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

FORM 10-K

☒ Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended March 31, 2022

☐ Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from to

Commission File No. 1-7521

FRIEDMAN INDUSTRIES, INCORPORATED

(Exact name of registrant as specified in its charter)

Texas	**74-1504405**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1121 Judson Road Suite 124, Longview, TX	**75601**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(903) 758-3431**

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

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
Common Stock, $1 Par Value	FRD	NYSE American

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes ☐ No ☒

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.
☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.
Yes ☒ No ☐

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

The aggregate market value of the Common Stock held by non-affiliates of the registrant as of September 30, 2021 (based upon the closing price on the NYSE American on September 30, 2021) was approximately $76,143,000.

The number of shares of the registrant's Common Stock outstanding at August 2, 2022 was 7,368,613 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Annual Report to Shareholders of Friedman Industries, Incorporated for the fiscal year ended March 31, 2022 — Part II.

PART I

Item 1. Business

Friedman Industries, Incorporated (the "Company"), a Texas corporation incorporated in 1965, is a manufacturer and processor of steel products and operates in two reportable segments: coil products and tubular products. Significant financial information relating to the Company's business segments for the last two years is contained in Note 13of the Consolidated Financial Statements included in the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, which financial statements are incorporated herein by reference in Item 8 hereof.

Coil Products

The coil product segment consists of the operation of two hot-rolled coil processing facilities; one in Hickman, Arkansas ("Hickman") and the other in Decatur, Alabama ("Decatur"). The Hickman facility operates a temper mill and a cut-to-length line and the Decatur facility operates a stretcher leveler cut-to-length line. The equipment at both facilities improves the flatness and surface qualities of the coils and cuts the coils into sheet and plate of prescribed lengths. The Hickman facility is capable of cutting sheet and plate with thicknesses ranging from 14 gauge to ½" thick in widths ranging from 36" wide to 72" wide. The Decatur facility is capable of cutting sheet and plate with thicknesses ranging from 14 gauge to ½" thick in widths ranging from 36" wide to 96" wide. The coil product segment sells its prime grade inventory under the Friedman Industries name but also maintains an inventory of non-standard coil products, consisting primarily of mill secondary and excess prime coils, which are sold through the Company's XSCP division. The coil product segment also processes customer-owned coils on a fee basis.

The Hickman and Decatur facilities are substantially similar with respect to products produced. The Company makes shipments of coil products based on which facility offers the desired product or, if the product is available at both facilities, based on other factors, such as customer location, freight conditions and the ability of the facility to fulfill the order on a timely basis. Coil products are sold on a wholesale, rapid-delivery basis in competition with other processors of hot-rolled steel coils. Shipments are made via unaffiliated truckers or by rail.

On May 25, 2021, the Company announced plans for a new facility in Sinton, Texas that will be part of the coil product segment. The new facility is on the campus of Steel Dynamics, Inc.'s ("SDI") new flat roll steel mill in Sinton, Texas. The Company's new location consists of an approximately 70,000 square foot building located on approximately 26.5 acres leased from SDI under a 99-year agreement. The Company contracted with Red Bud Industries to build one of the world's largest stretcher leveler cut-to-length lines, capable of handling material up to 1" thick, widths up to 96" and yields exceeding 100,000 psi. The Company expects the equipment commissioning to occur during August 2022 and September 2022 and then expects expanded production levels beginning in October 2022. The total cost of the project is estimated to be $21 million.

The coil segment purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company's business.

Tubular Products

The tubular product segment consists of the Company's Texas Tubular Products division ("TTP") located in Lone Star, Texas. TTP operates two electric resistance welded pipe mills with a combined outside diameter ("OD") size range of 2 3/8" OD to 8 5/8" OD. Both pipe mills are American Petroleum Institute ("API") licensed to manufacture line pipe and oil country pipe and also manufacture pipe for structural purposes that meets other recognized industry standards. TTP has a pipe finishing facility capable of applying threads and couplings to oil country tubular goods and performing other services that are customary in the pipe finishing process. The pipe finishing facility is currently idled. TTP's inventory consists of raw materials and finished goods. Raw material inventory consists of hot-rolled steel coils that TTP will manufacture into pipe. Finished goods inventory consists of pipe TTP has manufactured and mill reject pipe that TTP purchased from U.S. Steel Tubular Products, Inc.

TTP purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company's business.

Marketing

The following table sets forth the approximate percentage of total sales contributed by each group of products and services during each of the Company's last two fiscal years:

Product and Service Groups	2022	2021
Coil Products	81%	76%
Tubular Products	19%	24%

Coil Products. The Company sells coil products and processing services to approximately 230 customers located primarily in the midwestern, southwestern and southeastern regions of the United States. The Company's principal customers for these products and services are steel distributors and customers manufacturing steel products such as steel buildings, railroad cars, barges, tanks and containers, trailers, component parts and other fabricated steel products. For the fiscal year ended March 31, 2022, sales of coil products to O'Neal Steel accounted for approximately 11% of the Company's total sales. No individual coil products customer accounted for 10% or more of the Company's total sales for the fiscal year ended March 31, 2021.

The Company sells substantially all of its coil products through its own sales force. At March 31, 2022, the sales force was comprised of the Vice President of Sales – Coil Divisions and four professional sales personnel. Sales personnel are paid on a salary and commission basis.

Tubular Products. The Company sells its tubular products nationally to approximately 110 customers. The Company's principal customers for these products are steel and pipe distributors. In fiscal years 2022 and 2021, no individual tubular customer accounted for 10% or more of the Company's total sales.

The Company sells substantially all of its tubular products through its own sales force. At March 31, 2022, the sales force was comprised of the Vice President of Sales – Tubular Division and two professional sales personnel. Sales personnel are paid on a salary and commission basis.

Competition

The Company is engaged in a non-seasonal, highly-competitive business. The Company competes with other processors of hot-rolled steel coils, tubular manufacturers, steel distributors and brokers.

The Company believes that, generally, its ability to compete is dependent upon its ability to offer products at prices competitive with or below those of other steel suppliers, as well as its ability to provide products meeting customer specifications on a rapid-delivery basis.

Human Capital Resources

At March 31, 2022, the Company had 98 full-time employees and 1 part-time employee.

Executive Officers of the Company

The following table sets forth as of March 31, 2022, for each executive officer of the Company, the name, age, officer positions and arrangements with other persons regarding his selection as an officer, if any, and the period during which such officer has served in such capacity:

Name	Age	Position, Offices with the Company and Other Arrangements, if any
Michael J. Taylor	63	President and Chief Executive Officer since September 2019; formerly Interim President and Interim Chief Executive Officer since February 2019; Chairman of the Board of Directors since June 2017; member of the Board of Directors since December 2016
Alex LaRue	36	Chief Financial Officer – Secretary and Treasurer since March 2018; formerly Vice President — Secretary and Treasurer since 2014; formerly Assistant Vice President — Secretary and Treasurer since 2013; formerly Controller — Texas Tubular Products since 2011

Item 1A. Risk Factors

Not required.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

The principal real properties of the Company are described in the following table:

Location	Approximate Size	Ownership
Lone Star, Texas		
Plant — Texas Tubular Products	161,000 sq. feet	Owned(1)
Offices — Texas Tubular Products	12,200 sq. feet	Owned(1)
Land — Texas Tubular Products	122.4 acres	Owned(1)
Longview, Texas		
Offices	5,100 sq. feet	Leased(2)
Hickman, Arkansas		
Plant and Warehouse — Coil Products	64,600 sq. feet	Owned(1)
Offices — Coil Products	2,500 sq. feet	Owned(1)
Land — Coil Products	26.2 acres	Owned(1)
Decatur, Alabama		
Plant and Warehouse — Coil Products	48,000 sq. feet	Owned(1)
Offices — Coil Products	2,000 sq. feet	Owned(1)
Land — Coil Products	47.3 acres	Owned(1)
Sinton, Texas		
Plant and Warehouse	70,000 sq. feet	Leasehold Improvement (3)
Offices — Coil Products	3,100 sq. feet	Leasehold Improvement (3)
Land — Coil Products	26.5 acres	Leased(3)

(1) All of the Company's owned real properties, plants and offices are held in fee and are not subject to any mortgage or deed of trust.

(2) The office lease is with a non-affiliated party, expires on April 30, 2024, and requires a monthly rental payment by the Company of $4,878.

(3) The associated lease is a 99 year lease with Steel Dynamics Inc. that calls for an annual rental payment of $1 and has an expiration date of February 19, 2120.

Item 3. Legal Proceedings

The Company is not, and during fiscal year 2022 was not, a party to, nor is its property the subject of, any material pending legal proceedings.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

The Company's Common Stock is traded principally on the NYSE – American (Symbol: FRD).

Reference is hereby made to the sections of the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, entitled "Description of Business — Range of High and Low Sales Prices of Common Stock" and "Description of Business — Cash Dividends Declared Per Share of Common Stock", which sections are hereby incorporated herein by reference.

The approximate number of shareholders of record of Common Stock of the Company as of April 29, 2022 was 175. Because many of the Company's common shares are held by brokers and other institutions on behalf of shareholders, the Company is unable to estimate the total number of individual shareholders represented by these record holders.

Item 6. Selected Financial Data

Not required.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Information with respect to Item 7 is hereby incorporated herein by reference from the section of the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations".

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Not required.

Item 8. Financial Statements and Supplementary Data

The following financial statements and notes thereto of the Company included in the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, are hereby incorporated herein by reference:

Consolidated Balance Sheets — March 31, 2022 and 2021

Consolidated Statements of Operations — Years ended March 31, 2022 and 2021

Consolidated Statements of Comprehensive Income — Years ended March 31, 2022 and 2021

Consolidated Statements of Stockholders' Equity — Years ended March 31, 2022 and 2021

Consolidated Statements of Cash Flows — Years ended March 31, 2022 and 2021

Notes to Consolidated Financial Statements

Reports of Independent Registered Public Accounting Firm

The following supplementary schedule for the Company for the years ended March 31, 2022 and 2021, is incorporated herein by reference above in this Item 8 from the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022.

Schedule II — Valuation and Qualifying Accounts

All other schedules for which provision is made in the applicable accounting regulation of the U.S. Securities and Exchange Commission (the "SEC") are not required under the related instructions or are inapplicable and, therefore, have been omitted.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Information with respect to Item 9A is hereby incorporated herein by reference from the sections of the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, entitled "*Evaluation of Disclosure Controls and Procedures*" and "*Management's Report on Internal Control Over Financial Reporting*".

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Board of Directors

The following table sets forth the names of the nominees for election to the Board of Directors, the principal occupation or employment of each of the nominees, the period during which each nominee has served as a director of the Company and the age of each nominee:

Nominee	Principal Occupation and Business Experience for more than the Last Five Years	Director Since	Age
Mike Taylor	President and Chief Executive Officer of the Company since September 2019; formerly Interim President and Interim Chief Executive Officer since February 2019; formerly retired; formerly President, Cargill Metals Supply Chain (steel processing and distribution), The Woodlands, Texas	2016	63
Durga D. Agrawal	President, Piping Technology & Products, Inc. (pipe fabrication), Houston, Texas	2006	77
Max Reichenthal	President, Texas Iron and Metal (steel product sales), Houston, Texas	2008	64
Sandy Scott	Retired; Current director on the boards of Terra Nova Solutions, Rowland Inc., CEDA International, DWD International LLC and Goodwill of Houston; formerly Chief Executive Officer, Sprint Industrial Holdings (rental equipment and transportation company), Houston, Texas	2022	58
Joel Spira	Private investor, Houston, Texas; formerly Partner, Weinstein Spira & Company (accounting firm), Houston, Texas	2007	84
Tim Stevenson	Chief Executive Officer and Founder, Metal Edge Partners (metals price risk management and strategic advisory services), Plymouth, Minnesota; formerly Managing Director, Cargill Risk Management (price risk management services), Hopkins, Minnesota; formerly North American Lead of Derivatives and Analysis, Cargill, Inc. (steel processor), Hopkins, Minnesota	2019	55
Sharon Taylor	Vice President and Chief Financial Officer, Martin Midstream Partners LP and Martin Resource Management Corporation (terminalling, processing, transportation, storage and packaging services for petroleum products and by-products); formerly Director of Finance and Investor Relations, Martin Midstream Partners LP; formerly Business Analyst – Finance, Martin Midstream Partners LP, Kilgore, Texas	2022	57
Joe L. Williams	Partner, Pozmantier, Williams & Stone Insurance Consultants, LLC (insurance and risk management consultants), Houston, Texas	2000	76

Executive Officers of the Company

Information with respect to Item 10 regarding executive officers is hereby incorporated by reference from the information set forth under the caption "Executive Officers of the Company" in Item 1 of this Annual Report on Form 10-K.

Delinquent Section 16(a) Reports

Under the Exchange Act, our directors, executive officers and 10% shareholders must report to the SEC certain transactions involving Common Stock. Based solely on a review of the copies of the reports required pursuant to Section 16(a) of the Exchange Act that have been furnished to us and written representations that no other reports were required, we believe that these filing requirements have been satisfied for the fiscal year ended March 31, 2022 except for: one Form-4 filed by Durga D. Agrawal on December 30, 2021 (filed 87 days late); one Form-4 filed by Max Reichenthal on December 30, 2021 (filed 87 days late); one Form-4 filed by Joel Spira on December 30, 2021 (filed 87 days late); one Form-4 filed by Tim Stevenson on December 30, 2021 (filed 87 days late); one Form-4 filed by Joe L. Williams on December 30, 2021 (filed 87 days late); and one Form-4 filed by Alex LaRue on August 1, 2022 (filed 209 days late).

Audit Committee

The Board of Directors has established an Audit Committee which currently consists of Messrs. Agrawal, Reichenthal and Spira (Chairman). The Audit Committee discusses with the independent accountants and management our financial statements and the scope of the audit examinations, reviews with the independent accountants the audit budget, receives and reviews the audit report submitted by the independent accountants, reviews with the independent accountants internal accounting and control procedures and engages our independent auditor. The Audit Committee's responsibilities to the Board of Directors are further detailed in the Second Amended and Restated Charter of the Audit Committee, as amended, which is not available on our website but is attached as Appendix A to this proxy statement. The Audit Committee met four times in fiscal year 2022.

