175,611
Total Shyft Group, Inc. shareholders' equity	261,129	268,593
Non-controlling interest	69	101
Total shareholders' equity	261,198	268,694
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 495,846	\$ 580,481

See accompanying Notes to Condensed Consolidated Financial Statements.

THE SHYFT GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)
(In thousands, except per share data)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Sales	\$ 225,101	\$ 232,195	\$ 468,540	\$ 439,078
Cost of products sold	182,347	190,077	382,862	371,029
Gross profit	42,754	42,118	85,678	68,049
Operating expenses:				
Research and development	5,890	7,563	12,839	12,490
Selling, general and administrative	30,270	26,860	62,559	53,412
Total operating expenses	36,160	34,423	75,398	65,902
Operating income	6,594	7,695	10,280	2,147
Other income (expense)				
Interest expense	(1,477)	(463)	(3,125)	(617)
Other income (expense)	124	(488)	194	(523)
Total other expense	(1,353)	(951)	(2,931)	(1,140)
Income before income taxes	5,241	6,744	7,349	1,007
Income tax expense (benefit)	556	1,461	986	(424)
Net income	4,685	5,283	6,363	1,431
Less: net loss attributable to non-controlling interest	-	-	32	-
Net income attributable to The Shyft Group Inc.	\$ 4,685	\$ 5,283	\$ 6,395	\$ 1,431
Basic earnings per share	\$ 0.13	\$ 0.15	\$ 0.18	\$ 0.04
Diluted earnings per share	\$ 0.13	\$ 0.15	\$ 0.18	\$ 0.04
Basic weighted average common shares outstanding	34,935	35,049	34,995	35,078
Diluted weighted average common shares outstanding	34,991	35,243	35,161	35,437

See accompanying Notes to Condensed Consolidated Financial Statements.

THE SHYFT GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2023	2022
Cash flows from operating activities:		
Net income	\$ 6,363	\$ 1,431
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	8,050	6,696
Non-cash stock based compensation expense	3,090	3,708
Deferred income taxes	-	(432)
Loss on disposal of assets	128	481
Changes in accounts receivable and contract assets	68,064	(12,863)
Changes in inventories	(1,142)	(34,826)
Changes in accounts payable	(38,567)	7,333
Changes in accrued compensation and related taxes	303	(6,146)
Changes in accrued warranty	(1,143)	(379)
Change in other assets and liabilities	(9,525)	(1,672)
Net cash provided by (used in) operating activities	35,621	(36,669)
Cash flows from investing activities:		
Purchases of property, plant and equipment	(10,963)	(10,010)
Proceeds from sale of property, plant and equipment	82	148
Acquisition of business, net of cash acquired	(500)	-
Net cash used in investing activities	(11,381)	(9,862)
Cash flows from financing activities:		
Proceeds from long-term debt	70,000	85,000
Payments on long-term debt	(81,000)	(30,000)
Payment of dividends	(3,653)	(3,640)
Purchase and retirement of common stock	(8,786)	(26,789)
Exercise and vesting of stock incentive awards	(4,541)	(8,591)
Net cash provided by (used in) financing activities	(27,980)	15,980
Net decrease in cash and cash equivalents	(3,740)	(30,551)
Cash and cash equivalents at beginning of period	11,548	37,158
Cash and cash equivalents at end of period	\$ 7,808	\$ 6,607

See accompanying Notes to Condensed Consolidated Financial Statements.

THE SHYFT GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY (Unaudited)
(In thousands)

	Number of Shares	Common Stock	Retained Earnings	Non- Controlling Interest	Total Shareholders' Equity
Balance at December 31, 2022	35,066	\$ 92,982	\$ 175,611	\$ 101	\$ 268,694
Issuance of common stock and tax impact of stock incentive plan	5	(4,656)	-	-	(4,656)
Dividends declared (\$0.05 per share)	-	-	(1,820)	-	(1,820)
Purchase and retirement of common stock	(349)	(893)	(7,872)	-	(8,765)
Issuance of restricted stock, net of cancellation	193	-	-	-	-
Non-cash stock based compensation expense	-	1,827	-	-	1,827
Net income (loss)	-	-	1,710	(32)	1,678
Balance at March 31, 2023	<u>34,915</u>	<u>\$ 89,260</u>	<u>\$ 167,629</u>	<u>\$ 69</u>	<u>\$ 256,958</u>
Issuance of common stock and tax impact of stock incentive plan	5	83	-	-	83
Dividends declared (\$0.05 per share)	-	-	(1,770)	-	(1,770)
Issuance of restricted stock, net of cancellation	36	-	(21)	-	(21)
Non-cash stock based compensation expense	-	1,263	-	-	1,263
Net income	-	-	4,685	-	4,685
Balance at June 30, 2023	<u>34,956</u>	<u>\$ 90,606</u>	<u>\$ 170,523</u>	<u>\$ 69</u>	<u>\$ 261,198</u>
	Number of Shares	Common Stock	Retained Earnings	Non- Controlling Interest	Total Shareholders' Equity
Balance at December 31, 2021	35,416	\$ 95,375	\$ 171,379	\$ 101	\$ 266,855
Issuance of common stock and tax impact of stock incentive plan	3	(8,372)	-	-	(8,372)
Dividends declared (\$0.05 per share)	-	-	(1,794)	-	(1,794)
Purchase and retirement of common stock	(607)	(1,598)	(25,191)	-	(26,789)
Issuance of restricted stock, net of cancellation	215	-	-	-	-
Non-cash stock based compensation expense	-	1,648	-	-	1,648
Net loss	-	-	(3,852)	-	(3,852)
Balance at March 31, 2022	<u>35,027</u>	<u>\$ 87,053</u>	<u>\$ 140,542</u>	<u>\$ 101</u>	<u>\$ 227,696</u>
Issuance of common stock and tax impact of stock incentive plan	3	(219)	-	-	(219)
Dividends declared (\$0.05 per share)	-	-	(1,784)	-	(1,784)
Issuance of restricted stock, net of cancellation	33	-	-	-	-
Non-cash stock based compensation expense	-	2,060	-	-	2,060
Net income	-	-	5,283	-	5,283
Balance at June 30, 2022	<u>35,063</u>	<u>\$ 88,894</u>	<u>\$ 144,041</u>	<u>\$ 101</u>	<u>\$ 233,036</u>

See accompanying Notes to Condensed Consolidated Financial Statements.

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

NOTE 1 – NATURE OF OPERATIONS AND BASIS OF PRESENTATION

As used herein, the term “Company”, “we”, “us” or “our” refers to The Shyft Group, Inc. and its subsidiaries unless designated or identified otherwise.

Nature of Operations

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 upfit segments) and recreational vehicle industries. Our products include walk-in vans and truck bodies used in e-commerce/parcel delivery, upfit equipment used in the mobile retail and utility trades, service and vocational truck bodies, luxury Class A diesel motorhome chassis 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 as well as truck accessories.

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 June 30, 2023, and our results of operations and cash flows for the three and six months ended June 30, 2023. 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, 2022 filed with the Securities and Exchange Commission on February 23, 2023. The results of operations for the three and six months ended June 30, 2023, are not necessarily indicative of the results expected for the full year.

For a description of key accounting policies followed, refer to the notes to The Shyft Group, Inc. consolidated financial statements for the year ended December 31, 2022, included in our Annual Report on Form 10-K.

Supplemental Disclosures of Cash Flow Information

Non-cash investing in the six months ended June 30, 2023 and June 30, 2022 included \$2,106 and \$1,994 of capital expenditures, respectively. The Company has chassis pool agreements, where it participates in chassis converter pools that are non-cash arrangements and they are offsetting between current assets and current liabilities on the Company’s Consolidated Balance Sheets. See “Note 3 – Debt” for further information about the chassis pool agreements.

NOTE 2 – INVENTORIES

Inventories are summarized as follows:

	June 30, 2023	December 31, 2022
Finished goods	\$ 13,430	\$ 13,361
Work in process	3,150	5,200
Raw materials and purchased components	84,723	81,600
Total inventories	<u>\$ 101,303</u>	<u>\$ 100,161</u>

NOTE 3 – DEBT

Short-term debt consists of the following:

	June 30, 2023	December 31, 2022
Chassis pool agreements	\$ 9,312	\$ 19,544
Total short-term debt	<u>\$ 9,312</u>	<u>\$ 19,544</u>

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

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 with receipt at our facilities dependent on manufacturer's production schedules. 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 any related obligations in cash, nor does it expect to do so in the future. 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. 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.

Long-term debt consists of the following:

	June 30, 2023	December 31, 2022
Line of credit revolver	\$ 45,000	\$ 56,000
Finance lease obligation	363	455
Total debt	45,363	56,455
Less current portion of long-term debt	(179)	(189)
Total long-term debt	\$ 45,184	\$ 56,266

Revolving Credit Facility

On November 30, 2021, we entered into an Amended and Restated Credit Agreement (the "Credit Agreement") by and among us and certain of our subsidiaries as borrowers, Wells Fargo Bank, N.A. ("Wells Fargo"), as administrative agent, and the lenders party thereto consisting of Wells Fargo, JPMorgan Chase Bank, N.A., PNC Bank, National Association and Bank of America, N.A. (the "Lenders"). Certain of our other subsidiaries have executed guaranties guarantying the borrowers' obligations under the Credit Agreement.

On May 31, 2023, the Company amended the Credit Agreement to effectuate the transition of the underlying variable interest rate from LIBOR to the Secured Overnight Financing Rate ("SOFR"). Our interest expense is not expected to increase materially with this transition. Increased interest expense and/or disruption in the financial market could have a material adverse effect on our business, financial condition, or results of operations.

Under the Credit Agreement, we may borrow up to \$400,000 from the Lenders under a secured revolving credit facility which matures November 30, 2026. We may also request an increase in the facility of up to \$200,000 in the aggregate, subject to customary conditions. The revolving credit facility is also available for the issuance of letters of credit of up to \$20,000 and swing line loans of up to \$10,000, subject to certain limitations and restrictions. The revolving credit facility 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 SOFR plus 1.0%; or (ii) adjusted SOFR, in each case plus a margin based upon our ratio of debt to earnings from time to time. The applicable borrowing rate including the margin was 6.27% (or one-month SOFR plus 1.00%) at June 30, 2023. The revolving credit facility is secured by security interests in, and liens on, all assets of the borrowers and guarantors, other than real property and certain other excluded assets. At June 30, 2023 and December 31, 2022, we had outstanding letters of credit totaling \$1,550 and \$1,200, respectively, related to our workers' compensation insurance.

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

Under the terms of our Credit Agreement, available borrowings (exclusive of outstanding borrowings) totaled \$244,315 and \$187,162 at June 30, 2023 and December 31, 2022, respectively. The Credit Agreement requires us to maintain certain financial ratios and other financial covenants; 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, all subject to certain exceptions and baskets. At June 30, 2023 and December 31, 2022, we were in compliance with all covenants in our Credit Agreement.

NOTE 4 – REVENUE

Changes in our contract assets and liabilities for the six months ended June 30, 2023 and 2022 are summarized below:

	<u>June 30, 2023</u>	<u>June 30, 2022</u>
<u>Contract Assets</u>		
Contract assets, beginning of period	\$ 86,993	\$ 21,483
Reclassification of the beginning contract assets to receivables, as the result of rights to consideration becoming unconditional	(83,470)	(20,777)
Contract assets recognized, net of reclassification to receivables	37,707	41,662
Contract assets, end of period	<u>\$ 41,230</u>	<u>\$ 42,368</u>
<u>Contract Liabilities</u>		
Contract liabilities, beginning of period	\$ 5,255	\$ 988
Reclassification of the beginning contract liabilities to revenue, as the result of performance obligations satisfied	(4,912)	(988)
Cash received in advance and not recognized as revenue	3,855	1,359
Contract liabilities, end of period	<u>\$ 4,198</u>	<u>\$ 1,359</u>

The aggregate amount of the transaction price allocated to remaining performance obligations in existing contracts that are yet to be completed in the Fleet Vehicles and Services ("FVS") and Specialty Vehicles ("SV") segments are \$437,802 and \$72,402, respectively.

In the following tables, revenue is disaggregated by primary geographical market and timing of revenue recognition. The tables also include a reconciliation of the disaggregated revenue within the reportable segments.

	Three Months Ended June 30, 2023			
	<u>FVS</u>	<u>SV</u>	<u>Eliminations and Other</u>	<u>Total</u>
<u>Primary geographical markets</u>				
United States	\$ 124,463	\$ 87,519	\$ (1,443)	\$ 210,539
Other	14,520	42	-	14,562
Total sales	<u>\$ 138,983</u>	<u>\$ 87,561</u>	<u>\$ (1,443)</u>	<u>\$ 225,101</u>
<u>Timing of revenue recognition</u>				
Products transferred at a point in time	\$ 13,692	\$ 38,118	\$ -	\$ 51,810
Products and services transferred over time	125,291	49,443	(1,443)	173,291
Total sales	<u>\$ 138,983</u>	<u>\$ 87,561</u>	<u>\$ (1,443)</u>	<u>\$ 225,101</u>

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

	Three Months Ended June 30, 2022			
	FVS	SV	Eliminations and Other	Total
Primary geographical markets				
United States	\$ 133,861	\$ 95,273	\$ -	\$ 229,134
Other	3,036	25	-	3,061
Total sales	\$ 136,897	\$ 95,298	\$ -	\$ 232,195
Timing of revenue recognition				
Products transferred at a point in time	\$ 10,716	\$ 51,488	\$ -	\$ 62,204
Products and services transferred over time	126,181	43,810	-	169,991
Total sales	\$ 136,897	\$ 95,298	\$ -	\$ 232,195

	Six Months Ended June 30, 2023			
	FVS	SV	Eliminations and Other	Total
Primary geographical markets				
United States	\$ 278,491	\$ 174,703	\$ (4,624)	\$ 448,570
Other	19,925	45	-	19,970
Total sales	\$ 298,416	\$ 174,748	\$ (4,624)	\$ 468,540
Timing of revenue recognition				
Products transferred at a point in time	\$ 25,846	\$ 75,680	\$ -	\$ 101,526
Products and services transferred over time	272,570	99,068	(4,624)	367,014
Total sales	\$ 298,416	\$ 174,748	\$ (4,624)	\$ 468,540

	Six Months Ended June 30, 2022			
	FVS	SV	Eliminations and Other	Total
Primary geographical markets				
United States	\$ 245,197	\$ 189,456	\$ -	\$ 434,653
Other	4,397	28	-	4,425
Total sales	\$ 249,594	\$ 189,484	\$ -	\$ 439,078
Timing of revenue recognition				
Products transferred at a point in time	\$ 20,271	\$ 104,339	\$ -	\$ 124,610
Products and services transferred over time	229,323	85,145	-	314,468
Total sales	\$ 249,594	\$ 189,484	\$ -	\$ 439,078

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

NOTE 5 – PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are summarized by major classifications as follows:

	June 30, 2023	December 31, 2022
Land and improvements	\$ 12,226	\$ 12,314
Buildings and improvements	43,195	42,827
Plant machinery and equipment	58,810	55,969
Furniture and fixtures	19,415	18,334
Vehicles	2,008	2,083
Construction in process	15,367	9,946
Subtotal	151,021	141,473
Accumulated depreciation	(73,628)	(70,720)
Total property, plant and equipment, net	<u>\$ 77,393</u>	<u>\$ 70,753</u>

We recorded depreciation expense of \$3,233 and \$2,626 during the three months ended June 30, 2023 and 2022, respectively, and \$6,145 and \$4,751 during the six months ended June 30, 2023 and 2022, respectively.

NOTE 6 – LEASES

We have operating and finance leases for land, buildings and certain equipment. Our leases have remaining lease terms of one year to 17 years, some of which include options to extend the leases for up to 15 years. Our leases do not contain residual value guarantees. Assets recorded under finance leases were immaterial (See "Note 3 – 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:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Operating leases	\$ 2,983	\$ 2,571	\$ 5,947	\$ 4,809
Short-term leases(1)	370	19	622	57
Total lease expense	<u>\$ 3,353</u>	<u>\$ 2,590</u>	<u>\$ 6,569</u>	<u>\$ 4,866</u>

(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.