The Board of Directors has affirmatively determined that all members of the Audit Committee are independent in accordance with the applicable rules of the NYSE – American and Rule 10A-3(b)(1) of the Exchange Act. The Board also has determined that each of the members of the Audit Committee is able to read and understand fundamental financial statements. In addition, the Board has determined that Mr. Spira meets the financial sophistication requirements set forth in the applicable rules of the NYSE – American and qualifies as an "audit committee financial expert," as that term is defined in the rules promulgated by the SEC pursuant to the Sarbanes-Oxley Act of 2002, as amended.

The Company has adopted the Friedman Industries, Incorporated Code of Conduct and Ethics (the "Code"), which applies to the Company's employees, directors and officers, including its principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. A copy of the Code is filed as an exhibit hereto.

Item 11. Executive Compensation

Summary Compensation Table

The following table sets forth certain information regarding compensation paid for services rendered during the fiscal years ended March 31, 2022 and March 31, 2021, to each of our executive officers, including our principal executive officer and our principal financial officer (collectively, the "Named Executive Officers"):

Summary Compensation Table for Fiscal Year 2022

Name and Principal Position	Year	Salary ($)(1)	Bonus ($)(2)	Stock Awards ($)(3)	All Other Compensation ($)(4)	Total ($)
Michael J. Taylor	2022	279,996	1,198,786	—	5,233	1,484,015
President & Chief Executive Officer	2021	279,996	94,083	—	6,078	380,157
Alex LaRue	2022	180,000	799,191	—	11,587	990,778
Chief Financial Officer — Secretary & Treasurer	2021	165,000	87,722	—	9,189	261,911

(1) Represents base salary.
(2) Includes quarterly bonuses based on a percentage of our quarterly net income and Christmas bonuses, each of which is paid at the discretion of the Board of Directors.
(3) Reflects the aggregate grant date fair value for stock awards computed in accordance with FASB ASC Topic 718.
(4) Reflects contributions by the Company to the Friedman Industries, Inc. Employees' Retirement and 401(k) Plan for the benefit of the Named Executive Officers and cash dividends received related to restricted shares awarded under the Company's restricted stock plan.

Outstanding Equity Awards at Fiscal Year-End 2022

	Option Awards					Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($) (3)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value Of Unearned Shares, Units or Other Rights That Have Not Vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Michael J. Taylor	____	____	____	____	____	40,000 (1)	$352,400	____	____
Alex LaRue	____	____	____	____	____	4,000 (2)	$35,240	____	____

(1) The unvested stock awards for Mr. Taylor will vest in 10,000 share increments on April 1, 2022, April 1 2023, April 1, 2024 and April 1 2025.
(2) The unvested stock awards for Mr. LaRue will vest in 1,000 share increments on April 1, 2022, April 1 2023, April 1, 2024 and April 1 2025.
(3) Based on the closing price of our common stock on March 31, 2022 of $8.81.

Potential Payments upon Termination or Change-in-Control

The Named Executive Officers will receive the same benefits as our other employees upon termination of their employment. We maintain the Friedman Industries, Inc. Employees' Retirement and 401(k) Plan (the "Plan"), a defined contribution and 401(k) plan. The Plan covers substantially all employees, including officers, and employees fully vest in the Plan upon six years of service. The Company maintains a life insurance policy on Mr. LaRue but does not currently have a policy in place on Mr. Taylor. From time to time and in its discretion, the Board has approved the transfer of the applicable policy to an officer upon their retirement. At March 31, 2022, the cash surrender value of the life insurance policy held by the Company on Mr. LaRue was approximately $6,500. None of the Named Executive Officers has a change-in-control agreement with us.

Director Compensation

For the fiscal year ended March 31, 2022, directors were paid $9,000 per quarter. In addition, the Chairman and members of the Audit Committee received $3,000 and $2,250, respectively, per quarter. Mr. Taylor did not receive any compensation for serving as a director.

Except for Mr. Taylor, who is a Named Executive Officer (as defined in "Executive Compensation" below), the following table summarizes compensation paid to each director during the fiscal year ended March 31, 2022. Sandy Scott and Sharon Taylor are not listed in the table below due to them being added to the Board of Directors subsequent to March 31, 2022.

Director Compensation Table for Fiscal Year 2022

Name	Fees Earned or Paid in Cash ($)	All Other Compensation ($) (1)	Total ($)
Durga Agrawal	45,000	10,000	55,000
Max Reichenthal	45,000	10,000	55,000
Joel Spira	48,000	10,000	58,000
Tim Stevenson	36,000	10,000	46,000
Joe L. Williams	36,000	10,000	46,000

(1) All other compensation consists of restricted stock awards issued to directors during the fiscal year ended March 31, 2022.

Procedures and Processes for Determining Executive and Director Compensation

The Compensation Committee of the Board of Directors is responsible for reviewing and recommending to the full Board of Directors the compensation of our Chief Executive Officer and our other Named Executive Officers. The Committee also reviews and discusses with the Chief Executive Officer, and recommends to the full Board of Directors, the compensation for all other officers of the Company. The Committee may retain compensation consultants or other advisers it deems appropriate. Based on the Committee's analysis of relevant data, the Committee determines its recommendation regarding the compensation of our Chief Executive Officer during an executive session of the Committee at which the Chief Executive Officer is not present. Our Chief Executive Officer makes recommendations regarding the compensation of our other executive officers and other officers to the Committee. The Committee considers the recommendations, discusses the recommendations with our Chief Executive Officer, may discuss the matter in executive session and then makes recommendations to the full Board of Directors. The final determination as to the compensation of the Chief Executive Officer and all other officers of the Company is made by the full Board of Directors based on the recommendations of the Committee.

The Board of Directors, or an authorized committee thereof, may from time to time review and determine the form and amount of director compensation, including cash, equity-based awards and other director compensation to maintain a transparent and readily understandable compensation program which ensures that the directors continue to receive fair and appropriate compensation for the time commitment required to discharge their duties as directors for a company of our size.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Equity Compensation Plan Information

The table below sets forth the following information as of March 31, 2022 for all equity compensation plans, including those previously approved by our shareholders.

Equity Compensation Plan Table

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity Compensation Plans Approved By Security Holders	-	-	130,185
Equity Compensation Plans Not Approved By Security Holders	-	-	-
Total	-	-	130,185

Additional information with respect to Item 12 regarding equity compensation plan information relating to the Company is hereby incorporated herein by reference from Note 2 — Equity Compensation Plans and Capital Stock included in the Notes to Consolidated Financial Statements of the Company included in the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022.

Security Ownership Information

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information concerning the beneficial ownership of Common Stock by directors, nominees for director, Named Executive Officers, executive officers and directors as a group and persons who owned of record more than 5% of the outstanding Common Stock as of July 28, 2022:

Name	Amount and Nature of Beneficial Ownership(a)	Percentage of Shares Outstanding
Dimensional Fund Advisors LP	544,919 (b)	7.4 %
6300 Bee Cave Road, Building One		
Austin, Texas 78746		
Renaissance Technologies Holdings Corporation	488,018 (c)	6.6 %
800 Third Avenue		
New York, New York 10022		
Plateplus, Inc	516,041 (d)	7.0 %
21 Waterway Ave. Suite 525		
The Woodlands, TX 77380		
Mike Taylor	122,144	1.7%
Durga D. Agrawal	11,763	*
Max Reichenthal	11,763	*
Joel Spira	10,763	*
Tim Stevenson	24,763	*
Sharon Taylor	100	*
Joe L. Williams	20,333	*
Alex LaRue	42,150	*
Officers and directors as a group (8 persons)	243,779	3.3 %

* Less than 1%.

(a) Based upon information obtained from the officers, directors, director nominees and beneficial owners. Includes all shares beneficially owned according to the definition of "beneficial ownership" in the rules promulgated under the Exchange Act. Except as otherwise indicated, the indicated person has sole voting and investment power with respect to the shares.

(b) Based upon information contained in a Schedule 13G/A filed with the SEC on February 8, 2022 by Dimensional Fund Advisors LP ("Dimensional"). Dimensional is deemed to have beneficial ownership of 544,919 shares of the Common Stock as of December 31, 2021.

(c) Based upon information contained in a Schedule 13G/A filed with the SEC on February 11, 2022 by Renaissance Technologies Holdings Corporation ("Renaissance"). Renaissance is deemed to have beneficial ownership of 488,018 shares of the Common Stock as of December 31, 2021.

(d) Based upon information contained in a Schedule 13G filed with the SEC on May 9, 2022 by Plateplus, Inc. ("Plateplus"). Plateplus is deemed to have beneficial ownership of 516,041 shares of the Common Stock as of April 29, 2022.

Item 13. Certain Relationships, Related Transactions and Director Independence

Related Party Transactions

There were no transactions in fiscal year 2022 with related persons which required disclosure pursuant to Item 404(a) of Regulation S-K (17 CFR Part 229).

Policies and Procedures with Respect to Approval of Related Party Transactions

The Audit Committee of the Board of Directors has adopted a written policy with respect to related party transactions to document procedures pursuant to which such transactions are reviewed, approved or ratified. The policy applies to any transaction between us and any related party other than transactions (i) available to all employees generally or (ii) involving less than $5,000 when aggregated with all similar transactions. The Audit Committee is responsible for reviewing, approving and ratifying any related party transaction. In general, the policy prohibits all related party transactions although the Audit Committee may approve related party transactions (A) in exceptional circumstances where the situation is urgent and no reasonable alternatives exist, (B) when the benefit is unique and significant or (C) the economic value to us is highly compelling over an extended period.

Item 14. Principal Accountant Fees and Services

Audit Fees

In fiscal years 2022 and 2021, we retained Moss Adams LLP (Houston, Texas PCAOB ID: 659) to provide services and incurred fees therefor as indicated in the following table:

	2022 Actual Fees	2021 Actual Fees
Audit Fees (1)	$ 493,300	$ 214,700
Audit-Related Fees	—	—
Tax Fees	—	—
All Other Fees	—	—
Total Fees	$ 493,300	$ 214,700

(1) Includes fees and expenses incurred related to the fiscal year audit and interim reviews, notwithstanding when the fees and expenses were billed or when the services were rendered.

The Audit Committee has implemented pre-approval policies and procedures for all audit and non-audit services to be provided by our independent public accountants to us. With regard to all permissible non-audit services, the Audit Committee has designated the Chairman of the Audit Committee to approve in advance the provision by the independent public accountants of such services.

There were no services approved by the Audit Committee pursuant to the de minimis exception in paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X (17 CFR Part 210) during fiscal year 2022.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) Documents included in this report

1. Financial Statements

The following financial statements and notes thereto of the Company are included in the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, which is incorporated herein by reference:

Consolidated Balance Sheets — March 31, 2022 and 2021

Consolidated Statements of Operations — Years ended March 31, 2022 and 2021

Consolidated Statements of Comprehensive Income — Years ended March 31, 2022 and 2021

Consolidated Statements of Stockholders' Equity — Years ended March 31, 2022 and 2021

Consolidated Statements of Cash Flows — Years ended March 31, 2022 and 2021

Notes to Consolidated Financial Statements

Reports of Independent Registered Public Accounting Firm

2. Financial Statement Schedules

The following financial statement schedule is included in the Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022, which is incorporated herein by reference:

Schedule II — Valuation and Qualifying Accounts

All other schedules for which provision is made in the applicable accounting regulations of the SEC are not required under the related instructions or are inapplicable and, therefore, have been omitted.

3. Exhibits

Exhibit No.		Description
3.1	—	Articles of Incorporation of the Company, as amended (incorporated by reference from Exhibit 3.1 to the Company's Form S-8 filed on December 21, 2016).
3.2	—	Articles of Amendment to the Articles of Incorporation of the Company, as filed with the Texas Secretary of State on September 22, 1987 (incorporated by reference from Exhibit 3.1 to the Company's Form S-8 filed on December 21, 2016).
3.3	—	Amended and Restated Bylaws of the Company, as amended on November 8, 2021 (incorporated by reference from Exhibit 3.3 to the Company's Form 10-Q filed on November 19, 2021).
10.1	—	Friedman Industries, Incorporated 2016 Restricted Stock Plan (incorporated by reference from Exhibit 4.2 to the Company's Form S-8 filed on December 21, 2016).
10.2	—	Form of Friedman Industries, Incorporated Restricted Stock Award Agreement (incorporated by reference from Exhibit 4.3 to the Company's Form S-8 filed on December 21, 2016).
10.3	—	First Amendment to the Friedman Industries, Incorporated 2016 Restricted Stock Plan (incorporated by reference from Appendix C to the Company's Form DEF 14A filed on July 26, 2019).
10.4	—	Amended and Restated Credit Agreement dated May 19, 2021 (incorporated by reference from Exhibit 10.9 to the Company's Form 10-K for the fiscal year ended March 31, 2021 filed on July 7, 2021).
10.5	—	Pledge and Security Agreement dated May 19, 2021 (incorporated by reference from Exhibit 10.10 to the Company's Form 10-K for the fiscal year ended March 31, 2021 filed on July 7, 2021).
**10.6	—	First Amendment to Amended and Restated Credit Agreement (referenced in the Company's Current Report of Form 8-K filed on March 15, 2022).
**10.7	—	Second Amendment to Amended and Restated Credit Agreement (referenced in the Company's Current Report of Form 8-K filed on May 2, 2022).
**10.8	—	Asset Purchase Agreement by and among Friedman Industries, Inc., Plateplus Inc. and the Stockholder of Plateplus Inc. (referenced in the Company's Current Report on Form 8-K filed on May 2, 2022).
**10.9	—	Lease Assignment and Assumption Agreement for Parcel 1-A and Parcel 4 of Granite City, Illinois Property.
**10.10	—	Lease Assignment and Assumption Agreement for Parcel 1-B of Granite City, Illinois Property.
**10.11	—	Lease Assignment and Assumption Agreement for Parcel 5 of Granite City, Illinois Property.
**10.12	—	Third Amendment to Amended and Restated Credit Agreement (referenced in the Company's Current Report on Form 8-K filed on July 13, 2022).
**13.1	—	The Company's Annual Report to Shareholders for the fiscal year ended March 31, 2022.
**14.1	—	Friedman Industries, Incorporated Code of Conduct and Ethics.
**21.1	—	List of Subsidiaries.
**23.1	—	Consent of Moss Adams LLP.
**31.1	—	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, signed by Michael J. Taylor.
**31.2	—	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, signed by Alex LaRue.
**32.1	—	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, signed by Michael J. Taylor.
**32.2	—	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, signed by Alex LaRue.