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

	June 30,	
	2023	2022
Weighted average remaining lease term of operating leases (in years)	7.2	8.4
Weighted average discount rate of operating leases	2.8%	2.7%

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Supplemental cash flow information related to leases was as follows:

	Six Months Ended	
	June 30,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flow for operating leases	\$ 5,622	\$ 4,287
Right of use assets obtained in exchange for lease obligations:		
Operating leases	\$ 8,672	\$ 15,331
Finance leases	\$ 65	\$ 202

Maturities of operating lease liabilities as of June 30, 2023 are as follows:

Years ending December 31:		
2023 ⁽¹⁾		\$ 5,805
2024		10,770
2025		10,034
2026		7,867
2027		5,540
Thereafter		20,511
Total lease payments		60,527
Imputed interest		(9,648)
Total lease liabilities		\$ 50,879

(1) Excluding the six months ended June 30, 2023.

NOTE 7 – COMMITMENTS AND CONTINGENT LIABILITIES

At June 30, 2023, 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. An estimate of possible penalty or loss, if any, cannot be made at this time.

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Changes in our warranty liability are summarized below:

	Six Months Ended	
	June 30,	
	2023	2022
Balance of accrued warranty at January 1	\$ 7,161	\$ 5,975
Provisions for current period sales	2,002	2,151
Changes in liability for pre-existing warranties	(1,437)	(256)
Cash settlements	(1,708)	(2,274)
Balance of accrued warranty at June 30	<u>\$ 6,018</u>	<u>\$ 5,596</u>

Legal Proceedings Relating to Environmental Matters

As previously disclosed, in May 2020, the Company received an information request from the United States Environmental Protection Agency (“EPA”) requesting certain information regarding emissions labels on chassis, vocational vehicles, and vehicles that the Company manufactured or imported into the U.S. between January 1, 2017 to the date the Company received the request in May 2020. The Company responded to the EPA’s request and furnished the requested materials in the third quarter of 2020.

On April 6, 2022, the Company received a Notice of Violation from the EPA alleging a failure to secure certain certifications on manufactured chassis and a failure to comply with recordkeeping and reporting requirements related to supplier-provided chassis. The Company continues to investigate this matter, including potential defenses, and will continue discussions with the EPA regarding the allegations. At this time, it is not possible to estimate the potential fines or penalties that the Company may incur (if any) for this matter.

NOTE 8 – TAXES ON INCOME

Our effective income tax rate was 10.6% and 21.7% for the three months ended June 30, 2023 and 2022, respectively, compared to a tax expense of 13.4% and a tax benefit of 42.1% for the six months ended June 30, 2023 and 2022, respectively.

The effective tax rates of 10.6% and 21.7% for the three months ended June 30, 2023 and 2022, respectively, differ from the U.S. statutory tax rate of 21.0% primarily due to non-deductible executive compensation offset by the benefit of research credits.

Our effective income tax rate was a tax expense of 13.4% in the first six months of 2023, compared to a tax benefit of 42.1% in the first six months of 2022 primarily because of a discrete tax benefit in 2022 related to the difference in stock compensation expense recognized for book purposes and tax purposes upon vesting.

NOTE 9 – BUSINESS SEGMENTS

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

We evaluate the performance of our reportable segments based on Adjusted EBITDA (earnings before interest, taxes, depreciation and amortization) and it is calculated by excluding items that we believe to be infrequent or not indicative of our underlying operating performance, as well as certain non-cash expenses. We define Adjusted EBITDA as income from continuing operations before interest, income taxes, depreciation and amortization, as adjusted to eliminate the impact of restructuring charges, acquisition related expenses and adjustments, non-cash stock-based compensation expenses, and other gains and losses not reflective of our ongoing operations.

Our FVS segment manufactures commercial vehicles used in the e-commerce/last mile/parcel delivery, beverage and grocery delivery, laundry and linen, mobile retail, and trades industries. Our commercial vehicles are marketed under the Utilimaster brand name, which serves a diverse customer base and sells aftermarket parts and accessories for walk-in vans and other delivery vehicles. We also provide vocation-specific equipment upfit services.

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Our SV segment includes our Spartan RV chassis operations, Builtmore Contract Manufacturing operations, Royal Truck Body and DuraMag service body operations, vocation-specific equipment upfit services marketed under the Strobes-R-Us brand, and distribution of related aftermarket parts and accessories.

The accounting policies of the segments are the same as those described, or referred to, in "Note 1 – *Nature of Operations and Basis of Presentation*". 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." Adjusted EBITDA in the "Eliminations and Other" column contains corporate related expenses not allocable to the operating segments. Interest expense and Income tax expense are not included in the information utilized by the chief operating decision maker to assess segment performance and allocate resources, and accordingly, are excluded from the segment results presented below.

	Three Months Ended June 30, 2023			
	Segment			
	FVS	SV	Eliminations and Other	Consolidated
Fleet vehicle sales	\$ 125,291	\$ -	\$ -	\$ 125,291
Motorhome chassis sales	-	30,099	-	30,099
Other specialty vehicle sales	-	51,652	(1,443)	50,209
Aftermarket parts and accessories sales	13,692	5,810	-	19,502
Total sales	\$ 138,983	\$ 87,561	\$ (1,443)	\$ 225,101

Depreciation and amortization expense	\$ 1,641	\$ 1,700	\$ 845	\$ 4,186
Adjusted EBITDA	12,468	17,367	(13,968)	15,867
Segment assets	252,352	194,718	48,776	495,846
Capital expenditures	1,702	438	5,137	7,277

	Three Months Ended June 30, 2022			
	Segment			
	FVS	SV	Eliminations and Other	Consolidated
Fleet vehicle sales	\$ 126,181	\$ -	\$ -	\$ 126,181
Motorhome chassis sales	-	42,710	-	42,710
Other specialty vehicle sales	-	47,044	-	47,044
Aftermarket parts and accessories sales	10,716	5,544	-	16,260
Total sales	\$ 136,897	\$ 95,298	\$ -	\$ 232,195

Depreciation and amortization expense	\$ 1,182	\$ 1,953	\$ 592	\$ 3,727
Adjusted EBITDA	14,525	12,859	(13,695)	13,689
Segment assets	228,863	223,388	42,762	495,013
Capital expenditures	3,666	452	929	5,047

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	Six Months Ended			
	June 30, 2023			
	Segment			
	FVS	SV	Eliminations and Other	Consolidated
Fleet vehicle sales	\$ 272,570	\$ -	\$ -	\$ 272,570
Motorhome chassis sales	-	58,059	-	58,059
Other specialty vehicle sales	-	106,349	(4,624)	101,725
Aftermarket parts and accessories sales	25,846	10,340	-	36,186
Total sales	\$ 298,416	\$ 174,748	\$ (4,624)	\$ 468,540

Depreciation and amortization expense	\$ 2,979	\$ 3,379	\$ 1,692	\$ 8,050
Adjusted EBITDA	24,941	31,219	(29,505)	26,655
Segment assets	252,352	194,718	48,776	495,846
Capital expenditures	3,567	1,179	7,435	12,181

	Six Months Ended			
	June 30, 2022			
	Segment			
	FVS	SV	Eliminations and Other	Consolidated
Fleet vehicle sales	\$ 229,323	\$ -	\$ -	\$ 229,323
Motorhome chassis sales	-	87,601	-	87,601
Other specialty vehicle sales	-	91,750	-	91,750
Aftermarket parts and accessories sales	20,271	10,133	-	30,404
Total sales	\$ 249,594	\$ 189,484	\$ -	\$ 439,078

Depreciation and amortization expense	\$ 1,930	\$ 3,614	\$ 1,152	\$ 6,696
Adjusted EBITDA	13,654	22,958	(23,566)	13,046
Segment assets	228,863	223,388	42,762	495,013
Capital expenditures	7,799	686	2,007	10,492

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

The Shyft Group, Inc. was organized as a Michigan corporation and is headquartered in Novi, Michigan. 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 upfit segments) and recreational vehicle industries. Our products include walk-in vans and truck bodies used in e-commerce/parcel delivery, upfit equipment used in the mobile retail and utility trades, service and vocational truck bodies, luxury Class A diesel motorhome chassis 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 as well as truck accessories.

Our vehicles, parts and services are sold to commercial users, original equipment manufacturers (OEMs), dealers, individual end users, and municipalities and other governmental entities. Our diversification across several sectors provides numerous opportunities while reducing overall risk as the various markets we serve tend to have different cyclicalities. 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 is agile and able 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 growing opportunities that we have capitalized on in last mile delivery as a result of the rapidly changing e-commerce market is an excellent example 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

- Sales of \$225.1 million for the second quarter of 2023, a decrease of 3.1% compared to \$232.2 million for the second quarter of 2022.
- Gross Margin of 19.0% for the second quarter of 2023, compared to 18.1% for the second quarter of 2022.
- Operating expense of \$36.2 million, or 16.1% of sales for the second quarter of 2023, compared to \$34.4 million, or 14.8% of sales for the second quarter of 2022.
- Operating income of \$6.6 million for the second quarter of 2023, compared to \$7.7 million for the second quarter of 2022.
- Income tax expense of \$0.6 million for the second quarter of 2023, compared to \$1.5 million for the second quarter of 2022.
- Net income of \$4.7 million for the second quarter of 2023, compared to \$5.3 million for the second quarter of 2022.
- Diluted earnings per share of \$0.13 for the second quarter of 2023, compared to \$0.15 for the second quarter of 2022.
- Order backlog of \$510.2 million at June 30, 2023, a decrease of \$625.0 million or 55.1% from our backlog of \$1,135.2 million at June 30, 2022.

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:

- In March 2022, we announced Blue Arc™ Electric Vehicle ("EV") Solutions, a new go-to-market brand alongside a trio of initial product offerings—an industry-first commercial grade purpose-built EV chassis; a fully reimaged from the ground up all-electric delivery walk-in van; and a fully portable, remote-controlled charging station, the Power Cube™.
 - The proprietary battery-powered chassis features customizable length and wheelbase, making it well-suited to serve a wide range of medium-duty trucks and end uses. The chassis' modular design will accommodate multiple weight ratings and classifications, based on build-out and usage.
 - Leveraging a scalable design, the full Blue Arc EV portfolio is available in Class 3, 4 and 5 walk-in van configurations with body length options from 12 to 22 feet. Designed for high-frequency, last-mile delivery fleets, these vehicles are powered by lithium-ion battery packs with optional extended range packs available. With these options, Shyft customers can maximize productivity and minimize cost of ownership, including fuel and maintenance costs.
 - In March 2023, we completed testing and received certification from the United States Environmental Protection Agency (EPA) for the Company's Blue Arc™ EV Solutions Class 3, 4 and 5 electric delivery vehicles. In April 2023, we completed testing and received an executive order of compliance from the California Air Resources Board (CARB) for the Company's Blue Arc™ EV Solutions Class 3, 4 and 5 electric delivery vehicles. Testing for CARB demonstrated Class 3 delivery vehicle performance at a 225-mile city driving range.

- The Velocity lineup of last-mile delivery vehicles span Gross Vehicle Weight Rating class sizes 2 and 3 and are available on Ford Transit, Mercedes Sprinter, and RAM Promaster chassis. The Velocity combines fuel efficiency, comfort, and maneuverability with the cargo space, access, and load capacity similar to a traditional walk-in van.
- Royal Truck Body’s new Severe Duty body, built to fit General Motors’ medium-duty truck class and Ford’s Super Duty truck class, includes more standard features than any other service body on the market. With its fortress five-point lock system, 10-gauge steel box tops treated with a protective Polyurea coating and 3/8” tread plate steel floors, this work truck is built to last and is ideal for contractors and business owners that need heavy-duty work trucks.
- In March 2023, we debuted the all-new steel Royal XP Service Body, precision engineered to eliminate water, salt and chemical traps and featuring a proprietary high-endurance coating for a glossy, high-edge finish to seal out weather and wear. The body is third party tested to live up to its promise on the punishing proving grounds of a leading commercial testing facility and is performance-rated for 250,000 miles.
- The K3 and K4 motorhome chassis are equipped with the Spartan® RV Chassis Connected Coach®, featuring the new 15-inch anti-glare digital dash that is custom designed for the RV customer to meet their specific display or operational needs. Integrating with the digital dash is the new Tri-Pod Steering Wheel, which places driving features and instrumentation right at the driver’s fingertips, enabling a more effortless engagement with driving features and controls.
- The strength of our balance sheet and access to working capital 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 2022 Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 23, 2023.

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		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Sales	100.0	100.0	100.0	100.0
Cost of products sold	81.0	81.9	81.7	84.5
Gross profit	19.0	18.1	18.3	15.5
Operating expenses:				
Research and development	2.6	3.3	2.7	2.8
Selling, general and administrative	13.4	11.6	13.4	12.2
Operating income	2.9	3.3	2.2	0.5
Other expense	(0.6)	(0.4)	(0.6)	(0.3)
Income before income taxes	2.3	2.9	1.6	0.2
Income tax expense (benefit)	0.2	0.6	0.2	(0.1)
Net income	2.1	2.3	1.4	0.3
Non-controlling interest	-	-	-	-
Net income attributable to The Shyft Group, Inc.	2.1	2.3	1.4	0.3

Three Months June 30, 2023 Compared to the Three Months Ended June 30, 2022

Sales

For the quarter ended June 30, 2023, we reported consolidated sales of \$225.1 million, compared to \$232.2 million for the second quarter of 2022, a decrease of \$7.1 million or 3.1%. This decrease is primarily attributed to lower sales volumes in our Specialty Vehicles (“SV”) segment attributed to lower motorhome chassis sales, partially offset by increased sales in the Fleet Vehicles and Services (“FVS”) segment attributed to higher truck body sales, including \$7.5 million in pass-through chassis sales.

Cost of Products Sold

Cost of products sold was \$182.3 million in the second quarter of 2023, compared to \$190.1 million for the second quarter of 2022, a decrease of \$7.8 million or 4.1%. The decrease was due to \$11.0 million lower volume and mix and \$5.8 million due to higher productivity, partially offset by \$7.5 million in pass-through chassis costs and \$1.5 million higher material and labor inflation, and other costs.

Gross Profit

Gross profit was \$42.8 million for the second quarter of 2023, compared to \$42.1 million for the second quarter of 2022, an increase of \$0.7 million or 1.5%. The increase was due to \$5.8 million in higher productivity, partially offset by \$3.6 million in lower volume and mix net of pricing and \$1.5 million higher material, labor and other costs.

Operating Expenses

Operating expenses were \$36.2 million for the second quarter of 2023, compared to \$34.4 million for the second quarter of 2022, an increase of \$1.8 million or 5.0%. Research and development expense for the second quarter of 2023 was \$5.9 million, compared to \$7.6 million in the second quarter of 2022, a decrease of \$1.7 million, of which \$1.4 million was related to electric vehicle development initiatives. Selling, general and administrative expense was \$30.3 million for the second quarter of 2023, compared to \$26.9 million for the second quarter of 2022, an increase of \$3.4 million, primarily driven by \$2.5 million of increased employee and administrative costs including CEO transition and severance related cost reduction initiatives, and in addition \$0.9 million related to electric vehicle program costs.

Other Income (Expense)

Interest expense was \$1.5 million for the second quarter of 2023, compared to \$0.5 million for the second quarter of 2022, driven by higher borrowing costs. Other income was \$0.1 million for the second quarter of 2023, compared to \$0.5 million expense for the second quarter of 2022.

Income Tax Expense (Benefit)

Our effective income tax rate was 10.6% for the second quarter of 2023, compared to 21.7% for the second quarter 2022, which reflects the impact of current statutory income tax rates on our income before income taxes combined with the tax expense related to non-deductible officer compensation offset by the benefit of research credits.

Net Income

Net income for the second quarter of 2023 decreased by \$0.6 million to \$4.7 million compared to \$5.3 million for the second quarter of 2022. On a diluted per share basis, earnings decreased \$0.02 to \$0.13 for the second quarter of 2023 compared to \$0.15 per share for the second quarter of 2022. Driving this decrease were the factors noted above.

Adjusted EBITDA

Our consolidated Adjusted EBITDA for the second quarter of 2023 was \$15.9 million, compared to \$13.7 million for the second quarter of 2022, an increase of \$2.2 million.

The table below describes the changes in Adjusted EBITDA for the three months ended June 30, 2023 compared to the same period for 2022 (in millions):

Adjusted EBITDA three months ended June 30, 2022	\$	13.7
Sales volume and other		2.2
Material and labor costs		(0.9)
EV development/program costs		0.5
General and administrative costs and other		0.4
Adjusted EBITDA three months ended June 30, 2023	\$	<u>15.9</u>

Six Months June 30, 2023 Compared to the Six Months Ended June 30, 2022

Sales

For the six months ended June 30, 2023, we reported consolidated sales of \$468.5 million, compared to \$439.1 million for the first six months of 2022, an increase of \$29.5 million or 6.7%. This increase was primarily attributable to increased sales volume driven by truck body sales in our FVS segment including \$13.2 million in pass-through chassis sales and favorable pricing implemented to offset material and labor inflation, partially offset by lower sales volumes in our SV segment primarily attributable to lower motorhome chassis sales.