**101.INS	—	Inline XBRL Instance Document.
**101.SCH	—	Inline XBRL Taxonomy Schema Document.
**101.CAL	—	Inline XBRL Calculation Linkbase Document.
**101.DEF	—	Inline XBRL Definition Linkbase Document.
**101.LAB	—	Inline XBRL Label Linkbase Document.
**101.PRE	—	Inline XBRL Presentation Linkbase Document.
**104	—	Cover Page Interactive Data File (embedded within the Inline XBRL and contained in Exhibit 101)

** Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Friedman Industries, Incorporated has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FRIEDMAN INDUSTRIES, INCORPORATED

By: /S/ MICHAEL J. TAYLOR
Michael J. Taylor
President and Chief Executive Officer

Dated: August 2, 2022

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of Friedman Industries, Incorporated in the capacities and on the dates indicated.

Signature	Title	Date
/S/ MICHAEL J. TAYLOR Michael J. Taylor	President and Chief Executive Officer and Director (Principal Executive Officer)	August 2, 2022
/S/ ALEX LARUE Alex LaRue	Chief Financial Officer — Secretary and Treasurer (Principal Financial Officer and Principal Accounting Officer)	August 2, 2022
/S/ DURGA D. AGRAWAL Durga D. Agrawal	Director	August 2, 2022
/S/ MAX REICHENTHAL Max Reichenthal	Director	August 2, 2022
/S/ SANDY SCOTT Sandy Scott	Director	August 2, 2022
/S/ JOEL SPIRA Joel Spira	Director	August 2, 2022
/S/ TIM STEVENSON Tim Stevenson	Director	August 2, 2022
/S/ SHARON TAYLOR Sharon Taylor	Director	August 2, 2022
/S/ JOE L. WILLIAMS Joe L. Williams	Director	August 2, 2022

Exhibit 10.6

EXECUTION VERSION

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This **FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT** (this "Amendment"), dated as of March 11, 2022, is by and among **FRIEDMAN INDUSTRIES, INCORPORATED**, a Texas corporation (the "Borrower") and **JPMORGAN CHASE BANK, N.A.**, a national banking association, as a Lender, Issuing Bank and Swingline Lender (as each is defined in the below-referenced Credit Agreement) (in such capacities, the "Lender") and as Administrative Agent (the "Administrative Agent"). Capitalized terms used in this Amendment, to the extent not otherwise defined herein, shall have the same meaning as in the Credit Agreement, as amended hereby.

RECITALS:

WHEREAS, the Borrower, the other Loan Parties, the Lender and the Administrative Agent are parties to that certain Amended and Restated Credit Agreement, dated as of May 19, 2021 (as the same may be amended or modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower and the other Loan Parties have requested that the Lender and Administrative Agent amend certain provisions of the Credit Agreement in the manner and on the terms and conditions provided for herein; and

NOW, THEREFORE, in consideration of the foregoing and the agreements, promises and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1: Amendments to Credit Agreement. Effective as of the Effective Date, the Credit Agreement is hereby amended (a) to delete the stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the marked copy of the Credit Agreement (and to the extent provided in Exhibit A hereto, the exhibits, schedules and appendices to the Credit Agreement) attached hereto as Exhibit A and made a part hereof for all purposes.

SECTION 2: No Waiver. Nothing contained in this Amendment shall be construed as a waiver by the Administrative Agent of any covenant or provision of the Credit Agreement, the other Loan Documents, this Amendment, or of any other contract or instrument between any Loan Party and the Administrative Agent, and the failure of the Administrative Agent at any time or times hereafter to require strict performance by any Loan Party of any provision thereof shall not waive, affect or diminish any rights of the Administrative Agent to thereafter demand strict compliance therewith. The Administrative Agent hereby reserves all rights granted under the Credit Agreement, the other Loan Documents, this Amendment and any other contract or instrument between any Loan Party and the Administrative Agent.

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

(a) No Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing as of the date hereof;

(b) Representations and Warranties. As of the Effective Date and, after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects on and as of the date hereof to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date; and

(c) Authority. (i) The execution, delivery and performance by each Loan Party of this Amendment are within its respective organizational powers and have been duly authorized by all necessary corporate or limited liability company action on the part of such Person, (ii) this Amendment is the legal, valid and binding obligation of each Loan Party enforceable against such Person in accordance with its terms and (iii) neither the execution, delivery or performance by each Loan Party of this Amendment (1) violates any law or regulation, or any order or decree of any governmental authority, (2) conflicts with or results in the breach or termination of, constitutes a default under or accelerates any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Person is a party or by which such Person or any of its property is bound, (3) results in the creation or imposition of any Lien upon any of the Collateral (other than any Lien in favor of the Lender), (4) violates or conflicts with the organizational or governing documentation of such Person, or (5) requires the consent, approval or authorization of, or declaration or filing with, any other Person, except for those already duly obtained.

(d) Organizational Documents. No amendment, restatement, supplement or other modification has been made to the certificate or articles of incorporation or organization of the Borrower or to the by-laws or operating, management or partnership agreement, or any other organizational or governing documents of the Borrower since May 19, 2021.

SECTION 4: Conditions Precedent. This Amendment shall become effective only upon the satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions have been satisfied being herein called the ("Effective Date")):

(a) Documentation. The Administrative Agent shall have received each of the following, each in form and substance satisfactory to the Administrative Agent, in its sole discretion, and, where applicable, each duly executed by each party thereto, other than the Administrative Agent (each of which shall be deemed to constitute a "Loan Document" pursuant to the Credit Agreement):

(i) this Amendment or counterparts hereof; and

(ii) such other documents, instruments, and agreements as the Administrative Agent may reasonably request in connection with the transactions contemplated by this Amendment and the other Loan Documents, each in form and substance reasonably satisfactory to the Administrative Agent.

(b) No Default. After giving effect to this Amendment, no Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing.

(c) Warranties and Representations. After giving effect to this Amendment and the transactions contemplated hereby, the warranties and representations of the Loan Parties contained in the Loan Documents shall be true and correct in all material respects as of the Effective Date, with the same effect as though made on such date, except to the extent that such warranties and representations expressly relate to an earlier date, and all of such representations and warranties (except those relating to an earlier date) are hereby remade by the Loan Parties as of the Effective Date.

(d) Payment of Fees. Borrower shall have paid to Administrative Agent (i) an amendment fee in an amount equal to $35,000 and (ii) any fees and expenses owing to the Administrative Agent pursuant to Section 9.03(a) of the Credit Agreement.

SECTION 5: Ratification; Reference to and Effect on Loan Documents.

(a) Ratification. Except as specifically amended above, the Credit Agreement and the other Loan Documents shall remain in full force and effect. Notwithstanding anything contained herein, the terms of this Amendment are not intended to and do not effect a novation of the Credit Agreement or any other Loan Document. Each of the Loan Parties hereby ratifies and reaffirms each of the terms and conditions of the Loan Documents to which it is a party and all of its obligations thereunder. Each of the Loan Parties hereby agrees that all liens and security interests securing payment of the Obligations under the Credit Agreement and each of the other Loan Documents are hereby collectively renewed, ratified and brought forward as security for the payment and performance of the Obligations.

(b) References. Upon the effectiveness of this Amendment, each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

SECTION 6: Miscellaneous.

(a) Successors and Assigns. This Amendment shall be binding on and shall inure to the benefit of the Loan Parties, the Administrative Agent and their respective successors and assigns.

(b) Entire Agreement. This Amendment constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all other understandings, oral or written, with respect to the subject matter hereof.

(c) Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) Severability. Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

(e) Counterparts. This Amendment may be executed in any number of separate original counterparts (or telecopied counterparts with original execution copy to follow) and by the different parties on separate counterparts, each of which shall be deemed to be an original, but all of such counterparts shall together constitute one agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopy shall be effective as delivery of a manually executed counterpart of this Amendment.

(f) Incorporation of Credit Agreement Provisions. The provisions contained in Section 9.09 (Governing Law; Jurisdiction; Consent to Service of Process) and Section 9.10 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(g) RELEASE. FOR AND IN CONSIDERATION OF LENDERS' AGREEMENTS CONTAINED HEREIN, BORROWER, TOGETHER WITH ITS PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND ITS CURRENT AND FORMER OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND ITS PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, "**RELEASORS**") HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER WAIVES AND DISCHARGES LENDER AND EACH OF ITS PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS CURRENT AND FORMER DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND EACH OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, THE "**RELEASED PARTIES**") FROM ALL POSSIBLE CLAIMS, COUNTERCLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AMENDMENT IS EXECUTED THAT ANY OF THE RELEASORS MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION ARISING DIRECTLY OR INDIRECTLY FROM ANY LAWSUIT, ANY PRIOR OR EXISTING LOANS BETWEEN RELEASORS AND RELEASED PARTIES, ANY OF THE LOAN DOCUMENTS, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER ANY OF THE LOAN DOCUMENTS AND/OR NEGOTIATION FOR AND EXECUTION OF THIS AMENDMENT, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. EACH OF THE RELEASORS WAIVES THE BENEFITS OF ANY LAW, WHICH MAY PROVIDE IN SUBSTANCE: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MUST HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE DEBTOR." EACH OF THE RELEASORS UNDERSTANDS THE FACTS IT BELIEVES TO BE TRUE AT THE TIME OF MAKING THE RELEASE PROVIDED FOR HEREIN MAY LATER TURN OUT TO BE DIFFERENT THAN IT NOW BELIEVES, AND INFORMATION NOT NOW KNOWN OR SUSPECTED MAY LATER BE DISCOVERED. EACH OF THE RELEASORS ACCEPTS THIS POSSIBILITY, AND EACH OF THEM ASSUMES THE RISK OF THE FACTS TURNING OUT TO BE DIFFERENT AND NEW INFORMATION BEING DISCOVERED AND EACH OF THEM FURTHER AGREES THE RELEASE PROVIDED FOR HEREIN SHALL IN ALL RESPECTS CONTINUE TO BE EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BECAUSE OF ANY DIFFERENCE IN SUCH FACTS OR ANY NEW INFORMATION.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Amendment has been executed on the date first written above, to be effective upon satisfaction of the conditions set forth herein.

BORROWER:

FRIEDMAN INDUSTRIES, INCORPORATED

By: /s/ Alex LaRue
Name: Alex LaRue
Title: Chief Financial Officer

LENDER:

JPMORGAN CHASE BANK, N.A.,
individually and as Administrative Agent, Issuing Bank and Swingline Lender

By: /s/ Timothy Whitefoot
Name: Timothy Whitefoot
Title: Authorized Officer

Exhibit A

Amended Credit Agreement

[See Attached]

J.P.Morgan

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

May 19, 2021

among

Friedman Industries, Incorporated

each of the other Persons party hereto as a Borrower,

each of the Persons party hereto as a Loan Guarantor,

The Lenders Party Hereto

and

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

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

TABLE OF CONTENTS

	Page
ARTICLE I – Definitions	5
SECTION 1.01. Defined Terms	5
SECTION 1.02. Classification of Loans and Borrowings.	41
SECTION 1.03. Terms Generally.	42
SECTION 1.04. Accounting Terms; GAAP	42
SECTION 1.05. Interest Rates; Benchmark Notifications	43
SECTION 1.06. Reserved	43
SECTION 1.07. Status of Obligations	43
SECTION 1.08. Letters of Credit	44
SECTION 1.09. Divisions	44
ARTICLE II – The Credits	44
SECTION 2.01. Commitments	44
SECTION 2.02. Loans and Borrowings	44
SECTION 2.03. Requests for Revolving Borrowings	45
SECTION 2.04. Protective Advances.	46
SECTION 2.05. Swingline Loans and Overadvances.	46
SECTION 2.06. Letters of Credit	48
SECTION 2.07. Funding of Borrowings.	53
SECTION 2.08. Interest Elections.	53
SECTION 2.09. Termination of Commitments; Increase in Revolving Commitments	54
SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt.	56
SECTION 2.11. Prepayment of Loans	56
SECTION 2.12. Fees.	58
SECTION 2.13. Interest	59
SECTION 2.14. Alternate Rate of Interest; Illegality.	59
SECTION 2.15. Increased Costs.	61
SECTION 2.16. Break Funding Payments.	62
SECTION 2.17. Withholding of Taxes; Gross-Up.	63
SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs	66
SECTION 2.19. Mitigation Obligations; Replacement of Lenders.	68
SECTION 2.20. Defaulting Lenders.	69
SECTION 2.21. Returned Payments	71
SECTION 2.22. Banking Services and Swap Agreements	72
ARTICLE III – Representations and Warranties	72
SECTION 3.01. Organization; Powers	72
SECTION 3.02. Authorization; Enforceability	72
SECTION 3.03. Governmental Approvals; No Conflicts.	72
SECTION 3.04. Financial Condition; No Material Adverse Change	73
SECTION 3.05. Properties	73
SECTION 3.06. Litigation and Environmental Matters.	73
SECTION 3.07. Compliance with Laws and Agreements; No Default.	74
SECTION 3.08. Investment Company Status.	74
SECTION 3.09. Taxes.	74
SECTION 3.10. ERISA	74