Cost of Products Sold

Cost of products sold was \$382.9 million for the first six months of 2023, compared to \$371.0 million for the first six months of 2022, an increase of \$11.9 million or 3.2%. The increase was due to \$12.2 million higher volume and mix and \$3.5 million higher material and labor inflation and \$13.2 million in pass-through chassis costs, partially offset by \$17.0 million due to higher productivity.

Gross Profit

Gross profit was \$85.7 million for the first six months of 2023, compared to \$68.0 million for the first six months of 2022, an increase of \$17.6 million or 25.9%. The increase was due to \$4.1 million more favorable pricing net of lower volume and mix and \$17.0 million in higher productivity, partially offset by \$3.5 million due in higher material, labor and other costs.

Operating Expenses

Operating expenses were \$75.4 million for the first six months of 2023, compared to \$65.9 million for the first six months of 2022, an increase of \$9.5 million or 14.4%. Research and development expense for the first six months of 2023 was \$12.8 million, compared to \$12.5 million in the first six months of 2022, an increase of \$0.3 million, of which \$1.0 million was related to electric vehicle development initiatives partially offset by a \$0.7 million decrease related to other products. Selling, general and administrative expense was \$62.6 million for the first six months of 2023, compared to \$53.4 million for the first six months of 2022, an increase of \$9.2 million, primarily driven by \$6.6 million of increased employee and administrative costs including CEO transition and severance related to cost reduction initiatives and in addition \$2.6 million of electric vehicle program costs.

Other Income (Expense)

Interest expense was \$3.1 million for the first six months of 2023, compared to \$0.6 million for the first six months of 2022, driven by higher borrowing costs. Other income was \$0.2 million for the first six months of 2023, compared to \$0.5 million expense for the first six months of 2022.

Income Tax Expense (Benefit)

Our effective income tax rate was 13.4% for the first six months of 2023, compared to a tax benefit of 42.1% for the first six months of 2022, which reflects the impact of current statutory income tax rates on our income before income taxes combined with a discrete tax benefit in 2022 related to the difference in stock compensation expense recognized for book purposes and tax purposes upon vesting.

Net Income

Net income for the first six months of 2023 increased by \$5.0 million to \$6.4 million compared to \$1.4 million for the first six months of 2022. On a diluted per share basis, earnings increased \$0.14 to \$0.18 for the first six months of 2023 compared to \$0.04 per share for the first six months of 2022. Driving this increase were the factors noted above.

Adjusted EBITDA

Our consolidated Adjusted EBITDA for the first quarter of 2023 was \$26.7 million, compared to \$13.0 million for the first quarter of 2022, an increase of \$13.7 million.

The table below describes the changes in Adjusted EBITDA for the six months ended June 30, 2023 compared to the same period for 2022 (in millions):

Adjusted EBITDA six months ended June 30, 2022	\$	13.0
Sales volume and other		9.9
Product pricing and mix		8.1
Material and labor costs		(2.9)
EV development/program costs		(3.6)
General and administrative costs and other		2.2
Adjusted EBITDA six months ended June 30, 2023	\$	<u>26.7</u>

Order Backlog

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

	June 30, 2023	June 30, 2022
Fleet Vehicles and Services	\$ 437,802	\$ 1,000,021
Specialty Vehicles	72,402	135,162
Total consolidated	<u>\$ 510,204</u>	<u>\$ 1,135,183</u>

The consolidated backlog at June 30, 2023 totaled \$510.2 million, a decrease of \$625.0 million, or 55.1%, compared to \$1,135.2 million at June 30, 2022.

Our FVS backlog decreased by \$562.2 million, or 56.2%, primarily to vehicle sales and softening demand in delivery vans. Our SV segment backlog decreased by \$62.8 million, or 46.4%, due to lower motorhome orders.

Orders in the backlog are subject to modification, cancellation or rescheduling by customers. 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, supply of chassis, 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.

Reconciliation of Non-GAAP Financial Measures

This report presents Adjusted EBITDA (earnings before interest, taxes, depreciation and amortization), which is a non-GAAP financial measure. This non-GAAP measure is calculated by excluding items that we believe to be infrequent or not indicative of our underlying operating performance, as well as certain non-cash expenses. We define Adjusted EBITDA as income from continuing operations before interest, income taxes, depreciation and amortization, as adjusted to eliminate the impact of restructuring charges, acquisition related expenses and adjustments, non-cash stock-based compensation expenses, and other gains and losses not reflective of our ongoing operations.

We present the non-GAAP measure Adjusted EBITDA because we consider it to be an important supplemental measure 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. We believe this measure 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 this non-GAAP measure 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 this non-GAAP measure, when considered together with the corresponding GAAP financial measures and the reconciliations to that measure, provides investors with additional understanding of the factors and trends affecting our business than could be obtained in the absence of this disclosure.

We use Adjusted EBITDA to evaluate the performance of and allocate resources to our segments. Adjusted EBITDA is also used, along with other financial and non-financial measures, for purposes of determining annual incentive compensation for our management team and long-term incentive compensation for certain members of our management team.

The following table reconciles Income from continuing operations to Adjusted EBITDA for the periods indicated.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net Income	\$ 4,685	\$ 5,283	\$ 6,363	\$ 1,431
Net loss attributable to non-controlling interest	-	-	32	-
Add (subtract):				
Interest expense	1,477	463	3,125	617
Depreciation and amortization expense	4,186	3,727	8,050	6,696
Income tax expense (benefit)	556	1,461	986	(424)
Restructuring and other related charges	1,253	354	1,315	461
Acquisition related expenses and adjustments	-	341	291	557
Non-cash stock based compensation expense	1,263	2,060	3,090	3,708
Legacy legal matters	-	-	956	-
Non-recurring professional fees	160	-	160	-
CEO transition	2,287	-	2,287	-
Adjusted EBITDA	<u>\$ 15,867</u>	<u>\$ 13,689</u>	<u>\$ 26,655</u>	<u>\$ 13,046</u>

Our Segments

We identify our reportable segments based on our management structure and the financial data utilized by our chief operating decision maker to assess segment performance and allocate resources among our operating units. We have two reportable segments: FVS and SV.

For certain financial information related to each segment, see "Note 9 – 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
June 30,

	2023		2022	
	Amount	Percentage	Amount	Percentage
Sales	\$ 138,983	100.0%	\$ 136,897	100.0%
Adjusted EBITDA	12,468	9.0%	14,525	10.6%

Sales in our FVS segment were \$139.0 million for the second quarter of 2023, compared to \$136.9 million for the second quarter of 2022, an increase of \$2.1 million or 1.5%. This increase was primarily attributable to increased truck body sales including \$7.5 million in pass-through chassis sales partially offset by a softening in the delivery van markets.

Adjusted EBITDA in our FVS segment for the second quarter of 2023 was \$12.5 million compared to \$14.5 million for the second quarter of 2022, a decrease of \$2.0 million. This decrease was attributable to \$1.1 million lower volume and \$6.6 million unfavorable mix net of pricing, partially offset by \$3.2 million favorable productivity and \$2.5 million favorable material, labor costs, and other costs.

**Financial Data
(Dollars in Thousands)
Six Months Ended
June 30,**

	2023		2022	
	Amount	Percentage	Amount	Percentage
Sales	\$ 298,416	100.0%	\$ 249,594	100.0%
Adjusted EBITDA	24,941	8.4%	13,654	5.5%

Sales in our FVS segment were \$298.4 million for the first six months of 2023, compared to \$249.6 million for the first six months of 2022, an increase of \$48.8 million or 19.6%. This increase was primarily attributable to increased sales volume driven by truck body sales as well as easing of industry wide supply chain constraints.

Adjusted EBITDA in our FVS segment for the first six months of 2023 was \$24.9 million compared to \$13.7 million for the first six months of 2022, an increase of \$11.2 million. This increase was attributable to \$1.3 million favorable volume, \$9.0 million favorable productivity and \$4.3 million favorable material, labor costs, and other costs, partially offset by \$3.4 million unfavorable mix net of pricing.

Specialty Vehicles

**Financial Data
(Dollars in Thousands)
Three Months Ended
June 30,**

	2023		2022	
	Amount	Percentage	Amount	Percentage
Sales	\$ 87,561	100.0%	\$ 95,298	100.0%
Adjusted EBITDA	17,367	19.8%	12,859	13.5%

Sales in our SV segment were \$87.6 million in the second quarter of 2023, compared to \$95.3 million for the second quarter of 2022, a decrease of \$7.7 million or 8.1%. This decrease was primarily attributable to lower motorhome sales volumes, partially offset by higher service body sales.

Adjusted EBITDA for our SV segment for the second quarter of 2023 was \$17.4 million, compared to \$12.9 million for the second quarter of 2022, an increase of \$4.5 million or 35.1%. This increase was primarily attributable to \$6.7 million favorable pricing and mix and \$2.5 million favorable productivity, partially offset by \$2.4 million due to lower volume and \$2.3 million due to material, labor, and other costs.

**Financial Data
(Dollars in Thousands)
Six Months Ended
June 30,**

	2023		2022	
	Amount	Percentage	Amount	Percentage
Sales	\$ 174,748	100.0%	\$ 189,484	100.0%
Adjusted EBITDA	31,219	17.9%	22,958	12.1%

Sales in our SV segment were \$174.7 million in the first six months of 2023, compared to \$189.5 million for the first six months of 2022, a decrease of \$14.8 million or 7.8%. This decrease was primarily attributable to lower motorhome sales volumes, partially offset by higher service body sales.

Adjusted EBITDA for our SV segment for the first six months of 2023 was \$31.2 million, compared to \$23.0 million for the first six months of 2022, an increase of \$8.2 million or 36.0%. This increase was primarily attributable to \$14.2 million favorable pricing and mix and \$3.0 million favorable productivity, partially offset by \$4.7 million due to lower volume and \$4.3 million due to material, labor, and other costs.

LIQUIDITY AND CAPITAL RESOURCES

Cash Flows

Cash and cash equivalents decreased by \$3.7 million from December 31, 2022, to a balance of \$7.8 million as of June 30, 2023. These funds, in addition to cash generated from future operations and availability under our existing credit facilities, are expected to be sufficient to finance our foreseeable liquidity and capital needs, including potential future acquisitions.

Cash Flow from Operating Activities

We generated \$35.6 million of cash from operating activities during the six months ended June 30, 2023, an increase in cash provided of \$72.3 million from \$36.7 million of cash used in operating activities during the six months ended June 30, 2022. The \$35.6 million of cash generated in the first six months of 2023 was driven by a \$17.6 million net inflow related to income adjusted for non-cash charges to operations and by a \$18.0 million net inflow related to the change in net working capital. The change in working capital in the first six months of 2023 was driven by a \$68.1 million net inflow related to decreased receivables and contract assets primarily attributable to the completion of in process vehicles and a \$0.3 million net inflow related to changes in accrued compensation and related taxes, partially offset by a \$38.6 million net outflow related to decreased payables primarily attributable to timing of payments within the period, a \$1.1 million net outflow related to increased inventories primarily attributable to increased raw material inventories, a \$1.1 million net outflow related to changes in accrued warranty, and a \$9.5 million net outflow related to changes in other assets and liabilities.

Cash Flow from Investing Activities

We used \$11.4 million in investing activities during the six months ended June 30, 2023, an increase in cash used of \$1.5 million from \$9.9 million used during the six months ended June 30, 2022. The increase in cash used in investing activities is primarily due to a \$1.0 million increase in the purchases of property, plant and equipment and a \$0.5 million increase related to the acquisition of a business.

Cash Flow from Financing Activities

We used \$28.0 million of cash through financing activities during the six months ended June 30, 2023, an increase in cash used of \$44.0 million from \$16.0 million generated during the six months ended June 30, 2022. The increase in cash used by financing activities is primarily attributable to \$51.0 million of increased payments on long-term debt and \$15.0 million of decreased proceeds from long-term debt, partially offset by an \$18.0 million decrease in the purchase and retirement of common stock and a \$4.1 million decrease in exercise and vesting of stock awards.

Debt

On November 30, 2021, we entered into an Amended and Restated Credit Agreement (the "Credit Agreement") by and among us and certain of our subsidiaries as borrowers, Wells Fargo Bank, N.A. ("Wells Fargo"), as administrative agent, and the lenders party thereto consisting of Wells Fargo, JPMorgan Chase Bank, N.A., PNC Bank, National Association and Bank of America, N.A. (the "Lenders"). Certain of our other subsidiaries have executed guaranties guarantying the borrowers' obligations under the Credit Agreement.

On May 31, 2023, the Company amended the Credit Agreement to effectuate the transition of the underlying variable interest rate from LIBOR to the Secured Overnight Financing Rate ("SOFR"). Our interest expense is not expected to increase materially with this transition. Increased interest expense and/or disruption in the financial market could have a material adverse effect on our business, financial condition, or results of operations.

Under the Credit Agreement, we may borrow up to \$400.0 million from the Lenders under a secured revolving credit facility which matures November 30, 2026. We may also request an increase in the facility of up to \$200.0 million in the aggregate, subject to customary conditions. The revolving 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 \$10.0 million, subject to certain limitations and restrictions. The revolving credit facility 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 SOFR plus 1.0%; or (ii) adjusted SOFR, in each case plus a margin based upon our ratio of debt to earnings from time to time. The applicable borrowing rate including the margin was 6.27% (or one-month SOFR plus 1.00%) at June 30, 2023. The revolving credit facility is secured by security interests in, and liens on, all assets of the borrowers and guarantors, other than real property and certain other excluded assets. At June 30, 2023 and December 31, 2022, we had outstanding letters of credit totaling \$1.2 million, related to our workers' compensation insurance.

Under the terms of our Credit Agreement, available borrowings (exclusive of outstanding borrowings) totaled \$244.3 million and \$187.2 million at June 30, 2023 and December 31, 2022, respectively. The Credit Agreement requires us to maintain certain financial ratios and other financial covenants; 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, all subject to certain exceptions and baskets. At June 30, 2023 and December 31, 2022, we were in compliance with all covenants in our Credit Agreement.

Equity Securities

On February 17, 2022, our Board of Directors authorized the repurchase of up to \$250.0 million of our common stock in open market transactions. In the first quarter of 2023, we repurchased 348,705 shares for \$8.8 million. 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 dividends 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 2023 and 2022 as shown in the table below.

Date dividend declared	Record date	Payment date	Dividend per share (\$)	
May 2, 2023	May 17, 2023	Jun. 20, 2023	\$	0.05
Jan. 31, 2023	Feb. 17, 2023	Mar. 17, 2023	\$	0.05
Nov. 1, 2022	Aug. 17, 2022	Sep. 16, 2022	\$	0.05
Aug. 5, 2022	Aug. 17, 2022	Sep. 16, 2022	\$	0.05
May 2, 2022	May 17, 2022	June 17, 2022	\$	0.05
Feb. 16, 2022	Feb. 17, 2022	Mar. 17, 2022	\$	0.05

Effect of Inflation

Inflation affects us in two principal ways. First, our revolving credit facility is generally tied to the prime and SOFR 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. 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 June 30, 2023, we had \$45.0 million debt outstanding under our revolving credit facility. An increase of 100 basis points in interest rates would result in \$0.5 million of incremental interest expense on an annualized basis. 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.

On May 31, 2023, the Company amended the Credit Agreement to effectuate the transition of the underlying variable interest rate from LIBOR to SOFR. The interest rate charged on our outstanding borrowings pursuant to our revolving credit facility is currently based on SOFR, as described in Part 1, Item 1, "Note 3 – Debt" of this Form 10-Q. Our interest expense is not expected to increase materially with this transition. Increased interest expense and/or disruption in the financial market could have a material adverse effect on our business, financial condition, or results of operations.

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. 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 months ended June 30, 2023.

We do not believe that there has been a material change in the nature or categories of the primary market risk exposures or in the particular markets that present our primary risk of loss. As of the date of this report, we do not know of or expect any material changes in the general nature of our primary market risk exposure in the near term. In this discussion, "near term" means a period of one year following the date of the most recent balance sheet contained in this report.

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.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended), as of the end of the period covered by this Quarterly Report. Based on the evaluation of our disclosure controls and procedures as of June 30, 2023, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There have been no changes during the quarter ended June 30, 2023, in our internal control over financial reporting that have materially affected, or are likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and therefore can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

PART II. OTHER INFORMATION**Item 1. Legal Proceedings**

See “Note 7 – *Commitments and Contingent Obligations*,” included in Part I, Item 1, “Notes to Unaudited Consolidated Financial Statements,” within this quarterly report on Form 10-Q.

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, 2022, 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, 2022 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 February 17, 2022, our Board of Directors authorized the repurchase of up to \$250.0 million of our common stock in open market transactions. In the first quarter of 2023, we repurchased 348,705 shares for \$8.8 million. We believe that we have sufficient resources to fund any potential stock buyback in which we may engage.

Period	Total Number of Shares Purchased(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares That May Yet be Purchased Under Announced Plans or Programs(2) (In millions)
April 1 to April 30	-	\$ -	-	\$ 233.3
May 1 to May 31	-	-	-	233.3
June 1 to June 30	3,010	23.19	-	233.3
Total	<u>3,010</u>		<u>-</u>	

(1) During the quarter ended June 30, 2023, 3,010 shares were delivered by employees in satisfaction of tax withholding obligations that occurred upon the vesting of restricted shares.

(2) This column reflects the number of shares that may yet be purchased pursuant to the February 17, 2022 Board of Directors authorization described above.

Item 5. Other Information

On May 1, 2023, Daryl Adams, President and Chief Executive Officer and a director, entered into a Rule 10b5-1 Trading Arrangement (as defined in Item 408 of Regulation S-K) for the sale of up to 240,000 shares of the Company’s common stock, which trading arrangement is scheduled to terminate no later than July 30, 2024.

Item 6. Exhibits.

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

<u>Exhibit No.</u>	<u>Document</u>
10.1	Letter Agreement dated April 26, 2023 with Todd Heavin (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed on April 27, 2023). *
10.2	First Amendment to Amended and Restated Credit Agreement dated May 31, 2023 to Amended and Restated Credit Agreement dated November 30, 2021 by and among the Company and its affiliates, Wells Fargo Bank, National Association, as administrative agent, and the lenders party thereto.
10.3	Transition and Separation Agreement dated June 7, 2023 with Daryl M. Adams. *
10.4	The Shyft Group, Inc. Stock Incentive Plan (Amended and Restated Effective May 17, 2023) (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed on May 18, 2023).
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	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit 101)

*Management contract or compensatory plan or arrangement

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: July 27, 2023

THE SHYFT GROUP, INC.

By /s/ Jonathan C. Douyard
Jonathan C. Douyard
Chief Financial Officer

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is dated as of May 31, 2023, and effective in accordance with Section 3 below, by and among THE SHYFT GROUP, INC. (the "Company"), THE SHYFT GROUP SERVICES, LLC (formerly known as UTILIMASTER SERVICES, LLC), THE SHYFT GROUP USA, INC., and ROYAL TRUCK BODY LLC (formerly known as FORTRESS RESOURCES, LLC) (collectively, with the Company, the "Borrowers"), the Guarantors (as defined in the Credit Agreement referred to below) party hereto 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 Amended and Restated Credit Agreement dated as of November 30, 2021 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement", and the Existing Credit Agreement, as amended by this Amendment, the "Credit Agreement");

WHEREAS, pursuant to the notice of Early Opt-in Election posted to the Lenders on May 23, 2023, the Company and the Administrative Agent made an Early Opt-in Election to replace USD LIBOR with Adjusted Term SOFR in accordance with Section 2.14(c) of the Existing Credit Agreement and clause (a)(1) of the definition of "Benchmark Replacement", effective as of the date of this Amendment;

WHEREAS, in connection with such Early Opt-in Election the Borrowers have notified the Administrative Agent that they desire to amend the Existing Credit Agreement as set forth herein;

WHEREAS, subject to the terms and conditions set forth below, the parties hereto have agreed to such amendments as 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) 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 (excluding the Schedules and Exhibits thereto) are hereby amended to (a) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~), (b) add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) and (c) move the green double-underlined text (indicated textually in the same manner as the following example: double-underlined text), in each case, as set forth in the Credit Agreement attached hereto as Annex A.

(b) Schedule 2.05(b)(ii) to the Existing Credit Agreement is hereby amended and restated in its entirety to read as set forth on Annex B hereto.

Section 3. Conditions to Effectiveness. This Amendment shall become effective at 5:00 p.m., New York City time, on May 31, 2023 (being the sixth (6th) Business Day after the date that the Administrative Agent has posted a copy of this Amendment to each of the Lenders and the Borrowers); provided that the following conditions are satisfied or waived (such date, the “Amendment Effective Date”):

(a) Documentation. The Administrative Agent’s receipt of a counterpart of this Amendment, duly executed and delivered by the Borrowers, the Subsidiary Guarantors and the Administrative Agent.

(b) Expenses. Unless waived by the Administrative Agent, the Borrowers shall have paid all expenses (including reasonable and documented out-of-pocket fees, charges and disbursements of counsel) incurred by the Administrative Agent in connection with this Amendment.

(c) Lender Negative Consent. The Administrative Agent shall have posted a copy of this Amendment to each of the Lenders and the Borrowers at least six (6) Business Days prior to its effectiveness, and the Administrative Agent shall not have received, by 5:00 p.m., New York City time, on May 30, 2023 (being the fifth (5th) Business Day after the date that the Administrative Agent has posted a copy of this Amendment to each of the Lenders and the Borrowers), written notice of objection to this Amendment from Lenders comprising Required Lenders in accordance with Section 2.14(c) of the Existing Credit Agreement.

Section 4. Outstanding Loans. Upon the effectiveness of this Amendment on the Amendment Effective Date, and notwithstanding anything to the contrary in the Credit Agreement, all Eurodollar Loans (as defined in the Existing Credit Agreement) then outstanding under the Existing Credit Agreement shall continue as Eurodollar Loans (as defined in the Existing Credit Agreement) under the Credit Agreement (but subject to the applicable interest rate terms (including breakage) with respect thereto under the Existing Credit Agreement) solely for the duration of the existing Interest Periods applicable thereto as of the Amendment Effective Date; it being understood that such Eurodollar Loans and Interest Periods are not being renewed or extended as a result of this Amendment or the Credit Agreement and upon the expiration or earlier termination of such Interest Periods such Eurodollar Loans shall become either ABR Loans or SOFR Loans (each as defined in the Credit Agreement), in each case as selected by the applicable Borrower in accordance with the provisions of the Credit Agreement.

Section 5. Notice. To the extent that the Administrative Agent is required to provide notice to the Company, any Lender or any other party to the Credit Agreement of the implementation of an Early Opt-in Election and the applicable Benchmark Replacement Date, any Benchmark Replacement or the effectiveness of any Benchmark Replacement Conforming Changes in connection with the implementation of a Benchmark Replacement, this Amendment shall constitute such notice.

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 Amendment Effective Date, references in the Existing 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 Existing 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. Entire Agreement. This Amendment is the entire agreement, and supersedes 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:

THE SHYFT GROUP, INC.
THE SHYFT GROUP SERVICES, LLC (formerly known as
UTILIMASTER SERVICES, LLC)
THE SHYFT GROUP USA, INC.
ROYAL TRUCK BODY LLC (formerly known as FORTRESS
RESOURCES, LLC)

By: /s/ Joshua Sherbin

Name: Joshua Sherbin
Title: Secretary

GUARANTORS:

THE SHYFT GROUP UPFIT SERVICES, INC.
THE SHYFT GROUP GTB, LLC
THE SHYFT GROUP DURAMAG LLC

By: /s/ Joshua Sherbin

Name: Joshua Sherbin
Title: Secretary

The Shyft Group, Inc.
First Amendment to Amended and Restated Credit Agreement
Signature Page

ADMINISTRATIVE AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Administrative Agent

By: /s/ Megan Pridmore
Name: Megan Pridmore
Title: Director

The Shyft Group, Inc.
First Amendment to Amended and Restated Credit Agreement
Signature Page

Annex A

Amended Credit Agreement

See attached.

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

November 30, 2021

(as amended by the First Amendment to Amended and Restated Credit Agreement, dated as of May 31, 2023)

among

THE SHYFT GROUP, INC.,
~~THE SHYFT GROUP GLOBAL, INC.,~~
THE SHYFT GROUP SERVICES, LLC (formerly known as UTILIMASTER SERVICES, LLC),
THE SHYFT GROUP USA, INC.
and
ROYAL TRUCK BODY LLC (formerly known as FORTRESS RESOURCES, LLC),
as the Borrowers,

The Lenders Party Hereto

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

and

JPMORGAN CHASE BANK, N.A.,
as Syndication Agent

WELLS FARGO SECURITIES, LLC,
and
JPMORGAN CHASE BANK, N.A.
as Joint Lead Arrangers and Joint
Bookrunners

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Schedule 2.01 – Commitments
Schedule 2.05(b)(ii) – Floorplan Swingline Loans
Schedule 2.06 – Existing Letters of Credit
Schedule 3.05 – Subsidiaries
Schedule 3.06 – Disclosed Matters
Schedule 3.14 – Employee Relations
Schedule 5.13 – Post Closing Matters
Schedule 6.01 – Existing Indebtedness
Schedule 6.02 – Existing Liens
Schedule 6.04 – Existing Investments
Schedule 6.08 – Existing Restrictions

EXHIBITS:

Exhibit A – Form of Assignment and Assumption
Exhibit B – Form of Tax Certificates

This AMENDED AND RESTATED CREDIT AGREEMENT dated as of November 30, 2021, among THE SHYFT GROUP, INC., THE SHYFT GROUP ~~GLOBAL, INC., SERVICES, LLC (formerly known as~~ UTILIMASTER SERVICES, LLC), THE SHYFT GROUP USA, INC., and ~~ROYAL TRUCK BODY LLC (formerly known as~~ FORTRESS RESOURCES, LLC), the LENDERS party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent.

RECITALS

The Borrowers have requested that the Lenders amend and restate the Existing Credit Agreement (as defined below) and provide a revolving credit facility and other credit extensions hereunder and the Lenders are willing to do so on the terms and conditions set forth herein, including Section 9.21.

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 equal to (a) LIBOR for such Interest Period multiplied by (b) the Statutory Reserve Rate.~~

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“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.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“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 Amended and Restated 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~~ Term SOFR for a one month ~~Interest Period~~ tenor in effect 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~~ clause (c) shall not be applicable during any period in which Adjusted Term SOFR is unavailable or unascertainable). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or ~~the Adjusted LIBO Rate~~ Term SOFR, as applicable, 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~~ Term SOFR, 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~~ SOFR 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 Adjusted Term SOFR~~ 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 <u>Adjusted Term SOFR</u> Spread	Alternate Base Rate Spread	Commitment Fee Rate
I	< 1.25:1.00	100.0 bps	0.0 bps	15.0 bps
II	< 2.00:1.00 but ≥ 1.25:1.00	125.0 bps	25.0 bps	17.5 bps
III	< 2.50:1.00 but ≥ 2.00:1.00	150.0 bps	50.0 bps	20.0 bps
IV	< 3.00:1.00 but ≥ 2.50:1.00	175.0 bps	75.0 bps	22.5 bps
V	≥ 3.00:1.00	200.0 bps	100.0 bps	25.0 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 Year ending December 31, 2021 and the certificate under [Section 5.01\(c\)](#).

“[Approved Fund](#)” has the meaning assigned to such term in [Section 9.04](#).

“[Arrangers](#)” means each of Wells Fargo Securities, LLC and JPMorgan Chase Bank, N.A., in each case, in their capacities as joint lead arrangers and joint bookrunners.

“[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\(a\)](#).

“[Available Tenor](#)” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark [\(or component thereof\) that is or may be used for determining the length of an interest period pursuant to this Agreement](#) or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, ~~as applicable; (or component thereof)~~ that is or may be used for determining ~~the length of an Interest Period pursuant to this Agreement as of such date~~ [any frequency of making payments of interest calculated with reference to such Benchmark](#) and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to [Section 2.14\(c\)\(iv\)](#).

“[Bail-In Action](#)” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means 11 U.S.C. §§ 101 *et seq.*

“Benchmark” means, initially, ~~USD LIBOR~~the Term SOFR Reference Rate; provided that if a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable,~~ and its related Benchmark Replacement Date have occurred with respect to ~~USD LIBOR~~the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.14(c)(i).

“Benchmark Replacement” means, for any Available Tenor,

~~(a)~~ with respect to any Benchmark Transition Event ~~or Early Opt-in Election~~, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

~~(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment; provided that, if the Company has provided a notification to the Administrative Agent in writing on or prior to such Benchmark Replacement Date that a Borrower has a Hedge Agreement in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to this clause (a)(1) for such Benchmark Transition Event or Early Opt-in Election, as applicable;~~

(a) ~~(2)~~ the sum of: (A_i) Daily Simple SOFR and (B_{ii}) the related Benchmark Replacement Adjustment; or

(b) ~~(3)~~ the sum of: (A_i) the alternate benchmark rate that has been selected by the Administrative Agent and the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i_A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii_B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B_{ii}) the related Benchmark Replacement Adjustment;

~~(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment; or~~

~~(c) with respect to any Other Benchmark Rate Election, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;~~

provided that, ~~(i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3), clause (b) or clause (c) of this~~this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

~~(a) (1)~~ (a) for purposes of ~~clauses clause~~ clause (a)(1), (a)(2) and (b) of the definition of “Benchmark Replacement,” an amount equal to 0.10% (10 basis points); and

~~(b) (2)~~ (b) for purposes of clause ~~(a)(3)~~ (b) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Company giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; ~~and~~ .

~~(3) for purposes of clause (c) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Company giving due consideration to any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.~~

“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 “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), ~~the definition of “London Banking Day,”~~ timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of 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 such 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 and the other Loan Documents).

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

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

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date ~~of the public~~ on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication of information referenced ~~therein;~~ in clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

~~(c) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Company pursuant to Section 2.14(c)(i)(B); or~~

~~(d) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.~~

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

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

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date ~~pursuant to clauses (a) or (b) of that definition~~ has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14(c).

“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, The Shyft Group ~~Global, Inc., a Michigan corporation,~~ Services, LLC (formerly known as Utilimaster Services, LLC), an Indiana limited liability company, The Shyft Group USA, Inc., a South Dakota corporation and Royal Truck Body LLC (formerly known as 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~~ SOFR 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 (a) is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed and (b) is not a day on which commercial banks in Charlotte, North Carolina are closed.

“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 dated as of August 8, 2018, by and among the Loan Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time (and as reaffirmed by the Reaffirmation Agreement).

“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.

“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 The Shyft Group, 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 15% 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 15% 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.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covered Party” has the meaning assigned to such term in Section 9.24(a).

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

“Debtor Relief Laws” means the Bankruptcy Code of the United States 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, if the then-current Benchmark is USD LIBOR, the occurrence of:~~

~~(a) a notification by the Administrative Agent to (or the request by the Company to the Administrative Agent to notify) each of the other parties hereto that at least five (5) currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review); and~~

~~(b) the joint election by the Administrative Agent and the Company to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

“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).

“Electronic Record” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Electronic Signature” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Engagement Letter” means that certain Engagement Letter among the Company, the Administrative Agent and Wells Fargo Securities, LLC, dated as of November 4, 2021, as amended.

“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.

“Erroneous Payment” has the meaning assigned thereto in Section 8.11(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned thereto in Section 8.11(d).

“Erroneous Payment Impacted Class” has the meaning assigned thereto in Section 8.11(d).

“Erroneous Payment Return Deficiency” has the meaning assigned thereto in Section 8.11(d).

“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 Credit Agreement, dated as of August 8, 2018, among 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 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 2021 Fiscal Year shall mean the Fiscal Year ending December 31, 2021.

“Floor” means a rate of interest equal to 0%.

“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 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 EurodollarSOFR 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 EurodollarSOFR 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 EurodollarSOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as a Borrower may elect; 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, (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, and (c) no tenor that has been removed from this definition pursuant to Section 2.14(c)(iv) shall be available for specification in any Borrowing Request. 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 (a) Wells Fargo, which agrees to issue Letters of Credit on the terms and conditions set forth herein, and (b) JPMorgan Chase Bank, N.A., which may in its sole discretion and without commitment issue Letters of Credit on the terms and conditions set forth herein, each in its respective 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.