SECTION 3.11. Disclosure. 74
SECTION 3.12. Material Agreements 74
SECTION 3.13. Solvency. 75
SECTION 3.14. Insurance. 75
SECTION 3.15. Capitalization and Subsidiaries. 75
SECTION 3.16. Security Interest in Collateral 75
SECTION 3.17. Employment Matters 75
SECTION 3.18. Margin Regulations 76
SECTION 3.19. Use of Proceeds 76
SECTION 3.20. No Burdensome Restrictions 76
SECTION 3.21. Anti-Corruption Laws and Sanctions 76
SECTION 3.22. Common Enterprise 76
SECTION 3.23. EEA Financial Institutions 76
SECTION 3.24. Plan Assets; Prohibited Transactions 76
SECTION 3.25 Margin Regulations 77
ARTICLE IV - Conditions 77
SECTION 4.01. Effective Date 77
SECTION 4.02. Each Credit Event. 80
ARTICLE V – Affirmative Covenants 81
SECTION 5.01. Financial Statements; Borrowing Base and Other Information 81
SECTION 5.02. Notices of Material Events. 85
SECTION 5.03. Existence; Conduct of Business 86
SECTION 5.04. Payment of Obligations. 86
SECTION 5.05. Maintenance of Properties 86
SECTION 5.06. Books and Records; Inspection Rights 87
SECTION 5.07. Compliance with Laws and Material Contractual Obligations. 87
SECTION 5.08. Use of Proceeds. 87
SECTION 5.09. Accuracy of Information. 87
SECTION 5.10. Insurance. 88
SECTION 5.11. Casualty and Condemnation 88
SECTION 5.12. Appraisals 88
SECTION 5.13. Depository Banks 88
SECTION 5.14. Additional Collateral; Further Assurances 89
SECTION 5.15. Merger of Subsidiary 89
SECTION 5.16. Insurance 89
ARTICLE VI – Negative Covenants 90
SECTION 6.01. Indebtedness. 90
SECTION 6.02. Liens. 91
SECTION 6.03. Fundamental Changes. 92
SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions 92
SECTION 6.05. Asset Sales 94
SECTION 6.06. Sale and Leaseback Transactions 95
SECTION 6.07. Swap Agreements 95
SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. 95
SECTION 6.09. Transactions with Affiliates. 95
SECTION 6.10. Restrictive Agreements. 96
SECTION 6.11. Amendment of Material Documents 96
SECTION 6.13. Financial Covenants 96
ARTICLE VII – Events of Default 96

ARTICLE VIII – The Administrative Agent 99
SECTION 8.01. Authorization and Action 99
SECTION 8.02. Administrative Agent's Reliance, Limitation of Liability, Etc. 101
SECTION 8.03. Posting of Communications 102
SECTION 8.04. The Administrative Agent Individually 104
SECTION 8.05. Successor Administrative Agent 104
SECTION 8.06. Acknowledgements of Lenders and Issuing Bank 105
SECTION 8.07. Collateral Matters 106
SECTION 8.08. Credit Bidding 107
SECTION 8.09. Certain ERISA Matters 108
SECTION 8.10. Flood Laws 109
ARTICLE IX - Miscellaneous 109
SECTION 9.01. Notices 109
SECTION 9.02. Waivers; Amendments. 110
SECTION 9.03. Expenses; Limitation of Liability; Indemnity; Etc. 113
SECTION 9.04. Successors and Assigns 115
SECTION 9.05. Survival 118
SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. 118
SECTION 9.07. Severability 119
SECTION 9.08. Right of Setoff. 120
SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. 120
SECTION 9.10. WAIVER OF JURY TRIAL. 121
SECTION 9.11. Headings. 121
SECTION 9.12. Confidentiality. 121
SECTION 9.13. Several Obligations; Nonreliance; Violation of Law 122
SECTION 9.14. USA PATRIOT Act. 122
SECTION 9.15. Disclosure 122
SECTION 9.16. Appointment for Perfection 123
SECTION 9.17. Interest Rate Limitation 123
SECTION 9.18. Marketing Consent 123
SECTION 9.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions 123
SECTION 9.20. No Fiduciary Duty, Etc. 124
SECTION 9.21. Acknowledgement Regarding Any Supported QFCs 124
SECTION 9.22. Joint and Several 125
SECTION 9.23. Renewal, Extension or Rearrangement 126
ARTICLE X – Loan Guaranty 126
SECTION 10.01. Guaranty. 126
SECTION 10.02. Guaranty of Payment 126
SECTION 10.03. No Discharge or Diminishment of Loan Guaranty 126
SECTION 10.04. Defenses Waived. 127
SECTION 10.05. Rights of Subrogation 127
SECTION 10.06. Reinstatement; Stay of Acceleration. 128
SECTION 10.07. Information 128
SECTION 10.08. Termination 128
SECTION 10.09. Taxes. 128

SECTION 10.10. Maximum Liability 128
SECTION 10.11. Contribution 129
SECTION 10.12. Liability Cumulative 129
SECTION 10.13. Keepwell 129
ARTICLE XI – The Borrower Representative 130
SECTION 11.01. Appointment; Nature of Relationship 130
SECTION 11.02. Powers 130
SECTION 11.03. Employment of Agents 130
SECTION 11.04. Notices 130
SECTION 11.05. Successor Borrower Representative 130
SECTION 11.06. Execution of Loan Documents; Borrowing Base Certificate 130
SECTION 11.07. Reporting 131

SCHEDULES:

Commitment Schedule
Schedule 3.05 -- Properties
Schedule 3.06 -- Disclosed Matters
Schedule 3.12 -- Material Agreements
Schedule 3.14 -- Insurance
Schedule 3.15 -- Capitalization and Subsidiaries
Schedule 6.01 -- Existing Indebtedness
Schedule 6.02 -- Existing Liens
Schedule 6.04 -- Existing Investments
Schedule 6.10 -- Existing Restrictions

EXHIBITS:

Exhibit A -- Form of Assignment and Assumption
Exhibit B -- Form of Borrowing Base Certificate
Exhibit C -- Form of Compliance Certificate
Exhibit D -- Joinder Agreement
Exhibit E-1 -- U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-2 -- U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-3 -- U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-4 -- U.S. Tax Certificate (For Foreign that are Partnerships for U.S. Federal Income Tax Purposes)

AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 19, 2021 (as it may be amended or modified from time to time, this "Agreement") among Friedman Industries, Incorporated, a Texas corporation (the "Company") and each other Person joined hereto from time to time as a borrower (together with the Company, collectively, the "Borrowers" and each, individually, a "Borrower"), the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

WHEREAS, the Lenders have extended to the Company a line of credit in an amount not to exceed $20,000,000 at one time outstanding pursuant to that certain Credit Agreement, dated March 4, 2021, by and between the Company and the Lenders, as amended by that certain First Amendment to Credit Agreement, dated April 12, 2021, by and between the Company and the Lenders (the "Existing Credit Agreement");

WHEREAS, amounts advanced to the Company by the Lenders pursuant to the Existing Credit Agreement are evidenced by, and are payable in accordance with the terms of, that certain Line of Credit Note, dated March 4, 2021 and executed by the Company, as amended by that certain Note Modification Agreement, dated April 12, 2021, by and between the Company and the Lenders (the "Existing Note"); and

WHEREAS, the Company and the other Loan Parties desire to amend and restate the Existing Credit Agreement in the form of this Agreement, and in connection therewith, repay all indebtedness outstanding under the Existing Note.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Borrowers, the Loan Parties, Administrative Agent and Lenders hereby agree that the Existing Credit Agreement is hereby amended and restated in its entirety on the terms and conditions set forth herein. It is the intention of the Borrowers, the Loan Parties, Administrative Agent and Lenders that this Agreement supersede and replace the Existing Credit Agreement in its entirety; provided, that, (a) such amendment and restatement shall operate to renew, amend and modify the rights and obligations of the parties under the Existing Credit Agreement, as applicable and as provided herein, but shall not effect a novation thereof, and (b) the liens securing the Obligations under and as defined in the Existing Credit Agreement shall not be extinguished, but shall be carried forward and shall secure such Obligations as renewed, amended, restated, modified and increased hereby. The Borrowers, the Loan Parties, Administrative Agent and Lenders hereby further agree as follows:

ARTICLE I

Definitions

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

"Account" has the meaning assigned to such term in the Security Agreement.

"Account Debtor" means any Person obligated on an Account.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, 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 which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

"Adjusted Daily Simple SOFR" means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted Term SOFR Rate" means for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%, provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for purposes of this Agreement.

"Administrative Agent" means JPMorgan Chase Bank, N.A. (or any of its designated branch offices or affiliates), 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 specified Person.

"Agent-Related Person" has the meaning assigned to it in Section 9.03(d).

"Aggregate Credit Exposure" means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

"Aggregate Revolving Commitment" means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the First Amendment Effective Date, the Aggregate Revolving Commitment is $75,000,000.

"Aggregate Revolving Exposure" means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

"Ancillary Document" has the meaning assigned to it in Section 9.06(b).

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Parties" has the meaning assigned to it in Section 8.03(c).

"Applicable Percentage" means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment (provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the Aggregate Revolving Exposure at that time), and (b) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender's Commitment shall be disregarded in the calculations under clauses (a) and (b) above.

"Applicable Rate" means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth under the applicable caption below:

Revolver CBFR Spread	Revolver Term Benchmark Spread	Commitment Fee Rate
0.00%	1.70%	0.25%

"Approved Electronic Platform" has the meaning assigned to it in Section 8.03(a).

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

"Arranger" means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption agreement 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 (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Availability" means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base *minus* (b) the Aggregate Revolving Exposure, all as determined by the Administrative Agent in its sole discretion.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Available Revolving Commitment" means, at any time, the Aggregate Revolving Commitment *minus* the Aggregate Revolving Exposure.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date 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 clause (g) of Section 2.14.

"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).

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

"Banking Services Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Banking Services Reserves" means all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Event" means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Benchmark" means, initially, with respect to any Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR 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 clause (b) of Section 2.14.

"Benchmark Replacement" means, for any Available Tenor, 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 Adjusted Daily Simple SOFR;

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above 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, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor 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 Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/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 Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definitions of "CB Floating Rate," and "CBFR", the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period," 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 in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark 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 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, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) 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

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in any 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 (1) or (2) with respect to any such 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, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) 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 of administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, 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), in each case, 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

(3) 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, or as of a specified date will no longer be, representative.

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

"Benchmark Unavailability Period" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"BHC Act Affiliate" 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.

"Blocking Regulation" has the meaning assigned to it in Section 3.21.

"Borrower" or "Borrowers" have the meanings assigned to such terms in the recitals to this Agreement.

"Borrower Representative" has the meaning assigned to such term in Section 11.01.

"Borrowing" means (a) Revolving Borrowing, (b) a Swingline Loan, (c) a Protective Advance and (d) an Overadvance.

"Borrowing Base" means, at any time, the sum of (a) 85% of the Borrowers' Eligible Accounts at such time, *plus* (b) the product of 85% *multiplied by* the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent *multiplied by* the Borrowers' Eligible Inventory, valued at the lower of cost or market value, determined on a weighted average cost basis, *plus* (c) the M&E Component at such time, *minus* (d) Reserves.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(g) of this Agreement

"Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit B or another form which is acceptable to the Administrative Agent in its sole discretion.

"Borrowing Request" means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

"Burdensome Restrictions" means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.10.

"Business Day" means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago.

"Capital Expenditures" means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP.

"Capital Lease Obligations" of any Person means 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 financing 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.

"CB Floating Rate" means, the greater of the Prime Rate or 2.5%. Any change in the CB Floating Rate due to a change in the Prime Rate shall be effective from and including the effective date of such change in the Prime Rate.

"CBFR", when used in reference to: (a) a rate of interest, refers to the CB Floating Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the CB Floating Rate.

"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 SEC thereunder as in effect on the date hereof) other than Permitted Holders, of Equity Interests representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were not (i) directors of the Company on the date of this Agreement, nominated, appointed or approved for consideration by shareholders for election by the board of directors of the Company (ii) approved by the board of directors of the Company as director candidates prior to their election, nor (iii) appointed by directors so nominated, appointed or approved; or (c) the acquisition of direct or indirect Control of the Company by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than Permitted Holders; or (d) the Company shall cease to own, directly or indirectly, free and clear of all Liens or other encumbrances, at least 100% of the outstanding voting Equity Interests of the other Loan Parties on a fully diluted basis.

"Change in Law" means the occurrence after the date of this Agreement of any of the following: (a) the adoption of or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) 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, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.17.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, Protective Advances or Overadvances.

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR (or a successor administrator).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations, provided that, Collateral shall not include any real property owned by such Person.

"Collateral Access Agreement" has the meaning assigned to such term in the Security Agreement.

"Collateral Documents" means, collectively, the Security Agreement and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"Collection Account" has the meaning assigned to such term in the Security Agreement.

"Commercial LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

"Commitment" means, with respect to each Lender, the sum of such Lender's Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Commitment Schedule" means the Schedule attached hereto identified as such.

"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.

"Commodities Intermediary" has the meaning assigned to such term in Section 8.03(c)

"Commodities Intermediary Account" has the meaning assigned to such term in Section 4.01(j).

"Communications" has the meaning assigned to such term in Section 4.01(j).

"Company" has the meaning assigned to such term in the recitals to this Agreement.

"Compliance Certificate" means a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit C.

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

"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.

"Controlled Disbursement Account" means the account maintained with the Administrative Agent having an account # ending in -6576, and any replacement or additional accounts of the Borrowers maintained with the Administrative Agent as a zero balance, cash management account pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and amended from time to time, and through which all disbursements of a Borrower, any other Loan Party and any designated Subsidiary of a Borrower are made and settled on a daily basis with no uninvested balance remaining overnight.

"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 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).

"Covered Party" has the meaning assigned to it in Section 9.21.

"Credit Exposure" means, as to any Lender at any time, the sum of such Lender's Revolving Exposure at such time.

"Credit Party" means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

"Daily Simple SOFR" means, for any day, a ("SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (i) such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

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

"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.

"Defaulting Lender" means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

"Deficiency Funding Date" has the meaning assigned to such term in Section 2.05(a).

"Designated Account Debtor" means any Account Debtor obligated with respect to Accounts having 90-day payment terms that is approved in writing by Administrative Agent in its sole discretion, and for which such approval has not been rescinded in writing by Administrative Agent.

"Disclosed Matters" means the actions, suits, proceedings and environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division."

"Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Division Successor" means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

"Document" has the meaning assigned to such term in the Security Agreement.

"dollars" or "$" refers to lawful money of the U.S.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the U.S.

"EBITDA" means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period net of tax refunds, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any extraordinary non-cash charges for such period and (v) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period and any non-cash charge that relates to the write-down or write-off of inventory), *minus* (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(v) taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"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 EEA Financial Institution.