“Junior Indebtedness” means, with respect to the Borrowers and their Subsidiaries, any (a) Subordinated Indebtedness, (b) Indebtedness secured by Liens that are junior to the Liens securing the Secured Obligations and (c) unsecured Indebtedness with an aggregate outstanding principal amount in excess of \$1,000,000; provided, however, that Indebtedness permitted under clauses (b) through (i) of Section 6.01 shall not constitute Junior Indebtedness.

“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 (a) (i) the Consolidated Total Debt as of such Fiscal Quarter end minus (ii) Unrestricted Cash in an amount of up to \$50,000,000 on such date to (b) Consolidated EBITDA for the period of four consecutive Fiscal Quarters ending with such Fiscal Quarter end; provided that for purposes of Section 6.06(e), 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).

~~“LIBOR” means, subject to the implementation of a Benchmark Replacement in accordance with Section 2.14(c), for any 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 (2) London Banking 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 “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 (2) London Banking Days prior to the commencement of such Interest Period. Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error.~~

~~Notwithstanding the foregoing, (x) in no event shall LIBOR be less than 0% (including, without limitation, any Benchmark Replacement 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 with respect to “LIBOR” is implemented then all references herein to “LIBOR” shall be deemed references to such Benchmark Replacement.~~

“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, the Reaffirmation Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit applications, the Loan Party Guaranty, 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 that certain Loan Guaranty dated as of March 22, 2019, among the Guarantors in favor of the Administrative Agent, for the benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time (and as reaffirmed by the Reaffirmation Agreement).

“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.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.~~

“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) November 30, 2026, (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 Benchmark Rate Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:~~

~~(a) a notification by the Administrative Agent to (or the request by the Company to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a USD LIBOR-based rate, a term benchmark rate that is not a SOFR-based rate as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review); and~~

~~(b) the joint election by the Administrative Agent and the Company to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders;~~

“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)).

“Payment Recipient” has the meaning assigned thereto in Section 8.11(a).

“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 depository 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.

"Permitted Receivables Sale Transaction" means customary invoice discounting, receivables sale transactions or similar arrangements consistent with industry practice involving the sale of Receivables that is structured as a "true sale", without recourse to the Borrowers and their Subsidiaries (except for customary representations, warranties, covenants and indemnities made in connection therewith or as is otherwise customary (as determined by the Company in good faith) for such transactions and does not provide recourse to any Borrower and its Subsidiaries for credit risk of the account parties on such Receivable), to a counterparty pursuant to an accelerated payment program that is not entered into as part of an accounts receivable securitization transaction or any revolving credit or term loan financing transaction and that provides for payment to any Borrower or one of its Subsidiaries on account of such Receivables prior to the date that such Receivables would otherwise be due; provided that (a) the portion of the purchase price with respect to any Receivable that must be paid in cash shall not be less than 96% (or such lesser percentage as the Administrative Agent may reasonably determine) of the original invoiced amount of such Receivable, (b) such arrangement shall be on arm's length terms that are fair and reasonable to the Borrowers and their Subsidiaries (as determined in good faith by the Company) and (c) the aggregate book value of all Receivables that have been sold (or otherwise subjected to such arrangement) by the Borrowers and their Subsidiaries and that remain outstanding shall not at any time exceed \$10,000,000.

"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.

"Reaffirmation Agreement" means the Reaffirmation Agreement dated as of the date hereof made by each Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties.

“Receivables” means accounts receivable of the Company or any of its Subsidiaries arising in the ordinary course of business from the sale of goods or services, including any thereof constituting or evidenced by chattel paper, instruments, accounts (as defined in the UCC) or general intangibles, and all proceeds thereof and rights (contractual and other) and collateral (including all general intangibles, documents, instruments and records) related thereto that are customarily transferred in connection with a receivables facility or similar monetization of such assets.

“Reference Time” with respect to any setting of the then-current Benchmark means ~~(a) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (b) if such Benchmark is not USD LIBOR,~~ the time determined by the Administrative Agent in its reasonable discretion.

“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).

“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).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority

“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 (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). The amount of each Revolving Lender’s Revolving Credit Commitment as of the 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 aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments on the Effective Date is \$400,000,000.

“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 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; 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).

“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 S&P Global Inc. and any successor thereto.

“Sanctioned Country” means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Effective Date, Cuba, Iran, North Korea, Syria, Venezuela 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, any European member state, 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).

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions 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, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority with jurisdiction over any Lender, the Company or any of its Subsidiaries or Affiliates.

“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.

“SOFR” means, ~~with respect to any Business Day,~~ a rate ~~per annum~~ equal to the secured overnight financing rate ~~for such Business Day published~~ as administered by the SOFR Administrator ~~on the SOFR Administrator’s Website on the immediately succeeding Business Day.~~

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

~~“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.~~

“SOFR Loan” means any Loan bearing interest at a rate based on Adjusted Term SOFR as provided in Section 2.13.

“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.~~

“Subordinated Indebtedness” means the collective reference to any Indebtedness incurred by the Company or any of its Subsidiaries that is subordinated in right and time of payment to the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent.

“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,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Alternate Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern time) on any Alternate Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Alternate Base Rate SOFR Determination Day.

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

~~“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, Reference Rate” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Company of the occurrence of a Term SOFR Transition Event.~~

~~“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.~~

“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 certain outstanding Indebtedness, 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 Term SOFR or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“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.

“Unrestricted Cash” means, as of any date of determination, the sum of 100% of all cash and cash equivalents of the Loan Parties that are held in bank accounts or securities accounts located in the United States, in each case that are unrestricted and not subject to any Liens (other than Liens permitted under Section 6.02(e) and clause (h) of the definition of “Permitted Encumbrances”); provided that, for purposes of any incurrence-based baskets under this Agreement, the proceeds of any Indebtedness incurred substantially concurrently with the determination of such amount shall be excluded.

~~“USD LIBOR” means the London interbank offered rate for Dollars:~~

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.03, 2.08 and 2.11(a), in each case, such day is also a Business Day.

“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 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 (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 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 “EurodollarSOFR Loan” or an “ABR Loan”) or by Class and Type (e.g., a “EurodollarSOFR Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “EurodollarSOFR Borrowing” or an “ABR Borrowing”) or by Class and Type (e.g., a “EurodollarSOFR 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 obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of this Agreement (whether or not such obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Lease Obligations in the financial statements.

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 ~~interest rate on Eurodollar Loans and ABR Loans (when determined by reference to clause (c) of the definition of Alternate Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration (“IBA”), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the “FCA”), the regulatory supervisor of IBA, announced in public statements (the “Announcements”) that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate for such tenors may no longer be available or may no longer be deemed a representative reference rate upon which to determine the interest rate on Eurodollar Loans or ABR Loans (when determined by reference to clause (c) of the definition of Alternate Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 2.14(c), such Section 2.14(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Company, pursuant to Section 2.14(c), of any change to the reference rate upon which the interest rate on Eurodollar Loans and ABR Loans (when determined by reference to clause (c) of the definition of Alternate Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition of “LIBOR” thereof or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.14(c), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate or any other SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of a Benchmark SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Company. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.~~

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.

Section 1.10 Calculation of Baskets. If any of the baskets based on consolidated total assets set forth in Article VI of this Agreement are exceeded solely as a result of fluctuations in the consolidated total assets of the Borrowers and their Subsidiaries for the most recently completed Fiscal Quarter after the time any applicable Indebtedness was initially incurred, or any Liens, investments or Restricted Payments were initially incurred or made, in reliance on the exceptions under Article VI, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations.

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 EurodollarSOFR 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 EurodollarSOFR 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 [EurodollarSOFR](#) 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) [EurodollarSOFR](#) 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 [EurodollarSOFR](#) Borrowing, not later than 11:00 a.m., Eastern time, three [U.S Government Securities](#) 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](#):

- (a) the aggregate amount of the requested Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;
- (c) whether such Borrowing is to be an ABR Borrowing or a [EurodollarSOFR](#) Borrowing;
- (d) in the case of a [EurodollarSOFR](#) Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (e) 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 [EurodollarSOFR](#) 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 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 \$200,000,000, (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:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Incremental Amendment):

(i) the maturity of any such Incremental Term Loan shall not be earlier than the Maturity Date;

(ii) 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

(iii) 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;

(f) in the case of each Revolving Credit Facility Increase (the terms of which shall be set forth in the relevant Incremental Amendment):

(i) 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;

(ii) 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

(iii) 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

(g) 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 \$10,000,000, (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 \$5,000,000 (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 \$10,000,000, 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. (a) 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.

(b) 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 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:

(a) 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).

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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 SOFR 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. (a) 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~~SOFR 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~~SOFR 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 teletype 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:

(a) 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);

(b) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(c) whether the resulting Borrowing is to be an ABR Borrowing or a EurodollarSOFR Borrowing; and

(d) if the resulting Borrowing is a EurodollarSOFR 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 EurodollarSOFR 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 EurodollarSOFR 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 EurodollarSOFR Borrowing and (ii) unless repaid, each EurodollarSOFR 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 SOFR Revolving Borrowing, not later than 11:00 a.m., Eastern time, three U.S. Government Securities 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 be paid pursuant to Section 2.16.

(a) 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. (a) 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).

(a) 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~~SOFR 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).

(b) 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.

(c) The Borrowers agree to pay, on a joint and several basis, to the Administrative Agent and the Arrangers all fees set forth in the Engagement Letter or as otherwise separately agreed upon between the Company and such Arranger.

(d) 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. (a) 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.

(a) The Loans comprising each ~~Eurodollar~~SOFR Borrowing or a ~~Eurodollar~~SOFR Loan shall bear interest at ~~the~~Adjusted ~~LIBO~~RateTerm SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(b) 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~~SOFR Loans, Swingline Loans or Letters of Credit, (B) all outstanding ~~Eurodollar~~SOFR 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~~SOFR 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.

(c) 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~~SOFR 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.

(d) 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 ~~LIBOR~~Term SOFR, Term SOFR or SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14 Alternate Rate of Interest.

(a) Circumstances Affecting ~~Adjusted LIBO Rate~~ Benchmark Availability. Subject to clause (c) below, in connection with any request for a ~~Eurodollar~~SOFR Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that ~~Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Loan;~~ (ii) ~~the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that~~ reasonable and adequate means do not exist for ~~the~~ascertaining ~~the~~Adjusted ~~LIBO Rate~~Term SOFR for such Interest Period with respect to a proposed ~~Eurodollar Loan~~SOFR Loan on or prior to the first day of such Interest Period or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that ~~the~~Adjusted ~~LIBO Rate~~Term SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then, in each case, the Administrative Agent shall promptly give notice thereof to the Company. Thereafter, until the Administrative Agent notifies the Company that such circumstances no longer exist, the obligation of the Lenders to make ~~Eurodollar~~SOFR Loans and the right of the Borrowers to convert any Loan to or continue any Loan as a ~~Eurodollar~~SOFR Loan shall be suspended, ~~and the Borrowers shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such Eurodollar Loan together with accrued interest thereon (subject to Section 9.13), on the last day of the then current Interest Period applicable to such Eurodollar Loan; or (B) convert the then outstanding principal amount of each such Eurodollar Loan to an ABR Loan as of the last day (to the extent of the affected SOFR Loans or the affected Interest Periods). Upon receipt of such notice, (A) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans in the amount specified therein and (B) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period or may be repaid in full in accordance with the terms of this Agreement at the end of such Interest Period. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.16.~~

(b) Laws Affecting ~~Adjusted LIBO Rate~~SOFR Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective lending offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective lending offices) to honor its obligations hereunder to make or maintain any ~~Eurodollar Loan, SOFR Loan, or to determine or to charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR,~~ such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Company and the other Lenders (an "Illegality Notice"). Thereafter, until the Administrative Agent notifies the Company that such circumstances no longer exist, (i) ~~the obligations any obligation~~ of the Lenders to make ~~Eurodollar~~SOFR Loans, and the right of the Borrowers to convert any Loan to a ~~Eurodollar~~SOFR Loan or continue any Loan as a ~~Eurodollar~~SOFR Loan shall be suspended and ~~thereafter the Borrowers may select only ABR Loans and (ii) if any of the (ii) if necessary to avoid such illegality, the Administrative Agent shall compute the Alternate Base Rate without reference to clause (c) of the definition of "Alternate Base Rate". Upon receipt of an Illegality Notice, the Borrowers shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to ABR Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Alternate Base Rate without reference to clause (c) of the definition of "Alternate Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain the affected Eurodollar Loan to the end of the then current interest Period applicable thereto, the applicable Loan shall immediately be converted to an ABR Loan for the remainder of such Interest Period.~~ such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.16.

(c) Benchmark Replacement Setting.

(i) ~~(A)~~ Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedge Agreement shall be deemed not to be a “Loan Document” for purposes of this Section 2.14(c)), if a Benchmark Transition Event, ~~an Early Opt-in Election or an Other Benchmark Rate Election, as applicable,~~ and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause ~~(a)(1)~~ or (a)(2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause ~~(a)(3) or clause (c)~~ (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the affected Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If an Unadjusted Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

~~(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Company a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.~~

(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 or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Company and the Lenders of (A) any occurrence of a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable,~~ and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.14(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR ~~or USD LIBOR~~) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Company’s receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar SOFR 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 ABR Loans and (B) any outstanding affected Eurodollar SOFR Loans will be deemed to have been converted to ABR Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

~~(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the IBA, the administrator of the London interbank offered rate, and the FCA, the regulatory supervisor of the IBA, made the Announcements that the final publication or representativeness date for Dollars for (I) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (II) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Administrative Agent to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 2.14(c) shall be deemed satisfied.~~

Section 2.15 Increased Costs. (a) If any Change in Law shall:

(a) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board, as amended and in effect from time to time)), 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

~~(b)~~ 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;

~~(ii)~~ 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 EurodollarSOFR 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 EurodollarSOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any EurodollarSOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(ba) and is revoked in accordance therewith), except for any revocations or deemed revocations pursuant to Section 2.14(a), or (d) the assignment of any EurodollarSOFR 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 any loss, cost and expense attributable to such event. ~~In the case of a Eurodollar Loan, such (including any 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 arising from the liquidation or reemployment of funds or from fees payable) attributable to such event.~~ 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. (a) 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) (a) 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.

(b) Without limiting the generality of the foregoing:

(i) 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;

(ii) 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:

(A) 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;

(B) executed copies of IRS Form W-8ECI;

(C) 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 B 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

(D) 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 B, 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 B on behalf of each such direct and indirect partner;

(iii) 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

(iv) 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.

(a) 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).

(b) 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.

(c) 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 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.

(a) 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.

(b) 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.

(c) 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).

(d) 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.

(e) 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 Affected 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, 2020, 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.

(a) Since December 31, 2020, 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.

(a) 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.

(b) 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.

(a) 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.

(b) 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 amendment and restatement set forth in this Agreement 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 teletype 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.

(a) 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).

(b) 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.

(c) Lien Search. The Administrative Agent shall have received the results of a Lien search, 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).

(d) 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, 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.

(e) 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 most recently completed Fiscal Year 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.

(a) Governmental and Third Party Approvals. The Loan Parties 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.

(b) 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.

(a) 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.

(b) 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, (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.

(a) 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 or, with the written consent of each Lender, a Borrower, 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 \$20,000,000 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;

(i) Indebtedness incurred in the ordinary course of business owing to a Manufacturer, or any other manufacturer of motor vehicles approved by the Administrative Agent in writing, to finance the acquisition by a Borrower or its Subsidiaries of Vehicles pursuant to a customary floorplan arrangement (such arrangement, a "Floorplan Arrangement") in an aggregate principal amount not exceeding \$30,000,000 at any time outstanding;

(j) If no Event of Default or Unmatured Default exists or would be caused thereby, other Indebtedness at any time outstanding in an aggregate principal amount not exceeding the greater of (i) \$50,000,000 and (ii) ten percent (10%) of consolidated total assets of the Borrowers and their Subsidiaries as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01; and

(k) unsecured Indebtedness of a Loan Party; provided that:

(a) no Unmatured Default or Event of Default shall have occurred and be continuing or would result after giving effect to the incurrence of such Indebtedness;

(b) after giving effect to any such incurrence of Indebtedness under this clause (k) on a pro forma basis and the use of proceeds thereof, the Leverage Ratio shall be no more than 0.25 to 1.00 less than the maximum permitted Leverage Ratio pursuant to Section 6.13(a) at such time (after giving effect to any Leverage Ratio Increase then in effect or elected in connection therewith), based on financial statements for the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01;

(c) such Indebtedness does not mature or have scheduled principal amortization, mandatory prepayment, put right or sinking fund obligations prior to the date that is ninety-one (91) days after the then latest maturity of the Revolving Credit Commitments and Loans; provided that (A) any Indebtedness consisting of a customary bridge facility shall be deemed to satisfy this requirement so long as such Indebtedness automatically converts into long-term debt which satisfies this clause (iii), and (B) customary prepayment, redemption, repurchase or defeasance obligations in connection with a change of control, asset sale or the exercise of remedies after an event of default (in each case as determined by the Company in good faith) shall not disqualify such Indebtedness from satisfying the requirements of this clause (iii); and

(d) the terms of such Indebtedness reflect market terms (taken as a whole) at the time of issuance and (other than pricing, fees, rate floors, premiums and optional prepayment or redemption provisions), taken as a whole, are not materially more restrictive (as determined by the Company in good faith) on the Borrowers and their Subsidiaries than the terms of this Agreement, taken as a whole.

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;

(f) Liens on Vehicles and any assets related thereto that are customarily subject to a Lien pursuant to a Floorplan Arrangement (as determined by the applicable Borrower in good faith) securing Indebtedness permitted under Section 6.01(i); provided that (i) the Indebtedness secured thereby does not exceed the cost of acquiring such Vehicles and related assets and (ii) such security interests shall not apply to any other property or assets of any Borrower or any Subsidiary;

(g) Liens on Receivables incurred in connection with any Permitted Receivables Sale Transaction; and

(h) Liens not otherwise permitted hereunder on assets other than the Collateral securing Indebtedness or other obligations in the aggregate principal amount not to exceed the greater of (i) \$50,000,000 and (ii) ten percent (10%) of consolidated total assets of the Borrowers and their Subsidiaries as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01.

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;

(g) investments not otherwise permitted pursuant to this Section in an aggregate amount at any time outstanding not to exceed the greater of (i) \$50,000,000 and (ii) ten percent (10%) of consolidated total assets of the Borrowers and their Subsidiaries as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01; 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; and

(h) investments so long as (i) no Unmatured Default or Event of Default exists or would result after giving effect thereto and (ii) the Leverage Ratio would not exceed 3.00 to 1.00 after giving effect to such investment (and any Indebtedness incurred in connection therewith) on a pro forma basis as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01.

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;
- (d) other Restricted Payments during the term of this Agreement not exceeding the greater of (i) \$50,000,000 and (ii) ten percent (10%) of consolidated total assets of the Borrowers and their Subsidiaries as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01 so long as no Unmatured Default or Event of Default has occurred and is continuing or would result therefrom; and
- (e) the Borrowers may make Restricted Payments so long as (i) no Unmatured Default or Event of Default has occurred and is continuing or would result therefrom and (ii) after giving effect to such Restricted Payment (and any Indebtedness incurred in connection therewith) on a pro forma basis as of the most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01, the Leverage Ratio would not exceed 2.75 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, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof and (vi) the foregoing shall not apply to customary restrictions contained in documentation governing a Permitted Receivables Sale Transaction.

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;
- (i) the sale of Receivables prior to their stated due dates in connection with Permitted Receivable Sale Transactions; and
- (j) 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 (j) 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 3.50 to 1.00 as of any Fiscal Quarter end; 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 \$100,000,000 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 4.00 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 2.50 to 1.00 as of any Fiscal Quarter end.

Section 6.14 Payments and Modifications of Junior 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 Junior 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 Junior Indebtedness, except

(a) refinancings, refundings, renewals, extensions or exchange of any Junior Indebtedness permitted by Section 6.01 and by any subordination provisions applicable thereto;

(b) with respect to Subordinated Indebtedness, 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;

(c) so long as no Unmatured Default or Event of Default then exists or would be caused thereby, mandatory repayments, repurchases, redemptions or defeasances of Junior Indebtedness (in each case, except to the extent prohibited by the subordination terms thereof or the subordination agreement applicable thereto);

(d) payments and prepayments of Junior Indebtedness as a result of the conversion of all or any portion of such Junior Indebtedness into common Equity Interests of the Company;

(e) the payment of interest, expenses and indemnities in respect of Junior Indebtedness (except to the extent prohibited by the subordination terms thereof or the subordination agreement applicable thereto);

(f) payments and prepayments of Junior Indebtedness made solely with the proceeds of common Equity Interests or any capital contribution in respect of its common Equity Interests, so long as immediately before and after giving effect to any such payment or prepayment, no Unmatured Default or Event of Default then exists; and

(g) the Borrowers may make payments and prepayments of Junior Indebtedness so long as (i) no Unmatured Default or Event of Default has occurred and is continuing or would result therefrom and (ii) after giving effect to such payment or prepayment of Junior Indebtedness (and any Indebtedness incurred in connection therewith) on a pro forma basis as of the most recently ended four consecutive Fiscal Quarter period for which financial statements have been delivered pursuant to Section 5.01, the Leverage Ratio would not exceed 2.75 to 1.00.

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; or

(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;

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 Arrangers, the syndication agent, the Lenders, the Issuing Banks and their respective Related Parties, 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 banking, trust, financial advisory, underwriting, capital markets or other 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 or to provide notice to or consent of the Lenders with respect thereto.

Section 8.03 Exculpatory Provisions.

(a) The Administrative Agent, the Arrangers and their respective Related Parties 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, the Arrangers and their respective Related Parties:

(a) shall not be subject to any agency, trust, fiduciary or other implied duties, regardless of whether a Unmatured Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, 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;

(c) shall not have any duty to disclose, and shall not be liable for the failure to disclose to any Lender, any Issuing Bank or any other Person, any credit or other information concerning the business, prospects, operations, properties, assets, financial or other condition or creditworthiness of any Borrower or any of their respective Subsidiaries or Affiliates that is communicated to, obtained by or otherwise in the possession of the Person serving as the Administrative Agent, an Arranger or their respective Related Parties in any capacity, except for notices, reports and other documents that are required to be furnished by the Administrative Agent to the Lenders pursuant to the express provisions of this Agreement; and

(d) shall not be required to account to any Lender or any Issuing Bank for any sum or profit received by the Administrative Agent for its own account.

(b) The Administrative Agent, the Arrangers and their respective Related Parties shall not be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (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 and indicating that such notice is a "Notice of Default" is given to the Administrative Agent by a Borrower, a Lender or an Issuing Bank.

(c) The Administrative Agent, the Arrangers and their respective Related Parties shall not be responsible for or have any duty or obligations to any Lender or Participant or any other Person 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, or the creation, perfection, or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of the Collateral, (vi) 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 (vii) 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, shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, consent, communication, 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, including any certification pursuant to Section 8.09. 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 be fully protected in relying 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. Each Lender or Issuing Bank that has signed this Agreement or a signature page to an Assignment and Assumption or any other Loan Document pursuant to which it is to become a Lender or Issuing Bank hereunder shall be deemed to have consented to, approved and accepted and shall be deemed satisfied with each document or other matter required thereunder to be consented to, approved or accepted by such Lender or Issuing Bank or that is to be acceptable or satisfactory to such Lender or Issuing Bank.

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 or financial institution reasonably experienced in serving as administrative agent on syndicated bank facilities 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 or other amounts then 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 or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), 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 relating to its duties as Administrative Agent that are carried out following its retirement or removal, including, without limitation, any actions taken with respect to acting as collateral agent or otherwise holding any Collateral on behalf of any of the Secured Parties or in respect of any actions taken in connection with the transfer of agency to a replacement of successor Administrative Agent.

(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 expressly acknowledges that none of the Administrative Agent, any Arranger or any of their respective Related Parties has made any representations or warranties to it and that no act taken or failure to act by the Administrative Agent, any Arranger or any of their respective Related Parties, including any consent to, and acceptance of any assignment or review of the affairs of the Borrowers and their Subsidiaries or Affiliates shall be deemed to constitute a representation or warranty of the Administrative Agent, any Arranger or any of their respective Related Parties to any Lender, any Issuing Bank or any other Secured Party as to any matter, including whether the Administrative Agent, any Arranger or any of their respective Related Parties have disclosed material information in their (or their respective Related Parties') possession. Each Lender and each Issuing Bank expressly acknowledges, represents and warrants to the Administrative Agent and the Arrangers that (a) the Loan Documents set forth the terms of a commercial lending facility, (b) it is engaged in making, acquiring, purchasing or holding commercial loans in the ordinary course and is entering into this Agreement and the other Loan Documents to which it is a party as a Lender for the purpose of making, acquiring, purchasing and/or holding the commercial loans set forth herein as may be applicable to it, and not for the purpose of making, acquiring, purchasing or holding any other type of financial instrument, (c) it is sophisticated with respect to decisions to make, acquire, purchase or hold the commercial loans applicable to it and either it or the Person exercising discretion in making its decisions to make, acquire, purchase or hold such commercial loans is experienced in making, acquiring, purchasing or holding commercial loans, (d) it has, independently and without reliance upon the Administrative Agent, any Arranger, any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and appraisal of, and investigations into, the business, prospects, operations, property, assets, liabilities, financial and other condition and creditworthiness of the Borrowers and their Subsidiaries, all applicable bank or other regulatory Applicable Laws relating to the Transactions and the transactions contemplated by this Agreement and the other Loan Documents and (e) it has made its own independent decision to enter into this Agreement and the other Loan Documents to which it is a party and to extend credit hereunder and thereunder. Each Lender and each Issuing Bank also acknowledges that (i) it will, independently and without reliance upon the Administrative Agent, any Arranger or any other Lender or any of their respective Related Parties (A) continue to make its own credit analysis, appraisals and 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 based on such documents and information as it shall from time to time deem appropriate and its own independent investigations and (B) continue to make such investigations and inquiries as it deems necessary to inform itself as to the Borrowers and their Subsidiaries and (ii) it will not assert any claim in contravention of this Section 8.07.

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, but each such Person shall have the benefit of the indemnities and exculpatory provisions hereof.

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:

(a) 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, (C) on Receivables that are sold as part of any Permitted Receivables Sale Transaction or (D) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02;

(b) to release or 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) or Section 6.02(f); and

(c) to release any Borrower (other than the Company) or 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 Borrower (other than the Company) or any Guarantor from its obligations under this Agreement or the Loan Party Guaranty, as applicable, 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 Borrower and/or Guarantor from its obligations under this Agreement or the Loan Party Guaranty, as applicable, 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. Except as expressly provided in Section 7.03, 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/or Secured Hedge Agreements.

Section 8.11 Erroneous Payments.

(a) Each Lender, each Issuing Bank, each other Secured Party and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank or any other Secured Party (or the Lender Affiliate of a Secured Party) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender, Issuing Bank or other Secured Party (each such recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 8.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid 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 from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “Erroneous Payment Return Deficiency”), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Revolving Credit Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 9.04 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 8.11 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrowers or any other Loan Party for the purpose of making a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 8.11 will constitute a waiver or release of any claim of the Administrative Agent hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

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:

(a) if to the Borrowers, to The Shyft Group, Inc. at 41280 Bridge Street, Novi, Michigan 48375, Attention of the Group Treasurer (Telecopy No. (517) 997-3862);

(b) 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);

(c) 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); and

(d) 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.

(a) 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 (or amend any other term of the Loan Documents that would have the effect of changing Section 2.18(b), 2.18(c) or 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, (vi) (A) release or subordinate all or substantially all of the Collateral, or (B) release all of the Guarantors or Guarantors comprising substantially all of the credit support for the Secured Obligations (in each case, other than as authorized in Section 8.09 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Collateral Document as in effect on the Effective Date), in each case, without the written consent of each Lender, or (vii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation (other than as authorized in Section 8.09 as in effect on the Effective Date), 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.

(b) Notwithstanding anything to the contrary herein, (i) the Administrative Agent may, with the consent of the Company only, 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), (ii) the Administrative Agent may, with the consent of the Company (if applicable) 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 or any Benchmark Replacement Conforming Changes or otherwise effectuate the terms of Section 2.14(c) in accordance with the terms of Section 2.14(c), (iii) 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 (iv) 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. (a) 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.

(a) 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.

(b) 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.

(c) 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.

(d) All amounts due under this Section shall be payable promptly after written demand therefor.

Section 9.04 Successors and Assigns. (a) 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.

(a) (a) 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:

(i) 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;

(ii) 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

(iii) 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 holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) or a Defaulting Lender.

(b) Assignments shall be subject to the following additional conditions:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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.

(c) 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.

(d) 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.

(e) 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.

(b) (a) 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 (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(a) 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.

(c) 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; Electronic Execution.

(a) 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.

(b) Electronic Execution. The words “execute,” “execution,” “signed,” “signature,” “delivery” and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Loan Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (B) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

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 unmaturing. 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.

(a) 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.

(b) 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.

(c) 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.

(a) 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.

(b) 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:

(a) 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

(b) 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;

(c) 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.

(c) 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 Borrowers' 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.

(a) 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 Amendment and Restatement; No Novation. This Agreement constitutes an amendment and restatement of the Existing Credit Agreement, effective from and after the Effective Date. The execution and delivery of this Agreement shall not constitute a novation of any indebtedness or other obligations owing to the Lenders or the Administrative Agent under the Existing Credit Agreement based on facts or events occurring or existing prior to the execution and delivery of this Agreement. On the Effective Date, the credit facilities described in the Existing Credit Agreement, shall be amended, supplemented, modified and restated in their entirety by the facilities described herein, and all loans and other obligations of the Borrowers outstanding as of such date under the Existing Credit Agreement, shall be deemed to be loans and obligations outstanding under the corresponding facilities described herein, without any further action by any Person, except that the Administrative Agent shall make such transfers of funds as are necessary in order that the outstanding balance of such Loans, together with any Loans funded on the Effective Date, reflect the respective Revolving Credit Commitment of the Lenders hereunder.

Section 9.22 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 Arrangers 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:

(a) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans 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;

(b) 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;

(c) (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

(d) 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 (2) a Lender has provided another representation, warranty and covenant 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 Arrangers 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 none of the Administrative Agent, the Arrangers 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 hereto or thereto).

Section 9.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (a) a reduction in full or in part or cancellation of any such liability;
 - (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected 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
- (c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 9.24 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 9.24, 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.~~

~~THE SHYFT GROUP, INC.
THE SHYFT GROUP GLOBAL, INC.
UTILIMASTER SERVICES, LLC
THE SHYFT GROUP USA, INC.
FORTRESS RESOURCES, LLC~~

~~By: _____~~

~~Name: _____~~

~~Title: _____~~

The Shyft Group, Inc.
Amended and Restated Credit Agreement
Signature Page

~~WELLS FARGO BANK, N.A., as Administrative Agent, a Swingline Lender,
an Issuing Bank and a Lender~~

By: _____
Name:
Title:

~~The Shyft Group, Inc.
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Signature Page~~

~~JPMORGAN CHASE BANK, N.A., as a Swingline Lender, an Issuing Bank
and a Lender~~

By: _____
Name:
Title:

~~The Shyft Group, Inc.
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Signature Page~~

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: _____

Name:

Title:

BANK OF AMERICA, N.A., as a Lender

By: _____

Name:

Title:

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Summary report:	
Litera Compare for Word 11.4.0.111 Document comparison done on 7/26/2023 9:19:22 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://dmsus.mwllp.dom/ACTIVE/172674917/1	
Modified DMS: iw://dmsus.mwllp.dom/ACTIVE/172674917/3	
Changes:	
<u>Add</u>	335
Delete	418
<u>Move From</u>	81
<u>Move To</u>	81
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	915

Annex B

Amended Schedule 2.05(b)(ii)

See attached.

SCHEDULE 2.05(b)(ii)

Floorplan Swingline Loans

The unpaid principal balance of the Floorplan Swingline Loans will accrue interest at a variable rate per annum equal to the sum of (i) the Applicable Rate for SOFR Loans, and (ii) Adjusted Term SOFR applicable to the relevant Interest Period. Each change in the rate at which interest accrues will become effective without notice on the commencement of each Interest Period.

For the purposes of this Schedule 2.05(b)(ii), the following terms shall have the following meanings (capitalized terms not otherwise defined shall have the meanings set forth in the Agreement):

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than 0%, then Adjusted Term SOFR shall be deemed to be 0%.

“Interest Period” means each consecutive calendar month commencing with the calendar month in which the initial Floorplan Swingline Loan was requested. Each Interest Period shall commence on the first day of each calendar month and if the initial Floorplan Swingline Loan was requested on a date other than the first day of a calendar month, the first Interest Period shall be determined as of the first day of the calendar month in which the initial Floorplan Swingline Loan was requested.