"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 Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Eligible Accounts" means, at any time, the Accounts of a Borrower which the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Accounts shall not include any Account of a Borrower:

(a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent;

(c) (i) with respect to which the scheduled due date is more than 60 days (or, with respect to Accounts owing by any Designated Account Debtor, 90 days) after the date of the original invoice therefor, (ii) which is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date therefor ("Overage"), provided, that when calculating the amount under this clause (ii), for the same Account Debtor, the Administrative Agent shall include the net amount of such Overage and add back any credits, but only to the extent that such credits do not exceed the total gross receivables from such Account Debtor, or (iii) which has been written off the books of such Borrower or otherwise designated as uncollectible;

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) above;

(e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Borrowers exceeds 20% of the aggregate amount of Eligible Accounts of all Borrowers;

(f) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been breached or is not true in each case in any material respect (other than any covenant, representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such covenant, representation or warranty shall be true and correct in all respects);

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon such Borrower's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or substantially all of its assets;

(l) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of, and is directly drawable by, the Administrative Agent;

(m) which is owed in any currency other than U.S. dollars;

(n) which is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of, and is directly drawable by, the Administrative Agent, or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;

(o) which is owed by any Affiliate of any Loan Party or any employee, officer, director, agent or stockholder of any Loan Party or any of its Affiliates;

(p) which, for any Account Debtor, exceeds a credit limit determined by the Administrative Agent, to the extent of such excess;

(q) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(r) which is subject to any counterclaim, deduction, defense, setoff or dispute (in each case, only to the extent of such counterclaim, deduction, defense, setoff or dispute);

(s) which is evidenced by any promissory note, chattel paper or instrument;

(t) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Borrower to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Borrower has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(u) with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business and only to the extent of such reduction, or any Account which was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;

(v) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(w) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or which indicates any party other than such Borrower as payee or remittance party;

(x) which was created on cash on delivery terms;

(y) if acquired in connection with a Permitted Acquisition, (i) the Administrative Agent shall have received a field examination of such Account, the results of which shall are satisfactory to the Administrative Agent and (ii) such Account does not secure any Indebtedness permitted by Section 6.01(j); or

(z) which the Administrative Agent determines may not be paid by reason of the Account Debtor's inability to pay or which the Administrative Agent otherwise reasonably determines is unacceptable for any reason whatsoever.

In the event that an Account of a Borrower which was previously an Eligible Account ceases to be an Eligible Account hereunder, such Borrower or the Borrower Representative shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate. In determining the amount of an Eligible Account of a Borrower, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account.

"Eligible Equipment" means the Equipment owned by a Borrower and meeting each of the following requirements:

(a) Administrative Agent shall have received the results of an appraisal with respect to such Equipment, conducted by an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent;

(b) such Borrower has good title to such Equipment;

(c) such Borrower has the right to subject such Equipment to a Lien in favor of the Administrative Agent; such Equipment is subject to a first priority perfected Lien in favor of the Administrative Agent and is free and clear of all other Liens of any nature whatsoever (except for Permitted Encumbrances which do not have priority over the Lien in favor of the Administrative Agent);

(d) the full purchase price for such Equipment has been paid by such Borrower;

(e) such Equipment is located on premises (i) owned by such Borrower, or (ii) leased by such Borrower where (x) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its sole discretion;

(f) such Equipment is in good working order and condition (ordinary wear and tear excepted) and is used or held for use by such Borrower in the ordinary course of business of such Borrower;

(g) such Equipment (i) is not subject to any agreement which restricts the ability of such Borrower to use, sell, transport or dispose of such Equipment or which restricts the Administrative Agent's ability to take possession of, sell or otherwise dispose of such Equipment and (ii) has not been purchased from a Sanctioned Person; and

(h) such Equipment does not constitute "Fixtures" under the applicable laws of the jurisdiction in which such Equipment is located.

"Eligible Finished Goods" means, Eligible Inventory constituting finished goods to be sold by a Borrower in the ordinary course of business of such Borrower.

"Eligible Inventory" means, at any time, the Inventory of a Borrower which the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Inventory of a Borrower shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent;

(c) which is, in the Administrative Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been breached or is not true in each case in any material respect (other than any covenant, representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such covenant, representation or warranty shall be true and correct in all respects) and which does not conform in all material respects to all standards imposed by any Governmental Authority;

(e) in which any Person other than such Borrower shall (i) have any direct or indirect ownership, interest or title or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which, unless such Inventory is Eligible Finished Goods or Eligible Raw Materials, does not constitute finished goods, work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or is in transit with a common carrier from vendors and suppliers.

(h) which is located in any location leased by such Borrower unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its sole discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) an appropriate Reserve has been established by the Administrative Agent in its sole discretion;

(j) which is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party location or outside processor;

(k) which is a discontinued product or component thereof;

(l) which is the subject of a consignment by such Borrower as consignor;

(m) which is perishable;

(n) which contains or bears any intellectual property rights licensed to such Borrower unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(o) which is not reflected in a current perpetual inventory report of such Borrower;

(p) for which reclamation rights have been asserted by the seller;

(q) which has been acquired from a Sanctioned Person;

(r) if acquired in connection with a Permitted Acquisition, (i) the Administrative Agent shall have received an appraisal and field examination of such Inventory, the results of which shall be satisfactory to the Administrative Agent in its Permitted Discretion and (ii) such Inventory does not secure any Indebtedness permitted by Section 6.01(j); and

(s) which the Administrative Agent otherwise determines in its Permitted Discretion is unacceptable for any reason whatsoever.

In the event that Inventory of a Borrower which was previously Eligible Inventory ceases to be Eligible Inventory hereunder, such Borrower or the Borrower Representative shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

"Eligible Raw Materials" means, Eligible Inventory of a Borrower constituting raw materials used or consumed by a Borrower in the ordinary course of business in the manufacture or production of other inventory, excluding Eligible Finished Goods of such Borrower.

"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 (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release or threatened Release of any Hazardous Material or (d) 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 any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning assigned to such term in the Security Agreement.

"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 of the foregoing, but excluding any debt securities convertible into any of the foregoing.

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

"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 Section 4001(14) of ERISA 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 failure to satisfy the "minimum funding standard" (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 ERISA Affiliate 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 ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate 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 upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excess Availability" means, at any time, an amount equal to (a) Availability *minus* (b) aggregate amount of all outstanding trade payables of the Borrowers which have been unpaid for more than 60 days after the due date therefor (other than trade payables being contested or disputed in good faith), all as determined by the Administrative Agent in its sole discretion.

"Excluded Swap Obligation" means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor's failure for any reason to constitute an ECP at the time the Guarantee of such Loan Guarantor or the grant of such security interest becomes or would become 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.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

"Extenuating Circumstance" means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System, and (b) to accept a Borrowing Request or Interest Election Request telephonically.

"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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions (as determined in such manner as shall be set forth on the NYFRB's Website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fee Letter" means that certain Fee Letter by and among Administrative Agent and the Borrowers, dated as of May 19, 2021, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of a Borrower.

"First Amendment Effective Date" means March 11, 2022.

"Fixed Charge Coverage Ratio" means, at any date, the ratio of (a) EBITDA *minus* Unfinanced Capital Expenditures to (b) Fixed Charges *plus* an amount equal to the M&E Component Reduction for such period, all calculated for the period of twelve consecutive calendar months ended on such date (or, if such date is not the last day of a calendar month, ended on the last day of the calendar month most recently ended prior to such date).

"Fixed Charges" means, for any period, without duplication, cash Interest Expense, *plus* scheduled principal payments on Indebtedness actually made, *plus* expenses for Taxes paid in cash, *plus* Restricted Payments paid in cash, *plus* Capital Lease Obligation payments, *plus* cash contributions to any Plan, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Flood Laws" has the meaning assigned to such term in Section 8.10.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR as of the First Amendment Effective Date shall be 0%.

"Foreign Lender" means (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"Funding Accounts" has the meaning assigned to such term in Section 4.01(h).

"GAAP" means generally accepted accounting principles in the U.S.

"Governmental Authority" means the government of the U.S., 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.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guaranteed Obligations" has the meaning assigned to such term in Section 10.01.

"Hazardous Materials" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

"IBA" has the meaning assigned to such term in Section 1.05.

"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 Guarantees 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, (k) obligations under any earn-out (which for all purposes of this Agreement shall be valued at the maximum potential amount payable with respect to such earn-out) (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction. 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.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in the foregoing clause (a) hereof, Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(c).

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Information" has the meaning assigned to such term in Section 9.12.

"Interest Election Request" means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08.

"Interest Expense" means, for 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' acceptances and net costs under Swap 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 CBFR Loan (other than a Swingline Loan), the first Business Day of each calendar month and the Maturity Date, and (b) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Benchmark 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 the Maturity Date.

"Interest Period" means, with respect to any Term Benchmark 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 (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower Representative 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 shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" has the meaning assigned to such term in the Security Agreement.

"IRS" means the United States Internal Revenue Service.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Issuing Bank" means, individually and collectively, each of JPMCB, in its capacity as the issuer of Letters of Credit hereunder and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank, with the consent of such Revolving Lender and the Administrative Agent, and their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"Issuing Bank Sublimit" means, as of the Effective Date, (a) $1,500,000, in the case of JPMCB and (b) such amount as shall be designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; provided that any Issuing Bank shall be permitted at any time to increase or reduce its Issuing Bank Sublimit upon providing five (5) days' prior written notice thereof to the Administrative Agent and the Borrower Representative.

"Joinder Agreement" means a Joinder Agreement in substantially the form of Exhibit D.

"JPMCB" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means any payment made by an Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender-Related Person" has the meaning assigned to such term in Section 9.03(b).

"Lenders" means the Persons listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and the Issuing Bank.

"Letters of Credit" means the letters of credit issued pursuant to this Agreement, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"Letter of Credit Agreement" has the meaning assigned to it in Section 2.06(b).

"Liabilities" means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"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.

"Loan Documents" means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, each Compliance Certificate, the Loan Guaranty, the Fee Letter and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications and any agreements between the Borrower Representative and the Issuing Bank regarding the Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the applicable Borrower and the Issuing Bank in connection with the issuance by the Issuing Bank of Letters of Credit, 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 this Agreement or the transactions contemplated hereby. Any reference in this 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 this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guarantor" means each Loan Party.

"Loan Guaranty" means Article X of this Agreement.

"Loan Parties" means, collectively, the Borrowers, the Borrowers' Domestic Subsidiaries and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their respective successors and assigns, and the term "Loan Party" shall mean any one of them or all of them individually, as the context may require.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances and Protective Advances.

"M&E Component" means, at the time of any determination, an amount equal to the lessor of (a) 85% of the Net Orderly Liquidation Value of the Borrowers' Eligible Equipment and (b) the M&E Component Limit.

The M&E Component shall be updated (i) from time to time upon receipt of periodic valuation updates received from the Administrative Agent's asset valuation experts, (ii) concurrently with the sale or commitment to sell any assets constituting part of the M&E Component, (iii) in the event such assets are idled for any reason other than routine maintenance or repairs for a period in excess of ten (10) consecutive days, and (iv) in the event that the value of such assets is otherwise impaired, as determined by the Administrative Agent in its Permitted Discretion.

"M&E Component Limit" means, initially, $5,000,000, provided, that such amount shall be reduced by an amount equal to $83,333.33 (the "M&E Component Reduction") on the first Business Day of each calendar month occurring after the Effective Date.

"Margin Stock" means margin stock within the meaning of Regulations T, U and X, as applicable, of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"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 other Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Administrative Agent's Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents.

"Material Agreements" means all material agreements and contracts identified in Section 3.12 of the Disclosure Certificate.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding $1,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrowers or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means May 19, 2026 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

"Maximum Rate" has the meaning assigned to such term in Section 9.17.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Income" means, for any period, the consolidated net income (or loss) of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Company or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"Net Orderly Liquidation Value" means, with respect to Inventory, Equipment or intangibles of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all Taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d).

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called "synthetic lease" transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases)

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or any Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Overadvance" has the meaning assigned to such term in Section 2.05(b).

"Paid in Full" or "Payment in Full" means, (a) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the indefeasible payment in full in cash of the accrued and unpaid fees, (d) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

"Participant" has the meaning assigned to such term in Section 9.04(c).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Payment Condition" shall be deemed to be satisfied in connection with a Subject Transaction if:

(a) no Default has occurred and is continuing or would result immediately after giving effect to such Subject Transaction;

(b) immediately after giving effect to and at all times during the 30-day period immediately prior to such Subject Transaction, the Borrowers shall have (A) Availability calculated on a pro forma basis after giving effect to such Subject Transaction of not less than the greater of (1) 25% of the Aggregate Revolving Commitment and (2) $10,000,000 and (B) a Fixed Charge Coverage Ratio for the most recently completed trailing twelve month period for which the Borrowers are required to have delivered financial statements to the Administrative Agent in accordance with the terms of this Agreement, calculated on a pro forma basis as if such Subject Transaction had been made on the last day of such period, of not less than 1.25 to 1.00; and

(c) the Borrower Representative shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent certifying as to the items described in (a) and (b) above and attaching calculations for item (b).

With respect to any Subject Transaction that is a Permitted Acquisition, item (b) above shall be calculated as if all consideration given in connection with such Acquisition, other than Equity Interests of the applicable Borrower delivered to the seller(s) in such Acquisition, is paid in cash at the time of making such Acquisition.

For purposes of this definition, "Subject Transaction" shall mean any (i) Restricted Payment, (ii) Permitted Acquisition or (iii) an investment, loan, advance or guaranty described in Section 6.04(c), (d) or (e).