“Term SOFR” means, for any calculation with respect to a Floorplan Swingline Loan, the Term SOFR Reference Rate for a tenor comparable to the Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements with respect to Floorplan Swingline Loans, such day is also a day (other than a Saturday or Sunday) on which banks generally are open in Vermont and/or New York for the conduct of substantially all of their commercial lending activities.

If any applicable domestic or foreign law, treaty, rule or regulation now or later in effect (whether or not it now applies to any Lender) or the interpretation or administration thereof by a governmental authority charged with such interpretation or administration, or compliance by any Lender with any guideline, request or directive of such an authority (whether or not having the force of law), shall make it unlawful or impossible for any Lender to maintain or fund the Floorplan Swingline Loans, then, upon notice to the Borrower by the Swingline Lender, the outstanding principal amount of Floorplan Swingline Loans, together with accrued interest and any other amounts payable to the Lenders under this Agreement or the other Loan Documents shall be repaid (a) immediately upon the Swingline Lender's demand if such change or compliance with such requests, in the Swingline Lender's judgment, requires immediate repayment, or (b) at the expiration of the last Interest Period to expire before the effective date of any such change or request.

If the Swingline Lender determines that reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR for the applicable Interest Period for purposes of determining the interest rate as provided in this Schedule 2.05(b)(ii), then the Swingline Lender shall forthwith give notice of such circumstances to the Borrower, whereupon (i) the obligation of the Swingline Lender to make Floorplan Swingline Loans shall be suspended until the Swingline Lender notifies the Borrowers that the circumstances giving rise to the suspension no longer exists, and (ii) the Borrowers shall repay in full the then outstanding principal amount of the Floorplan Swingline Loans, together with accrued interest, on the last day of the then current Interest Period.

TRANSITION AND SEPARATION AGREEMENT

This Transition and Separation Agreement (this “**Transition Agreement**”), by and between The Shyft Group, Inc. (the “**Company**”) and Daryl M. Adams (“**you**” and similar words), and effective as of June 9, 2023 (the “**Effective Date**”), memorializes certain terms of your transition and separation from the Company and its subsidiaries. This Transition Agreement is intended to support the process by which the Company’s Board of Directors (“**Board**”) will operate a search and leadership transition for the position of President and Chief Executive Officer (“**CEO**”) at the Company (the “**Succession**”). The terms of this Transition Agreement also address certain requirements under The Shyft Group, Inc. Executive Severance Plan (the “**Executive Severance Plan**”) in order for you to receive, after the Effective Date, certain of the payments and benefits described in this Transition Agreement, as described or set forth in detail below.

By signing this Transition Agreement, you and the Company agree as follows:

1. PROVISIONS REGARDING CHIEF EXECUTIVE OFFICER SERVICE, BOARD SERVICE, SPECIAL ADVISOR SERVICE AND EMPLOYMENT CESSATION

(a) You and the Company agree that, after the Effective Date, you will serve as the CEO of the Company until such date on which a successor Chief Executive Officer of the Company (“**Successor CEO**”) is appointed or elected by the Board and commences serving in such role (such date, the “**Successor CEO Start Date**”). Notwithstanding anything in this Transition Agreement to the contrary, the Board retains the right (subject to **Section 1(c)** of this Transition Agreement) to remove you from the position of CEO prior to the Successor CEO Start Date (the date of any such removal, the “**Removal Date**”).

(b) You and the Company agree that, as of the Successor CEO Start Date (or the Removal Date under **Section 1(a)** above), you will no longer serve as a member of the Board, and that you will promptly execute any documents and take any actions as may be necessary or reasonably requested by the Company to effectuate or memorialize such cessation of Board service.

(c) You and the Company agree that, commencing on the Successor CEO Start Date (or the Removal Date under **Section 1(a)** above), you will no longer serve as the CEO of the Company, but you will transition to become a non-officer employee in service to the Company until the end of the day immediately prior to the six-month anniversary of the Successor CEO Start Date (such day, the “**Transition Anniversary Date**,” and such non-officer employment period, the “**Advisory Period**”). During the Advisory Period you shall be employed by the Company and will (i) serve in the non-executive employee role of Special Advisor to the Company, reporting directly to the Chairman of the Board, and working no more than 20 hours per week, and (ii) support the Succession by providing reasonable assistance to the Company and the Board in the transition to and integration of the Successor CEO, to the extent desired and/or requested by Board, plus otherwise supporting and promoting various reasonable tasks and responsibilities related thereto. During the Advisory Period, you will receive monthly base salary, derived from an annual rate equal to \$435,175, in accordance with the normal payroll practices of the Company as may be in effect from time to time. Your awards under the Equity Plans (as defined below) that are outstanding as of the Successor CEO Start Date (or the Removal Date under **Section 1(a)** above) will continue to vest according to the applicable terms of such awards under such Equity Plans during the Advisory Period and your service during the Advisory Period shall count for purposes of the pro-rata fraction under Section 4.3 of the Executive Severance Plan.

(d) At the end of the day on the Transition Anniversary Date, your employment with the Company and all of its subsidiaries and affiliates will terminate as a “Qualifying Termination” by the Company as defined in the Executive Severance Plan (the “**Qualifying Termination**”). We refer to your last day of employment with the Company and its subsidiaries and affiliates as the “**Separation Date**.” You and the Company agree that your Qualifying Termination shall entitle you to the payments and benefits as set forth or described in **Section 2** of this Transition Agreement, and that but for the provision of such payments and benefits, you would not agree to provide the services as described in **Section 1(c)** of this Transition Agreement. You and the Company also agree that, as of the Separation Date, you will terminate from any and all other positions you hold (if any) as an officer, employee or director of the Company and the Company’s subsidiaries and affiliates, and that you will promptly execute any documents and take any actions as may be necessary or reasonably requested by the Company to effectuate or memorialize your termination from all positions with the Company and its subsidiaries and affiliates. Notwithstanding anything in this Transition Agreement to the contrary, nothing prohibits the Board from terminating your employment with the Company for Cause (as defined in the Executive Severance Plan, “**Cause**”) prior to such Separation Date, and you and the Company agree and acknowledge that your right to receive the Severance Benefits or any other payments or benefits under this Transition Agreement (other than the benefits addressed under **Section 2(c)** of this Transition Agreement) shall immediately cease and be unenforceable if your employment with the Company is terminated for Cause prior to the Separation Date.

(e) Notwithstanding anything in this Transition Agreement to the contrary, you and the Company agree that your cessation of service under this Transition Agreement will not be claimed by you as constituting, contributing to or supporting “Good Reason” under the Executive Severance Plan, and that the Company will not terminate your designation as a participant under the Executive Severance Plan prior to the Separation Date.

2. “QUALIFYING TERMINATION” SEVERANCE PAYMENTS AND BENEFITS; LEGAL FEES REIMBURSEMENT

In consideration for you signing this Transition Agreement, and signing no earlier than the Separation Date and no later than 30 days following the Separation Date, a general waiver and release of claims, substantially in the form attached hereto as **Exhibit A** (the “**Release**”), and letting the Release become effective as set forth in the Release:

(a) For purposes of the Executive Severance Plan, this Transition Agreement and any related agreements, and based on the facts of the Succession, your separation from the Company will be deemed a “Qualifying Termination” under the terms of the Executive Severance Plan;

(b) You will receive (due to your Qualifying Termination) the payments and benefits as specified on **Exhibit B** attached hereto, all subject to applicable tax withholding (the “**Severance Benefits**”). The Severance Benefits will be in full satisfaction of any amounts due under the Executive Severance Plan, your Employment Offer Letter, dated July 22, 2014, with the Company (the “**Employment Offer Letter**”), the Spartan Motors, Inc. Stock Incentive Plan of 2012 (including as amended or amended and restated to date) and all applicable award agreements thereunder (the “**2012 Equity Plan**”), The Shyft Group, Inc. Stock Incentive Plan of 2016 (including as amended or amended and restated to date) and all applicable award agreements thereunder (the “**2016 Equity Plan**” and, together with the 2012 Equity Plan, the “**Equity Plans**”), and all other compensation and benefit arrangements of the Company and its subsidiaries and affiliates. You acknowledge and agree that some or all of the Severance Benefits would not be due and payable unless you sign the Release, and that the Severance Benefits constitute fair and adequate consideration for your promises and covenants set forth in this Transition Agreement and the Release. You and the Company also acknowledge and agree that the Executive Severance Plan will be interpreted in accordance with the terms of this Transition Agreement to the extent necessary or desirable to provide for the Severance Benefits; and

(c) You will receive reimbursement from the Company of your reasonable attorney’s fees and expenses incurred in connection with negotiation and execution of this Transition Agreement, up to a maximum amount of \$25,000.

3. RESTRICTIVE COVENANTS

By signing this Transition Agreement, you reaffirm that, subject to applicable law, you will continue to abide by the restrictive covenants to which you are subject, including as set forth in or applicable under the Equity Plans and the Executive Severance Plan, which restrictive covenants expressly survive your Qualifying Termination pursuant to their terms.

Notwithstanding anything in this Transition Agreement, the Equity Plans or the Executive Severance Plan (or otherwise) to the contrary, nothing in such documents (or otherwise) prevents you from providing, without prior notice to the Company, information to governmental authorities regarding possible legal violations or otherwise testifying or participating in any investigation or proceeding by any governmental authorities regarding possible legal violations, and for purpose of clarity you are not prohibited from providing information voluntarily to the Securities and Exchange Commission pursuant to Section 21F of the Securities Exchange Act of 1934, as amended.

No Company policy or individual agreement between the Company and you shall prevent you from providing information to government authorities regarding possible legal violations, participating in investigations, testifying in proceedings regarding the Company's past or future conduct, engaging in any future activities protected under the whistleblower statutes administered by any government agency (e.g., EEOC, NLRB, SEC, etc.) or receiving a monetary award from a government-administered whistleblower award program for providing information directly to a government agency. The Company nonetheless asserts and does not waive its attorney-client privilege over any information appropriately protected by privilege. By executing this Transition Agreement you represent that, as of the date you sign this Transition Agreement, no claims, lawsuits, or charges have been filed by you or on your behalf against the Company or any of its legal predecessors, successors, assigns, fiduciaries, parents, subsidiaries, divisions or other affiliates, or any of the foregoing's respective past, present or future principals, partners, shareholders, directors, officers, employees, agents, consultants, attorneys, trustees, administrators, executors or representatives. You acknowledge and agree that you have in a timely manner received or waived all applicable notices required under the Equity Plans and the Executive Severance Plan (or otherwise) in connection with or reasonably related to this Transition Agreement and your Qualifying Termination. The Company agrees that this Transition Agreement does not extend to, release or modify any rights to indemnification or advancement of expenses to which you are entitled from the Company or its insurers under the Company's articles of incorporation, bylaws, or other corporate governing law or instruments (including any directors and officers liability insurance) or your indemnification agreement(s) with the Company.

You agree that you will not make or issue, or procure any person, firm, or entity to make or issue, any statement in any form, including written, oral and electronic communications of any kind, which conveys negative or adverse information concerning the Company, the Shyft Companies (as defined below), or any and all past, present, or future related persons or entities, including but not limited to the Company's and such Shyft Companies' officers, directors, managers, employees, shareholders, agents, attorneys, successors and assigns, specifically including without limitation the Company and its subsidiaries and affiliates, their business, their actions or their officers or directors, to any person or entity, regardless of the truth or falsity of such statement. Further, the Company will instruct and direct the executive officers and directors of the Company and its subsidiaries not to make or issue, or procure any person, firm, or entity to make or issue, any statement in any form, including written, oral and electronic communications of any kind, which conveys negative or adverse information concerning you or any of your legal successors, assigns, or other affiliates, or any of the foregoing's respective past, present or future directors, officers, employees or representatives (collectively, "**Your Non-Disparagement Parties**"), or any of Your Non-Disparagement Parties' businesses, or their actions, to any person or entity, regardless of the truth or falsity of such statement. Any inquiries to the Company by future employers shall be referred to the Company's human resources department which shall only provide your last position and dates of employment. This paragraph does not apply to truthful testimony compelled by applicable law or legal process.

4. LIMITATIONS

Nothing in this Transition Agreement or the Executive Severance Plan shall be binding upon the parties hereto to the extent it is void or unenforceable for any reason, including, without limitation, as a result of any law regulating competition or proscribing unlawful business practices; *provided, however*, that to the extent that any provision in this Transition Agreement, the Equity Plans or the Executive Severance Plan could be reasonably modified to render it enforceable under applicable law, it shall be deemed so modified and enforced to the fullest extent allowed by law.

5. MATERIAL BREACH

You agree that in the event of any breach of any provision of the restrictive covenants described in **Section 3** of this Transition Agreement, the Company will be entitled to equitable and/or injunctive relief and, because the damages for such a breach will be impossible or impractical to determine and will not therefore provide a full and adequate remedy, the Company or (as applicable) any and all past, present or future parents, subsidiaries and affiliates of the Company (the “*Shyft Companies*”) will also be entitled to specific performance by you. Except with respect to any clawback rights the Company may have or obtain with respect to equity or incentive awards under the Equity Plans or otherwise (including under any Company policy adopted to comply with applicable stock exchange listing standards, Section 10D of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), and Rule 10D-1 under the Exchange Act), no amount owing to you under this Transition Agreement shall be subject to set-off or reduction by reason of any claims that the Company and its subsidiaries and affiliates have or may have against you. You will be entitled to recover actual damages if the Company materially breaches this Transition Agreement, including any unexcused late or non-payment of any amounts owed under this Transition Agreement, or any unexcused failure to provide any other benefits specified in this Transition Agreement. Failure by any party hereto to enforce any term or condition of this Transition Agreement at any time shall not preclude that party from enforcing that provision, or any other provision, at a later time.

6. NO RE-EMPLOYMENT; STANDSTILL AGREEMENT

(a) You understand that your employment with the Company is terminated on the Separation Date. You agree that you will not seek or accept employment with the Company and its subsidiaries and affiliates, including assignment to or on behalf of the Company as an independent contractor or through any third party, and the Company and its subsidiaries and affiliates have no obligation to consider you for any future employment or assignment.

(b) You agree that, unless approved in advance in writing by the Board, neither you nor any of your affiliates, and none of such persons' respective directors, officers, employees, managing members, general partners, agents and consultants, as applicable (including attorneys, financial advisors and accountants) (collectively, "**Representatives**"), acting on behalf of or in concert with you (or any of your Representatives) will, for a period of 18 months after the Separation Date, directly or indirectly:

(i) make any statement or proposal to the Board, any of the Company's Representatives or any of the Company's stockholders regarding, or make any public announcement, proposal or offer (including any "solicitation" of "proxies" as such terms are defined or used in Regulation 14A of the Exchange Act) with respect to, or otherwise solicit, seek or offer to effect (including, for the avoidance of doubt, indirectly by means of communication with the press or media) (A) any business combination, merger, tender offer, exchange offer or similar transaction involving the Company or any of its subsidiaries, (B) any restructuring, recapitalization, liquidation or similar transaction involving the Company or any of its subsidiaries, (C) any acquisition of any of the Company's loans, debt securities, equity securities or assets, or rights or options to acquire interests in any of the Company's loans, debt securities, equity securities or assets, (D) any proposal to seek representation on the Board or otherwise seek to control or influence the management, Board or any policies of the Company, (E) any request or proposal to waive, terminate or amend the provisions of this Transition Agreement, or (F) any proposal, arrangement or other statement that is inconsistent with the terms of this Transition Agreement, including this **Section 6(b)(i)**;

(ii) instigate, encourage or assist any third party (including forming a "group" with any such third party) to do, or enter into any discussions or agreements with any third party with respect to, any of the actions set forth in clause (i) above;

(iii) take any action which would reasonably be expected to require the Company or any of its affiliates to make a public announcement regarding any of the actions set forth in clause (i) above; or

(iv) acquire (or propose or agree to acquire), of record or beneficially, by purchase or otherwise, any loans, debt securities, equity securities or assets of the Company or any of its subsidiaries, or rights or options to acquire interests in any of the Company's loans, debt securities, equity securities or assets.

7. REVIEW OF TRANSITION AGREEMENT

This Transition Agreement is important. You are advised to review it carefully and consult an attorney before signing it, as well as any other professional whose advice you value, such as an accountant or financial advisor. If you agree to the terms of this Transition Agreement, sign in the space below where your agreement is indicated. The payments and benefits specified in this Transition Agreement are contingent on your (a) signing this Transition Agreement and (b) signing the Release no earlier than the Separation Date and no later than 30 calendar days following the Separation Date, and not revoking the Release.