"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 by any Loan Party in a transaction that satisfies each of the following requirements:

(a) such Acquisition is not a hostile or contested acquisition;

(b) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under applicable U.S. and state laws, and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;

(c) both before and after giving effect to such Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct (except any such representation or warranty which relates to a specified prior date) in all material respects (other than any representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such representation or warranty shall be true and correct in all respects) and no Default (including any Default in compliance (on a pro forma basis) with the covenants contained in Section 6.12(a)) exists, will exist, or would result therefrom;

(d) as soon as available, but not less than thirty (30) days prior to such Acquisition, the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent including pro forma financial statements, statements of cash flow, and Availability projections;

(e) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person shall become a Wholly-Owned Subsidiary of a Borrower or a Loan Party pursuant to the terms of this Agreement;

(f) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Borrower or another Loan Party shall acquire such assets;

(g) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(h) if such Acquisition involves a merger or a consolidation involving a Borrower or any other Loan Party, such Borrower or such Loan Party, as applicable, shall be the surviving entity;

(i) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, Tax, litigation, or other matters) that could reasonably be expected to have a Material Adverse Effect;

(j) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person (other than Liens permitted by Section 6.02) shall be terminated unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets (other than Liens permitted by Section 6.02) shall be terminated;

(k) unless (i) the total consideration (including the maximum potential total amount of all deferred payment obligations (including earn-outs) and Indebtedness assumed or incurred) of such Acquisition does not exceed $2,000,000 or (ii) the purchase price for such Acquisition is paid exclusively with (a) the proceeds of a cash equity contribution to the Company (b) the proceeds of the issuance by the Company of any Equity Interests, (c) Equity Interests of the Company delivered to the seller(s) in such Acquisition, or a combination thereof, then, with respect to such Acquisition, the Payment Condition has been satisfied;

(l) all actions required to be taken with respect to any newly acquired or formed Wholly-Owned Subsidiary of a Borrower or a Loan Party, as applicable, required under Section 5.14 shall have been taken; and

(m) the Borrower Representative shall have delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within 10 days following the consummation thereof.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"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 thirty (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 Article VII;

(f) Liens of the Commodities Intermediary in the Commodities Intermediary Account, provided that such Liens secure obligations permitted by this Agreement.

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

"Permitted Holders" shall mean (i) Dimensional Fund Advisors LP and their Affiliates (ii) Renaissance Technologies Holdings Corporation and their Affiliates and (iii) members of management of the Company who are holders of Equity Interests of the Company on the Effective Date.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), 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, bankers' 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 U.S. or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer 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.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Prepayment Event" means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or Subsidiary, other than Dispositions described in Section 6.05; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party or Subsidiary with a fair value immediately prior to such event equal to or greater than $100,000.

(c) the issuance by the Company of any Equity Interests, or the receipt by the Company of any capital contribution (unless, in each case, the proceeds thereof are used to finance a substantially contemporaneous Permitted Acquisition); or

(d) the incurrence by any Loan Party or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Proceeding" means any claim, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

"Projections" has the meaning assigned to such term in Section 5.01(f).

"Protective Advance" has the meaning assigned to such term in Section 2.04.

"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.

"Public-Sider" means a Lender whose representatives may trade in securities of the Company or its Controlling Person or any of its Subsidiaries while in possession of the financial statements provided by the Company under the terms of this Agreement.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.21.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

"Reference Time" with respect to any setting of the then-current Benchmark means the time determined by the Administrative Agent in its reasonable discretion.

"Refinance Indebtedness" has the meaning assigned to such term in Section 6.01(f).

"Register" has the meaning assigned to such term in Section 9.04(b).

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person's Affiliates.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

"Relevant Governmental Body" means the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"Report" means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

"Required Lenders" means, subject to Section 2.20, (a) at any time prior to the earlier of the Loans becoming due and payable pursuant to Article VII or the Commitments terminating or expiring, Lenders having Credit Exposures and Unfunded Commitments representing at least 66.70% of the sum of the Aggregate Credit Exposure and Unfunded Commitments at such time; provided that, as long as there are only two Lenders, Required Lenders shall mean both Lenders; provided further that, solely for purposes of declaring the Loans to be due and payable pursuant to Article VII, the Unfunded Commitment of each Lender shall be deemed to be zero in determining the Required Lenders and (b) for all purposes after the Loans become due and payable pursuant to Article VII or the Commitments expire or terminate, Lenders having Credit Exposures representing at least 66.70% of the Aggregate Credit Exposure at such time; provided that, as long as there are only two Lenders, Required Lenders shall mean both Lenders.

"Required Revolving Lenders" means, at any time, Lenders (other than Defaulting Lenders) having Revolving Exposures and unused Revolving Commitments representing at least 66.70%% of the sum of the Aggregate Revolving Exposure and unused Revolving Commitments at such time; provided that, as long as there are only two Revolving Lenders, Required Revolving Lenders shall mean both Revolving Lenders

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), 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.

"Reserves" means any and all reserves which the Administrative Agent deems necessary, in its sole discretion, to maintain (including, without limitation, an availability reserve, reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee's, warehousemen's and bailee's charges, reserves for dilution of Accounts, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation and reserves for Taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the president, Financial Officer or other executive officer of a Borrower.

"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 or any option, warrant or other right to acquire any such Equity Interests.

"Reuters" means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

"Revolving Borrowing" means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

"Revolving Commitment" means, with respect to each Lender, the amount set forth on the Commitment Schedule opposite such Lender's name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C) pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04; provided, that at no time shall the Revolving Exposure of any Lender exceed its Revolving Commitment. As of the First Amendment Effective Date, the aggregate amount of the Lenders' Revolving Commitment is $75,000,000.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure and its Swingline Exposure at such time, *plus* (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time *plus* (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

"Revolving Lender" means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" means a Loan made pursuant to Section 2.01.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Leaseback Transaction" has the meaning assigned to such term in Section 6.06.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission of the U.S.

"Secured Obligations" means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of "Secured Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"Secured Parties" means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

"Security Agreement" means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Settlement" has the meaning assigned to such term in Section 2.05(d).

"Settlement Date" has the meaning assigned to such term in Section 2.05(d).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's Website, 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.

"Standby LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time *plus* (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

"Statements" has the meaning assigned to such term in Section 2.18(f).

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of 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 and/or one or more subsidiaries of the parent.

"Subsidiary" means any direct or indirect subsidiary of the Company or a Loan Party, as applicable.

"Supported QFC" has the meaning assigned to it in Section 9.21.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; 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 Borrowers or the Subsidiaries shall be a Swap Agreement.

"Swap Agreement Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

"Swap Obligation" means, with respect to any Loan 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 or any rules or regulations promulgated thereunder.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMCB (or any of its designated branch offices or affiliates), in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as Administrative Agent or Issuing Bank shall be deemed given by JPMCB in its capacity as Swingline Lender.

"Swingline Loan" has the meaning assigned to such term in Section 2.05(a).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Benchmark" 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 Term SOFR Rate.

"Term SOFR Rate" means, with respect to any Term Benchmark Borrowing for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m. Dallas time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

"Term SOFR Reference Rate" means, for any day and time (such day, the "Term SOFR Determination Day"), and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 p.m. (City of Dallas time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term, SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

"Transactions" means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, 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 Term SOFR Rate or the CBFR.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"UK Financial Institutions" 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 applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unfinanced Capital Expenditures" means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

"Unfunded Commitment" means, with respect to each Lender, the Revolving Commitment of such Lender *less* its Revolving Exposure.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

"U.S." means the United States of America.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 9.21.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"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 "Term Benchmark Loan") or by Class and Type (e.g., a "Term Benchmark Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "Term Benchmark Borrowing") or by Class and Type (e.g., a "Term Benchmark 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 mascu-line, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. 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, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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, (e) 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, (f) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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. (a) 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 after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative 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 migration or change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. In the event that historical accounting practices, systems or reserves relating to the components of the Borrowing Base are modified in a manner that is adverse to the Lenders in any material respect, the Borrowers will agree to maintain such additional reserves (for purposes of computing the Borrowing Base) in respect of the components of the Borrowing Base and make such other adjustments (which may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base). Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness under Financial Accounting Standards Board Accounting Standards Codification 470-20 or 2105-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of "Capital Lease Obligations," any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("FAS 842"), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

SECTION 1.05. Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may be in the future become the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative successor or replacement reference rate will be similar to, or produce the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments hereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in it reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, 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 1.06. Reserved.

SECTION 1.07. Status of Obligations. In the event that any Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.08. Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrowers and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Aggregate Revolving Exposure exceeding the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.04, by making immediately available funds available to the Administrative Agent's designated account, not later than 2:00 p.m., Chicago time. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, Overadvance and any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of CBFR Loans or Term Benchmark Loans as the Borrower Representative may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as CBFR Borrowings but may be converted into Term Benchmark Borrowings in accordance with Section 2.08. Each Swingline Loan shall be a CBFR Loan. Each Lender at its option may make any Term Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accord-ance with the terms of this Agreement. After giving effect to each requested Term Benchmark Borrowing, including those which are converted from a CBFR Borrowing in accordance with Section 2.08, there shall not be outstanding more than five (5) Term Benchmark Borrowings, in the aggregate at any time.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $1,000,000. CBFR Borrowings may be in any amount.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not 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 Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) not later than (a) in the case of a Term Benchmark Borrowing, 10:00 a.m., Chicago time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, noon, Chicago time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of such proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower(s);

(ii) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be a CBFR Borrowing or a Term Benchmark Borrowing; and

(v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period.”

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a CBFR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower(s) 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 Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Protective Advances. (a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) if an Event of Default under clauses (a), (b), (h) or (i) of the definition thereof or resulting from a breach of Section 6.12 has occurred and is continuing, to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement that have not been paid by Borrowers on or before the date required, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, the Aggregate Revolving Exposure after giving effect to the Protective Advances being made shall not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be CBFR Borrowings. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by 100% of the Lenders (other than any Defaulting Lender). Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

SECTION 2.05. Swingline Loans and Overadvances.

(a) The Administrative Agent, the Swingline Lender and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a CBFR Borrowing, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to a Funding Accounts (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "Swingline Loan"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan shall be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago time, on each Business Day, make available to the Borrowers by means of a credit to a Funding Accounts, the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers shall be deemed to have requested a CBFR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. The Swingline Lender shall not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans shall be CBFR Borrowings.

(b) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation), on behalf of the Revolving Lenders, (x) make Revolving Loans to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (y) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that, no Overadvance shall result in a Default due to Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute CBFR Borrowings. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed an amount equal to ten percent (10%) of Availability at any time, no Overadvance may remain outstanding for more than thirty days and no Overadvance shall cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Revolving Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof.

(c) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(d) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

SECTION 2.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request any Issuing Bank to issue Letters of Credit for its own account or for the account of another Borrower denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to such Issuing Bank, at any time and from time to time during the Availability Period, and such Issuing Bank may, but shall have no obligation, to issue such requested Letters of Credit pursuant to this Agreement.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the respective Issuing Bank) to an Issuing Bank selected by it and to the Administrative Agent (reasonably in advance of, but in any event prior to 9:00 am, Chicago time, at least three (3) Business Days prior to the requested date of issuance, amendment or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment 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 or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the applicable Borrower shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application in each case, as required by the respective Issuing Bank and using such Issuing Bank's standard form (each, a "Letter of Credit Agreement"). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) the aggregate LC Exposure shall not exceed $1,500,000, (ii) no Revolving Lender's Revolving Exposure shall exceed its Revolving Commitment and (iii) the Aggregate Revolving Exposure shall not exceed the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of this Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) 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 (or, in the case of any extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such extension) 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 Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving 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 or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago time, on (a) (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Chicago time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m. Chicago time on the day of receipt; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a CBFR Borrowing in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting CBFR Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank, as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or Swingline Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrowers' joint and several 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, any Letter of Credit Agreement or this Agreement, or any term or provision therein or herein, (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) any payment by the respective 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 Borrowers' obligations hereunder. Neither the Administrative Agent, the Revolving Lenders, nor any Issuing Bank or any of their respective 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, any error in translation or any consequence arising from causes beyond the control of the respective Issuing Bank; provided that the foregoing shall not be construed to excuse an Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any 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, an 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 Issuing Bank for any Letter of Credit shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment if 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 Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank for any Letter of Credit shall make any LC Disbursement, then, unless the Borrowers 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 Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrowers fail 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 such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) Replacement and Resignation of an Issuing Bank.

(i) An Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(c). From and after the effective date of any such replacement, (A) 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 (B) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous 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 then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower Representative and the Lenders, in which case, such resigning Issuing Bank shall be replaced in accordance with Section 2.06(i)(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus 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 any Borrower described in clause (h) or (i) of Article VII. Such Borrower also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Sections 2.10(b), 2.11(b) or 2.20. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Borrowers shall immediately deposit in the LC Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. 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 Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrowers are 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 Borrowers within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Administrative Agent.

(k) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank that is not the Administrative Agent shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, and amendments, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends or extends any Letter of Credit, the date of such issuance, amendment or extension, and the stated amount of the Letters of Credit issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(l) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) shall reimburse, indemnify and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrowers, and that each Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that, Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to a Funding Account; provided that CBFR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance or an Overadvance shall be retained by the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each 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 Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing, provided, that any interest received from a Borrower by the Administrative Agent during the period beginning when Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

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 Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative 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, Overadvances or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and each such telephonic Interest Election Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(c) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

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

(iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark 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 Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers 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 Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term Benchmark 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 a CBFR 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 Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing shall be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination of Commitments; Increase in Revolving Commitments. (a) Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate the Revolving Commitments upon the Payment in Full of the Secured Obligations.

(c) The Borrower Representative shall notify the Administrative Agent of any election to terminate the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(d) The Borrowers shall have the right to increase the Revolving Commitments by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase shall be in a minimum amount of $5,000,000, (ii) the Borrower Representative, on behalf of the Borrowers, may make a maximum of two (2) such requests, (iii) after giving effect thereto, the sum of the total of the additional Commitments does not exceed $10,000,000, (iv) the Administrative Agent and the Issuing Bank have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedure described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(e) Any amendment hereto for such an increase or addition shall be in form and substance satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrowers and each Lender being added or increasing its Commitment subject only to the approval of all Lenders if any such increase or addition would cause the Revolving Commitments to exceed $85,000,000. As a condition precedent to such an increase or addition, the Borrowers shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, (2) no Default exists and (3) the Borrowers are in compliance (on a pro forma basis) with the covenants contained in Section 6.12(a) and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(f) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Term Benchmark Loan, shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, and (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent.

(b) At all times that full cash dominion is in effect pursuant to Section 7.3 of the Security Agreement, on each Business Day, the Administrative Agent shall apply all funds credited to the Collection Account on the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available) first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and third if an Event of Default has occurred and is continuing, to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds shall be subject to Section 2.11(c).

(c) 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.