8. RETURN OF PROPERTY

You affirm that you will return, within a reasonable time after the Separation Date, to the Company in reasonable working order all Company Property, as described more fully below. "Company Property" includes company-owned or leased equipment, supplies and documents, including computers and reasonably related equipment or other electronics. Such documents may include but are not limited to customer lists, financial statements, cost data, price lists, invoices, forms, passwords, electronic files and media, mailing lists, contracts, reports, manuals, personnel files, correspondence, business cards, drawings, employee lists or directories, lists of vendors, photographs, maps, surveys, and the like, including copies, notes or compilations made there from, whether such documents are embodied on "hard copies" or contained on computer disk or any other medium. You further agree that you will not retain any copies or duplicates of any such Company Property.

9. FUTURE COOPERATION

You agree that you shall, without any additional compensation, respond to reasonable requests for information from the Company (such requests shall not require you to provide services to the Company (excluding for clarification any services provided under the second and third sentences of this paragraph, which services will not require any additional compensation other than expense reimbursement as described in the last sentence of this paragraph)) regarding matters that may arise in the Company's business. You further agree to fully and completely cooperate with the Company, its advisors and its legal counsel with respect to any litigation that is pending against the Company and any claim or action that may be filed against the Company in the future. Such cooperation shall include making yourself available at reasonable times and places for interviews, reviewing documents, testifying in a deposition or a legal or administrative proceeding, and providing advice to the Company in preparing defenses to any pending or potential future claims against the Company. The Company agrees to (or to cause one of its affiliates to) pay/reimburse you for any approved travel expenses reasonably incurred as a result of your cooperation with the Company, with any such payments/reimbursements to be made in accordance with the Company's expense reimbursement policy as in effect from time to time.

10. TAX MATTERS

By signing this Transition Agreement, you acknowledge that you will be solely responsible for any taxes which may be imposed on you as a result of the Severance Benefits or the provisions of this Transition Agreement, that all amounts payable to you under or in connection with this Transition Agreement will be subject to applicable tax withholding by the Company or its subsidiaries or affiliates, and that the Company has not made any representations or guarantees regarding the tax result for you with respect to any income recognized by you in connection with this Transition Agreement or the Severance Benefits.

11. INTERNAL REVENUE CODE SECTION 409A

The intent of you and the Company is that payments and benefits under this Transition Agreement comply with, or be exempt from, Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder (collectively "**Code Section 409A**"); accordingly, to the maximum extent permitted, this Transition Agreement shall be interpreted to be in compliance therewith. Notwithstanding any provision of this Transition Agreement to the contrary, in the event that you are a "specified employee" within the meaning of Code Section 409A (as determined in accordance with the methodology established by the Company as in effect on the Separation Date) (a "**Specified Employee**"), any payments or benefits that are considered non-qualified deferred compensation under Code Section 409A payable under this Transition Agreement on account of a "separation from service" during the six-month period immediately following your "separation from service" shall, to the extent necessary to comply with Code Section 409A and following the application of the relevant exceptions under Treas. Reg. 1.409A-1(b)(9), instead be paid, or provided, as the case may be, on the first regular payroll date after the date that is six months following your "separation from service" within the meaning of Code Section 409A. For purposes of Code Section 409A, your right to receive any installment payments pursuant to this Transition Agreement shall be treated as a right to receive a series of separate and distinct payments. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Transition Agreement that is considered nonqualified deferred compensation, subject to Code Section 409A. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits that are deferred compensation subject to Code Section 409A, the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, and such payments shall be made on or before the last day of your taxable year following the taxable year in which the expense occurred.

12. COMPENSATION RECOVERY POLICY

Notwithstanding anything in this Transition Agreement to the contrary, you acknowledge and agree that this Transition Agreement and any compensation described herein are subject to the terms and conditions of the Company's clawback policy (if any) as may be in effect from time to time specifically as required to implement Section 10D of the Exchange Act, and any applicable rules or regulations promulgated thereunder (including applicable stock exchange listing standards or rules and regulations) (the "**Compensation Recovery Policy**"), and that applicable sections of this Transition Agreement and any related documents shall be deemed superseded by and subject to the terms and conditions of the Compensation Recovery Policy from and after the effective date thereof.

13. NATURE OF AGREEMENT

By signing this Transition Agreement, you acknowledge that you are doing so freely, knowingly and voluntarily. You acknowledge that in signing this Transition Agreement you have relied only on the promises written in this Transition Agreement and on the Executive Severance Plan and the Equity Plans, but not on any other promise made by the Company or Shyft Companies. This Transition Agreement is not, and will not be considered, an admission of liability or of a violation of any applicable contract, law, rule, regulation, or order of any kind. This Transition Agreement, the Executive Severance Plan, the Equity Plans and the Release contain the entire agreement between the Company, other Shyft Companies and you regarding your transition and separation from the Company, except that all post-employment covenants contained in the Executive Severance Plan and Equity Plans remain in full force and effect in accordance with their terms. The Severance Benefits are in full satisfaction of any severance benefits under the Executive Severance Plan and the Equity Plans, and of any other compensation arrangements between you and the Company or the Shyft Companies. This Transition Agreement may not be altered, modified, waived or amended except by a written document signed by a duly authorized representative of the Company and you. Except as otherwise explicitly provided, this Transition Agreement will be interpreted and enforced in accordance with the laws of the State of Michigan, and the parties hereto, including their successors and assigns, consent to the jurisdiction of the state and federal courts of Michigan. The headings in this document are for reference only, and shall not in any way affect the meaning or interpretation of this Transition Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, you and the Company have executed this Transition Agreement as of the dates set forth below.

DARYL M. ADAMS

 /s/ Daryl Adams

Date: June 9, 2023

THE SHYFT GROUP, INC.

By: /s/ Joshua Sherbin

Name: Joshua Sherbin
Title: Chief Legal Officer

Date: June 9, 2023

Exhibit A

Release

This Release (the “**Release**”) is between The Shyft Group, Inc. (the “**Company**”) and Daryl M. Adams (“**you**” and similar words), in favor of the Company and its affiliates (meaning any entities that directly or indirectly control, are controlled by, or are under the same control as, the Company or any other entities affiliated with the Company or such entities), in consideration of the benefits provided to you and to be received by you from the Company as described in the Transition and Separation Agreement between the Company and you dated as of the applicable date referenced therein (the “**Transition Agreement**”). Capitalized terms used herein without definition have the meanings ascribed to such terms in the Transition Agreement.

By signing this Release, you and the Company hereby agree as follows:

1. Waiver and Release

You, for yourself and on behalf of anyone claiming through you including each and all of your legal representatives, administrators, executors, heirs, successors and assigns (collectively, the “**Releasors**”), do hereby fully, finally and forever release, absolve and discharge the Company and each and all of its legal predecessors, successors, assigns, fiduciaries, parents, subsidiaries, divisions and other affiliates, and each of the foregoing’s respective past, present and future principals, partners, shareholders, directors, officers, employees, agents, consultants, attorneys, trustees, administrators, executors and representatives (collectively, the “**Company Released Parties**”), of, from and for any and all claims, causes of action, lawsuits, controversies, liabilities, losses, damages, costs, expenses and demands of any nature whatsoever, at law or in equity, whether known or unknown, asserted or unasserted, foreseen or unforeseen, that the Releasors (or any of them) now have, have ever had, or may have against the Company Released Parties (or any of them) based upon, arising out of, concerning, relating to or resulting from any act, omission, matter, fact, occurrence, transaction, claim, contention, statement or event occurring or existing at any time in the past up to and including the date on which you sign this Release, including, without limitation: (a) all claims arising out of or in any way relating to your employment with or separation of employment from the Company or its affiliates; (b) all claims for compensation or benefits, including salary, commissions, bonuses, vacation pay, expense reimbursements, severance pay, fringe benefits, stock options, restricted stock units or any other ownership interests in the Company Released Parties; (c) all claims for breach of contract, wrongful termination and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, invasion of privacy and emotional distress; (e) all other common law claims; and (f) all claims (including claims for discrimination, harassment, retaliation, attorneys fees, expenses or otherwise) that were or could have been asserted by you or on your behalf in any federal, state, or local court, commission, or agency, or under any federal, state, local, employment, services or other law, regulation, ordinance, constitutional provision, executive order or other source of law, including without limitation under any of the following laws, as amended from time to time: the Age Discrimination in Employment Act (the “**ADEA**”), Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981 & 1981a, the Americans with Disabilities Act, the Equal Pay Act, the Employee Retirement Income Security Act, the Lilly Ledbetter Fair Pay Act of 2009, the Family and Medical Leave Act, Sarbanes-Oxley Act of 2002, the National Labor Relations Act, the Rehabilitation Act of 1973, the Worker Adjustment Retraining and Notification Act, the Uniformed Services Employment and Reemployment Rights Act, Federal Executive Order 11246, and the Genetic Information Nondiscrimination Act.

2. Scope of Release

Nothing in this Release (a) shall release the Company from any of its obligations set forth in the Transition Agreement, awards under the Equity Plans or any claim that by law is non-waivable, (b) shall release the Company from any obligation to defend and/or indemnify you against any third party claims arising out of any action or inaction by you during the time of your employment and within the scope of your duties with the Company to the extent (i) you have any such defense or indemnification right (including under your indemnification agreement with the Company or to the extent the claims are covered by the Company’s director & officer liability insurance), and (ii) permitted by applicable law, (c) shall affect your right to file a claim for workers’ compensation or unemployment insurance benefits, or (d) shall prohibit you from instituting any action to challenge the validity of the release under the ADEA.

You further acknowledge that by signing this Release, you do not waive the right to file a charge against the Company with, communicate with or participate in any investigation by the Equal Employment Opportunity Commission, the Securities and Exchange Commission or any comparable state or local agency. However, you waive and release, to the fullest extent legally permissible, all entitlement to any form of monetary relief arising from a charge you or others may file, including without limitation any costs, expenses or attorneys’ fees. You understand that this waiver and release of monetary relief would not affect an enforcement agency’s ability to investigate a charge or to pursue relief on behalf of others. Notwithstanding the foregoing, you will not give up your right to any benefits to which you are entitled under any retirement plan of the Company that is intended to be qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended, or your rights, if any, under Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (COBRA), or any monetary award offered by the Securities and Exchange Commission pursuant to Section 21F of the Securities Exchange Act of 1934, as amended, the Dodd-Frank Wall Street Reform and Consumer Protection Act or The Sarbanes-Oxley Act of 2002.

By executing this Release, you represent that, as of the date you sign this Release, no claims, lawsuits, grievances, or charges have been filed by you or on your behalf against the Company Released Parties.

3. Knowing and Voluntary ADEA Waiver

In compliance with the requirements of the Older Workers' Benefit Protection Act, you acknowledge by your signature below that, with respect to the rights and claims waived and released in this Release under the ADEA, you specifically acknowledge and agree as follows: (a) you have read and understand the terms of this Release; (b) you have been advised and hereby are advised, and have had the opportunity, to consult with an attorney before signing this Release; (c) the Release is written in a manner understood by you; (d) you are releasing the Company and the other Company Released Parties from, among other things, any claims that you may have against them pursuant to the ADEA; (e) the releases contained in this Release do not cover rights or claims that may arise after you sign this Release; (f) you will receive valuable consideration in exchange for the Release other than amounts you would otherwise be entitled to receive; (g) you have been given a period of at least 21 days in which to consider and execute this Release (although you may elect not to use the full consideration period at your option); (h) you may revoke this Release during the seven-day period following the date on which you sign this Release, and this Release will not become effective and enforceable until the seven-day revocation period has expired; and (i) any such revocation must be submitted in writing to the Company c/o Joshua Sherbin, Chief Legal Officer, The Shyft Group, Inc., 41280 Bridge Street, Novi, Michigan 48375, prior to the expiration of such seven-day revocation period. If you revoke this Release within such seven-day revocation period, it shall be null and void.

4. Entire Agreement

This Release, the Transition Agreement, and the documents referenced therein contain the entire agreement between you and the Company regarding the matters described therein, and take priority over any other written or oral understanding or agreement that may have existed in the past regarding the matters described therein. You acknowledge that no other promises or agreements have been offered for this Release (other than those described above) and that no other promises or agreements will be binding unless they are in writing and signed by you and the Company. Should any provision of this Release be declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remaining provisions shall remain in full force and effect; provided, however, that upon a finding that the Release, in whole or part, is illegal, void, or unenforceable, you shall be required to execute a release that is legal and enforceable.

[SIGNATURE PAGE FOLLOWS]

I agree to the terms and conditions set forth in this Release.

DARYL M. ADAMS

Date: _____

Exhibit B

Severance Benefits*

1. Severance Benefits under the Equity Plans and the Executive Severance Plan, which Severance Benefits will consist of the following:
 - Payment of an amount equal to \$1,305,525 (the equivalent of 18 months of base salary derived from an annual rate equal to \$870,350 (your annual base salary rate as CEO in effect on the Effective Date, which rate will be unchanged through the Separation Date). This amount will be payable in the form of 18 months of base salary continuation, payable in accordance with the Company's normal payroll practices in effect at the applicable time, payable in accordance with Section 4.1(b) of the Executive Severance Plan and its applicable terms;
 - If your Qualifying Termination occurs in 2023, and if the threshold performance requirements are satisfied for annual cash incentive award payment under the Company's annual cash incentive plan for 2023, payment of a pro-rata portion of your target annual cash incentive award opportunity under the Company's annual cash incentive plan for 2023 (based on \$1,305,525 multiplied by a fraction, the numerator of which is the number of complete calendar months that elapse from January 1, 2023 until the Separation Date occurring in 2023, and the denominator of which is 12). This amount, if any, will be payable in a lump sum after the end of 2023, at the same time as your annual cash incentive plan award payment for 2023 would have been paid if you had not experienced a Qualifying Termination during 2023. However, in the alternative, if your Qualifying Termination occurs in 2024, and if the threshold performance requirements are satisfied for annual cash incentive award payment under the Company's annual cash incentive plan for 2024, payment of a pro-rata portion of your target annual cash incentive award opportunity under the Company's annual cash incentive plan for 2024 (which target will be derived solely from only that period in 2024 during which you are serving as CEO, and not on that period in 2024 during which you are providing special advisor services), multiplied by a fraction, the numerator of which is the number of complete calendar months that elapse from January 1, 2024 until the Separation Date occurring in 2024, and the denominator of which is 12). This amount, if any, will be payable in a lump sum after the end of 2024, at the same time as your annual cash incentive plan award payment for 2024 would have been paid if you had not experienced a Qualifying Termination during 2024;
 - If you timely elect to continue group health care coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), subject to the Company's COBRA policies, reimbursement by the Company to you under Section 4.2 of the Executive Severance Plan for the employer's portion of premiums for your CEO medical, dental and vision coverage for 18 months after the Separation Date (or until the date on which you become eligible to receive any health care benefits under any plan or program of another employer);

* Except as otherwise expressly provided in this Transition Agreement (including this Exhibit B), all benefits are to be paid or provided in the manner and at the time specified in the applicable plan or agreement, or as required under applicable law.

- Your outstanding Company equity awards under the Equity Plans will be governed by the applicable terms of the Equity Plans and Section 4.3 of the Executive Severance Plan for such awards for a Qualifying Termination, with the timing of payment of such awards governed by the Code Section 409A provisions of the Equity Plans and the Executive Severance Plan; and
 - The provision to you by the Company of 12 months (running from the Separation Date) of outplacement services as described under Section 4.4 of the Executive Severance Plan.
2. All other accrued vested benefits under the Company's other benefit plans, programs or arrangements pursuant to the terms of such plans, programs or arrangements.

CERTIFICATION

I, Daryl M. Adams, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Shyft Group, 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: July 27, 2023

/s/ Daryl M. Adams

Daryl M. Adams
President and Chief Executive Officer
The Shyft Group, Inc.

CERTIFICATION

I, Jonathan C. Douyard, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Shyft Group, 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: July 27, 2023

/s/ Jonathan C. Douyard

Jonathan C. Douyard
Chief Financial Officer
The Shyft Group, Inc.

EXHIBIT 32

CERTIFICATION

Each of the undersigned hereby certifies in his capacity as an officer of The Shyft Group, 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 June 30, 2023 (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: July 27, 2023

/s/ Daryl M. Adams

Daryl M. Adams

President and Chief Executive Officer

Dated: July 27, 2023

/s/ Jonathan C. Douyard

Jonathan C. Douyard

Chief Financial Officer