(d) 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 the Borrowers 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.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; 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.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11. Prepayment of Loans. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (e) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(b) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base, the Borrowers shall prepay the Revolving Loans, LC Exposure and/or Swingline Loans or cash collateralize the LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by any Loan Party, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(d) below in an aggregate amount equal to (x) in the case of a prepayment event described in clause (c) of the definition of the term "Prepayment Event", 20% of such Net Proceeds and (y) in the case of all other Prepayment Events, 100% of such Net Proceeds, provided that, (x) in the case of a prepayment event described in clause (c) of the definition of the term "Prepayment Event", unless an Event of Default has occurred and is continuing, there shall be no requirement to cash collateralize the LC Exposure, and (y) in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", if the Borrower Representative shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 180 days after receipt of such Net Proceeds, to acquire (or replace or rebuild) equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties, and certifying that no Default has occurred and is continuing, then either (i) so long as full cash dominion is not in effect, no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate or (ii) if full cash dominion is in effect, then, if the Net Proceeds specified in such certificate are to be applied to acquire, replace or rebuild such assets by (A) the Borrowers, such Net Proceeds shall be applied by the Administrative Agent to reduce the outstanding principal balance of the Revolving Loans (without a permanent reduction of the Revolving Commitment) and upon such application, the Administrative Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied and (B) any Loan Party that is not a Borrower, such Net Proceeds shall be deposited in a cash collateral account, and in the case of either (A) or (B), thereafter, such funds shall be made available to the applicable Loan Party as follows:

(1) the Borrower Representative shall request a Revolving Borrowing (specifying that the request is to use Net Proceeds pursuant to this Section) or the applicable Loan Party shall request a release from the cash collateral account be made in the amount needed;

(2) so long as the conditions set forth in Section 4.02 have been met, the Revolving Lenders shall make such Revolving Borrowing or the Administrative Agent shall release funds from the cash collateral account; and

(3) in the case of Net Proceeds applied against the Revolving Borrowing, the Reserve established with respect to such insurance proceeds shall be reduced by the amount of such Revolving Borrowing;

provided that to the extent of any such Net Proceeds therefrom that have not been so applied by the end of such 180-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied.

(d) All prepayments made pursuant to Section 2.11(a) shall be applied, if made with respect to the Revolving Loans or the Swingline Loans, to prepay such Loans in accordance with the Lenders' respective Applicable Percentages without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure. All such amounts pursuant to Section 2.11(c) shall be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and, if required in accordance with Section 2.11(c), to cash collateralize outstanding LC Exposure.

(e) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 10:00 a.m., Chicago time, (A) in the case of prepayment of a Term Benchmark Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of a CBFR Revolving Borrowing, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each 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 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 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 Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

SECTION 2.12. Fees. (a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each calendar month and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay Administrative Agent for its own account, all fees and other amounts required to be paid pursuant to the Fee Letter, at the times and in the amounts as specified therein.

(c) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Revolving Loans during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, which shall accrue at the rate of 0.125% per annum on the daily maximum amount then available to be drawn under such Letter of Credit, during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as such Issuing Bank’s standard fees and commissions with respect to the issuance, amendment or extension of any Letter of Credit and other processing fees and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of each calendar month shall be payable on the first Business Day of each calendar month 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 Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (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).

(d) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(e) All fees payable hereunder shall be paid on the dates due, in dollars 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 CBFR Borrowings (including all Swingline Loans) shall bear interest at the CBFR plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each Protective Advance and each Overadvance shall bear interest at the CBFR plus the Applicable Rate for Revolving Loans plus 2%.

(d) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(e) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) 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 a CBFR Revolving 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 Term Benchmark 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.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating 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 CB Floating Rate and the Adjusted Term SOFR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14 if:

(i) The Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) prior to commencement of any Interest Period for a Term Benchmark Borrowing, that the adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period (each a "Relevant Rate"); or

(ii) The Administrative Agent is advised by the Required Lenders that prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such interest period;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for a CBFR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan is outstanding on the date the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, a CBFR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.14), if a Benchmark 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 (x) if a Benchmark Replacement is determined in accordance with clause (1) 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 (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 any Benchmark setting at or after 5:00 p.m. (City of Dallas time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, 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 further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) an occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) of 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, 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.

(e) 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), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) 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 (B) 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" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) 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" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark 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 for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to a CBFR Borrowing. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, a CBFR Loan.

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

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receiv-able by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the 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 Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or the 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 the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the 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 Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(c) and is revoked in accordance therewith), or (d) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Benchmark Loan had such event not occurred, at the Adjusted Term SOFR Rate that would have been applicable to such Term Benchmark 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 Term Benchmark 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 U.S. market. A certifi-cate 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 Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Withholding of Taxes; Gross-Up. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than (i) Indemnified Taxes that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Recipient or (ii) interest or penalties attributable to the failure or delay by such Recipient to make a written demand to the Loan Party within 180 days of receiving written notice that such Taxes subject to indemnification under this Section 2.17 have been levied, imposed or asserted against it). A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative 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(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative 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 Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) an executed copy of IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form) (with proper attachments), as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, 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 E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative 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 Borrower Representative 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 U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative 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 Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document (including the Payment in Full of the Secured Obligations).

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Setoffs. (a) The Borrowers shall make each payment or prepayment required to be made by them 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 2:00 p.m., Chicago time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment 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 its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, except payments to be made directly to the 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. Unless otherwise provided for herein, 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 shall be made in dollars.

(b) All payments and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established, ratably, seventh, to payment of any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22 and to the extent not paid pursuant to clause sixth above, and eighth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Term Benchmark Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements 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 similarly situated 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 all such 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 or Swingline Loans to any assignee or participant, other than to the Borrowers 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 setoff 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.

(e) Unless the Administrative Agent shall have received, prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank pursuant to the terms hereof or any other Loan Document (including any date that is fixed for prepayment by notice from the Borrower Representative to the Administrative Agent pursuant to Section 2.11(e)), notice from the Borrower Representative that the Borrowers will not make such payment or prepayment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the 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 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts 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 reasonable 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 requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unrea-sonably be withheld, (ii) such 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 assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) 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 2.18(b) 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 Swingline Lender hereunder; third, to cash collateralize the LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower Representative may request (so long as no 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 Borrower Representative, 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 future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; 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 Section 4.02 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 the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) 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 Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(c) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(d) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within five (5) Business Days following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(c) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(c) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(e) so long as such Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrowers or such Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrowers and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

SECTION 2.21. Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22. Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party shall deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof shall deliver to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed. For the avoidance of doubt, so long as JPMCB or its Affiliate is the Administrative Agent, neither JPMCB nor any of its Affiliates providing Banking Services for, or having Swap Agreements with, any Loan Party shall be required to provide any notice described in this Section 2.22 in respect of such Banking Services or Swap Agreements.

ARTICLE III

Representations and Warranties.

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each Loan Party and each Subsidiary is duly organized or formed, 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, and is in good standing, in every juris-diction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, 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 Transactions (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 and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, or give rise to a right thereunder to require any payment to be made by any Loan Party or any Subsidiary, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to the Loan Documents.

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 (i) as of and for the fiscal year ended March 31, 2020, reported on by Moss Adams LLP, independent public accountants, (ii) as of and for the fiscal month and the portion of the fiscal year ended February 28, 2021, certified by a Financial Officer and (iii) a draft of the consolidated balance sheet and statements of income, stockholders equity and cash flows of the Company for the fiscal year ended March 31, 2021. Such financial state-ments 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, subject to normal year-end audit adjustments (all of which, when taken as a whole, would not be materially adverse) and the absence of footnotes in the case of the statements referred to in clause (ii) and (iii) above.

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since March 31, 2020.

SECTION 3.05. Properties. (a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each of the Loan Parties and each of its Subsidiar-ies has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement.

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 any Loan Party, threatened against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possi-bility of an adverse determination and that, if adversely deter-mined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters (i) no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) 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, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. No Loan Party or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each Loan Party and each Subsidiary has timely filed (taking into account extensions) or caused to be filed all income and other material Tax returns required to have been filed and has paid or caused to be paid all income and other material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party 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 be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. 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 by more than $50,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $50,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Disclosure. (a) The Loan Parties have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary 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. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (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, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

(b) As of the Effective Date, to the best knowledge of any Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12. Material Agreements. All material agreements and contracts to which any Loan Party is a party or is bound as of the date of this Agreement are listed on Schedule 3.12. No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (a) any material agreement to which it is a party or (b) any agreement or instrument evidencing or governing Indebtedness, in each case which could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.13. Solvency. (a) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(b) No Loan Party intends to, nor will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.14. Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. Each Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15. Capitalization and Subsidiaries. Schedule 3.15 sets forth as of the Effective Date (a) a correct and complete list of the name and relationship to the Company of each and all of the Company's Subsidiaries, (b) a true and complete listing of each class of each Borrower's authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (c) the type of entity of the Company and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. As of the Effective Date, there are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

SECTION 3.16. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

SECTION 3.17. Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

SECTION 3.18. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.19. Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.20. No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

SECTION 3.21. Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or, to the knowledge of any such Loan Party or Subsidiary, employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.22. Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.23. EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

SECTION 3.24. Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

SECTION 3.25. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

ARTICLE IV

Conditions.

SECTION 4.01. Effective Date. The obligations of the Lenders to amend and restate the Existing Credit Agreement in the form of this Agreement, and the obligation to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document and (iii) such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a customary legal opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders, all in form and substance satisfactory to the Administrative Agent and its counsel.

(b) Financial Statements and Projections. The Lenders shall have received (i) audited consolidated financial statements of the Company for the fiscal years ending March 2018, March 2019, March 2020 (ii) to the extent available as of the Effective Date, a draft of the consolidated financial statements of the Company for the fiscal year ending March 2021, (iii) unaudited interim consolidated financial statements of the Company for each fiscal month ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph and on or prior to February 28, 2021, and such financial statements shall not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of the Company, as reflected in the audited, consolidated financial statements described in clause (i) of this paragraph and (iv) satisfactory projections for the fiscal years of the Company ending March 2022 and March 2023.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of each Borrower, its Financial Officers, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(d) No Default Certificate. The Administrative Agent shall have received a certificate, signed by a Financial Officer of the Company, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(e) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(f) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(g) Pay-Off Letter. The Administrative Agent shall have received satisfactory pay-off letters for all existing Indebtedness to be repaid from the proceeds of the initial Borrowing, confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with such payment and all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized or supported by a Letter of Credit.

(h) Funding Account. The Administrative Agent shall have received a notice setting forth the deposit accounts of the Borrowers (the "Funding Accounts") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(i) Customer List. The Administrative Agent shall have received a true and complete customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number and shall be certified as true and correct by a Financial Officer of the Borrower Representative.

(j) Collateral Access and Control Agreements. The Administrative Agent shall have received (i) each Collateral Access Agreement required to be provided pursuant to Section 4.13 of the Security Agreement, (ii) each Deposit Account Control Agreement required to be provided pursuant to Section 4.14 of the Security Agreement and (iii) a control agreement acceptable to Administrative Agent in its Permitted Discretion, executed by StoneX Financial Inc. (the "Commodities Intermediary") with respect to Account #462-24461 maintained with the Commodities Intermediary (the "Commodities Intermediary Account").

(k) Solvency. The Administrative Agent shall have received a solvency certificate signed by a Financial Officer dated the Effective Date.

(l) Borrowing Base Certificate. The Administrative Agent shall have received a Borrowing Base Certificate which calculates the Borrowing Base as of a recent date determined by the Administrative Agent.

(m) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability shall not be less than $20,000,000.

(n) Pledged Equity Interests; Stock Powers; Pledged Notes. The Administrative Agent shall have received (i) the certificates representing the Equity Interests pledged pursuant to the Security Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(o) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or requested by the Administrative Agent in its sole discretion to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(p) Insurance. Unless required to be delivered by a later date pursuant to Section 5.16, the Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof and Section 4.12 of the Security Agreement.

(q) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent shall have received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable). The Borrowers shall have executed the Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(r) Tax Withholding. The Administrative Agent shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(s) Corporate Structure. The corporate structure, capital structure and other material debt instruments, material accounts and governing documents of the Borrowers and their Affiliates shall be acceptable to the Administrative Agent in its sole discretion.

(t) Field Examination. The Administrative Agent or its designee shall have conducted, at the sole cost and expense of the Lenders, a field examination of the Borrower's Accounts, Inventory and related working capital matters and of the Borrowers' related data processing and other systems, the results of which shall be satisfactory to the Administrative Agent in its sole discretion. The Loan Parties shall have no obligation to reimburse the Administrative Agent or the Lenders for the cost of such field examination notwithstanding Section 4.01(e).

(u) Legal Due Diligence. The Administrative Agent and its counsel shall have completed all legal due diligence, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(v) Appraisals. The Administrative Agent shall have received an appraisal of the Borrowers' Inventory from one or more firms satisfactory to the Administrative Agent, which appraisal shall be satisfactory to the Administrative Agent in its sole discretion.

(w) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrowers requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrowers at least ten (10) days prior to the Effective Date, and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrowers at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(x) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

The Administrative Agent shall notify the Borrowers, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 2:00 p.m., Chicago time, on the 5th Business Day following the date of this Agreement (and, in the event such conditions are not so satisfied or waived, the Commitments may be terminated at such time by written notice to Borrower Representative delivered by Administrative Agent.).

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment or extension of such Letter of Credit, as applicable, (i) no Default shall have occurred and be continuing and (ii) no Protective Advance shall be outstanding.

(c) After giving effect to any Borrowing or the issuance of any Letter of Credit, Availability shall not be less than zero.

(d) No event shall have occurred and no condition shall exist which has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment 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), (b), (c) and (d) of this Section.

Notwithstanding the failure to satisfy the conditions precedent set forth in paragraphs (a) or (b) of this Section, unless otherwise directed by the Required Lenders, the Administrative Agent may, but shall have no obligation to, continue to make Loans and an Issuing Bank may, but shall have no obligation to, issue, amend or extend, or cause to be issued, amended or extended, any Letter of Credit for the ratable account and risk of Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending or extending, or causing the issuance, amendment or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE V

Affirmative Covenants.

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 5.01. Financial Statements; Borrowing Base and Other Information. The Borrowers will furnish to the Administrative Agent and each Lender:

(a) As soon as available and in any event within 5 days after the date on which such financial statements are required to be filed with the SEC for such fiscal year (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 90 days after the end of each such fiscal year) the audited consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for each fiscal year of the Company, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a “going concern” or like qualification, commentary 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) As soon as available and in any event within 5 days after the date on which such financial statements are required to be filed with the SEC for such fiscal quarter (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 45 days after the end of each such fiscal quarter), the consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for each fiscal quarter of the Company and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Finan-cial Officer of the Borrower Representative 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within thirty (30) days after the end of each fiscal month of the Company, the consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal month 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 a Finan-cial Officer of the Borrower Representative 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a Compliance Certificate (i) certifying, in the case of the financial statements delivered under clause (b) or (c), 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12 and (iv) 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;

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) as soon as available but in any event no later than 30 days following the end of each fiscal year of the Company, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and cash flow statement) of the Company for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(g) as soon as available but in any event within 20 days of the end of each calendar month, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request; provided, that, (A) during the sixty (60) day period following the First Amendment Effective Date, to the extent required by the Administrative Agent and (B) at any time that Availability is less than the greater of (1) 15% of the Aggregate Revolving Commitment or (2) $6,000,000, in each case, Borrowers shall deliver the reports set forth in this clause (g) on a weekly basis within 3 Business Days of the end of each calendar week;

(h) as soon as available but in any event within 20 days of the end of each calendar month and at such other times as may be requested by the Administrative Agent, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent:

(i) a detailed aging of the Borrowers' Accounts, including all invoices aged by invoice date and due date (with an explanation of the terms offered), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name, address, and balance due for each Account Debtor;

(ii) a schedule detailing the Borrowers' Inventory, in form satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a weighted average cost basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, and (2) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by Borrowers and complaints and claims made against the Borrowers);

(iii) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(iv) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above and (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (g) above as of such date; and

(v) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement;

(i) as soon as available but in any event within 20 days of the end of each calendar month and at such other times as may be requested by the Administrative Agent, as of the month then ended, a schedule and aging of the Borrowers' accounts payable, delivered electronically in a text formatted file acceptable to the Administrative Agent;

(j) promptly upon the Administrative Agent's request:

(i) copies of invoices issued by the Borrowers in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(iv) an updated customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number, delivered electronically in a text formatted file acceptable to the Administrative Agent and certified as true and correct by a Financial Officer of the Borrower Representative.

(k) [Reserved.];

(l) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Govern-mental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be; and

(m) promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan;

(n) if requested by Administrative Agent, as soon as possible and in any event within twenty (20) Business Days of filing thereof, copies of all U.S. federal income tax returns filed by any Loan Party with the U.S. Internal Revenue Service.

(o) promptly after receipt thereof by any Borrower or any Subsidiary, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by the SEC or such other agency regarding financial or other operational results of any Borrower or any Subsidiary thereof;

(p) promptly following any request therefor and to the extent requested, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Borrower by independent accountants in connection with the accounts or books of such Borrower or any Subsidiary, or any audit of any of them as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

Documents required to be delivered pursuant to Section 5.01(a), (b) or (l) (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 such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on a Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether made available by the Administrative Agent); provided that: (A) upon written request by the Administrative Agent (or any Lender through the Administrative Agent) to the Borrower Representative, the Borrower Representative shall deliver paper copies of such documents to the Administrative Agent or such Lender until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower Representative shall notify the Administrative Agent and each Lender (by fax or through Electronic Systems) of the posting of any such documents and provide to the Administrative Agent through Electronic Systems electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by any Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents to it and maintaining its copies of such documents.

The Company represents and warrants that each of it, and its Controlling and Controlled entities, in each case, if any (collectively with the Borrowers, the "Relevant Entities"), either (i) has no SEC registered or unregistered, publicly traded securities outstanding, or (ii) files its financial statements with the SEC and/or makes its financial statements available to potential holders of its securities, and, accordingly, the Company hereby (A) authorizes the Administrative Agent to make the financial statements to be provided under Section 5.01(a) and (b) above (collectively or individually, as the context requires, the "Financial Statements"), along with the Loan Documents, available to Public-Siders and (B) agree that at the time such Financial Statements are provided hereunder, they shall already have been made available to holders of any such securities. The Company will not request that any other material be posted to Public-Siders without expressly representing and warranting to the Administrative Agent in writing that such materials do not constitute material non-public information within the meaning of the federal securities laws or that the Relevant Entities have no outstanding SEC registered or unregistered, publicly traded securities. Notwithstanding anything herein to the contrary, in no event shall the Company request that the Administrative Agent make available to Public-Siders budgets or any certificates, reports or calculations with respect to the Borrowers' compliance with the covenants contained herein or with respect to the Borrowing Base.

SECTION 5.02. Notices of Material Events. The Borrowers will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) within two (2) Business Days after obtaining knowledge thereof, the occurrence of any Default;

(b) within ten (10) Business Days following receipt, receipt of any notice of any investigation by a Governmental Authority or any litigation or Proceeding commenced or threatened against any Loan Party or any Subsidiary that (i) seeks damages in excess of $100,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of $100,000 in respect of any Tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(c) within two (2) Business Days after obtaining knowledge thereof, any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral;

(d) within two (2) Business Days after obtaining knowledge thereof, any loss, damage, or destruction to the Collateral in the amount of $100,000 or more, whether or not covered by insurance;

(e) within five (5) Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located;

(f) within ten (10) Business Days after the execution thereof, all material amendments to any Material Agreement, together with a copy of each such amendment;

(g) within five (5) Business Days after the execution thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(h) within ten (10) Business Days after obtaining knowledge thereof, the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding $100,000;

(i) within ten (10) Business Days after the implementation thereof, any material change in accounting or financial reporting practices by any Borrower or any Subsidiary;

(j) within two (2) Business Days after obtaining knowledge thereof, any other development that results, or could reasonably be expected to result in, a Material Adverse Effect;

(k) within two (2) Business Days after the occurrence thereof, any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(l) within five (5) Business Days following the formation or acquisition thereof, any Subsidiary is formed or acquired after the date of this Agreement.

Each notice delivered under this Section (i) shall be in writing, (ii) shall contain a heading or a reference line that reads "Notice under Section 5.02 of Amended and Restated Credit Agreement dated May 19, 2021" and (iii) shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative 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. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to maintain its legal existence, (b) except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, do all things necessary to maintain and preserve the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and all requisite authority to conduct its business in each jurisdiction in which its business is currently conducted, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03, and (c) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04. Payment of Obligations. Each Loan Party will, and will cause each Subsidiary to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropri-ate proceedings, (b) such Loan Party or 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 . Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (a) 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 and (b) permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers, agents and appraisers retained by the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to conduct at such Loan Party's premises field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (and hereby authorizes the Administrative Agent and each Lender to contact its independent accountants directly) and to provide contact information for each bank where each Loan Party has a depository and/or securities account and each such Loan Party hereby authorizes the Administrative Agent and each Lender to contact the bank(s) in order to request bank statements and/or balances, all at such reasonable times and as often as reasonably requested. Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to each Loan Party's assets for internal use by the Administrative Agent and the Lenders. The Loan Parties shall be responsible for the costs and expenses of one (1) field examination during any 12-month period and one (1) additional field examination (for the total of two (2) such field examinations during any 12-month period) conducted at any time after Availability falls below the greater of (i) $6,000,000 and (ii)15% of the Aggregate Revolving Commitment; provided, that the Loan Parties shall be responsible for the costs and expenses of all field examinations conducted while an Event of Default has occurred and is continuing; provided, further, the Loan Parties shall not be responsible for the costs and expenses of the initial field examination conducted in connection with entering into this Agreement.

SECTION 5.07. Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (a) comply with each Requirement of Law applicable to it or its property (including without limitation Environmental Laws) except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (b) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds.

(a) The proceeds of the Loans and the Letters of Credit will be used only (i) to repay certain indebtedness of the Company existing prior to the Effective Date, (ii) to finance certain Capital Expenditures related to the businesses in which the Loan Parties are engaged on the Effective Date and (iii) other working capital and general organizational purposes in the ordinary course of business. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (i) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X or (ii) to make any Acquisition other than Permitted Acquisitions.

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (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, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no 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, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 5.10. Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including, without limitation: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.11. Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.12. Appraisals. Subject to the limitations below, at the request of the Administrative Agent, the Borrowers will provide the Administrative Agent with appraisals or updates thereof of the Inventory and/or Equipment of the Loan Parties from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent in its Permitted Discretion, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law. The Loan Parties shall be obligated to arrange or facilitate, and shall be responsible for the costs and expenses of, up to one (1) Inventory and one (1) Equipment appraisal during any calendar year, and one (1) additional Inventory and one (1) additional Equipment appraisal (for the total of two (2) such Inventory and such Equipment appraisals during any calendar year) during any calendar year during which Availability falls below the greater of (i) $6,000,000 and (ii) 15% of the Aggregate Revolving Commitment. Additionally, there shall be no limitation on the number or frequency of Inventory and/or Equipment appraisals if an Event of Default has occurred and is continuing, and the Loan Parties shall be responsible for the costs and expenses of any such appraisals conducted while an Event of Default has occurred and is continuing. Notwithstanding the foregoing, an appraisal of the Equipment of the Loan Parties shall be required as a condition to the inclusion thereof in the Borrowing Base, but no appraisal of Equipment shall be required unless and until the Borrowers elect to so include such Equipment in the Borrowing Base.

SECTION 5.13. Depository Banks. Each Borrower and each Subsidiary will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity and other deposit accounts for the conduct of its business. Additionally, the Administrative Agent shall be the principal provider of other Banking Services to the Borrowers and their Subsidiaries.

SECTION 5.14. Additional Collateral; Further Assurances. (a) Subject to applicable Requirement of Law, each Loan Party will cause each Domestic Subsidiary formed or acquired after the date of this Agreement to become a Loan Party by executing a Joinder Agreement. In connection therewith, the Administrative Agent shall have received all documentation and other information regarding such newly formed or acquired Domestic Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act. Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral.

(b) Each Loan Party will cause 100% of the issued and outstanding Equity Interests of each of its Domestic Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Domestic Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, request in its sole discretion to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(d) If any material assets are acquired by any Loan Party after the Effective Date (other than real property and other than assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon acquisition thereof), the Borrower Representative will (i) notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing the Secured Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or requested by the Administrative Agent in its sole discretion to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

SECTION 5.15. Merger of Subsidiary. Within sixty (60) days after the Effective Date, Borrowers shall deliver to the Administrative Agent a plan of merger and certificate of merger, satisfactory to Administrative Agent in its Permitted Discretion, filed with and accepted by the Secretary of State of the state of Texas and giving effect to the merger of Friedman/Decatur L.L.C., an Alabama limited liability company, with and into the Company, with the Company being the surviving entity following the effectiveness of such merger.

SECTION 5.16. Insurance. Within twenty (20) days after the Effective Date, or such longer period as may be agreed to by the Administrative Agent in its Permitted Discretion, Borrowers shall deliver to the Administrative Agent all endorsements necessary to comply with the provisions of Section 4.12(b) of the Security Agreement, in each case, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion.

ARTICLE VI

Negative Covenants.

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any extensions, renewals, refinancings and replacements of any such Indebtedness in accordance with clause (f) hereof;

(c) Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;

(d) Guarantees by any Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(e) Indebtedness of any Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), 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 in accordance with clause (f) below; 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) together with any Refinance Indebtedness in respect thereof permitted by clause (f) below, shall not exceed $8,000,000 at any time outstanding;

(f) Indebtedness which represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clauses (b), (e), (i), (j) and (k) hereof (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness other than fees and interests are not less favorable to the obligor thereunder than the original terms of such Original Indebtedness and (vi) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) Subordinated Indebtedness in an aggregate principal amount not exceeding $5,000,000 at any time outstanding;

(j) Indebtedness of any Person that becomes a Subsidiary after the date hereof in connection with a Permitted Acquisition or that is assumed by a Borrower in connection with a Permitted Acquisition; provided that (i) such Indebtedness exists at the time such Permitted Acquisition is consummated and is not created in contemplation of or in connection therewith and (ii) the aggregate principal amount of Indebtedness permitted by clause (i) above, together with any Refinance Indebtedness in respect thereof permitted by Section 6.01(f) (it being understood that Indebtedness under clause (i) above shall constitute "Original Indebtedness" for purposes of Section 6.01(f)), shall not exceed $10,000,000 at any time outstanding;

(k) other unsecured Indebtedness in an aggregate principal amount not exceeding $5,000,000 at any time outstanding.

SECTION 6.02. Liens. No Loan Party will, nor will it 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) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower 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 such Borrower or Subsidiary or any other Borrower or 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;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such Liens 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 80% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(e) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisi-tion or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party 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 Loan Party, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06; and

(h) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (1) Accounts, other than those permitted under clause (a) of the definition of Permitted Encumbrances and clause (a) above and (2) Inventory, other than those permitted under clauses (a) and (b) of the definition of Permitted Encumbrances and clause (a) above.

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it 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 otherwise Dispose of all or substantially all of its assets, or all or substantially all of the stock 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 shall have occurred and be continuing (i) with respect to an acquisition of assets or Equity Interests of another Person in connection with a Permitted Acquisition, any Person may merge into a Borrower in a transaction in which the surviving entity is a Borrower, (ii) any Person may merge into any Subsidiary in a transaction in which the surviving entity is a Subsidiary and, if any party to such merger is a Loan Party, such surviving entity is a Loan Party or becomes a Loan Party concurrently with such merger and (iii) any Subsidiary may liquidate or dissolve if the Borrower which owns such Subsidiary determines in good faith that such liquidation or dissolution is in the best interests of such Borrower and is not materially disadvantageous to the Lenders; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will consummate a Division as the Dividing Person, without the prior written consent of Administrative Agent. Without limiting the foregoing, if any Loan Party that is a limited liability company consummates a Division (with or without the prior consent of Administrative Agent as required above), each Division Successor shall be required to comply with the obligations set forth in Section 5.14 and the other further assurances obligations set forth in the Loan Documents and become a Loan Party under this Agreement and the other Loan Documents.

(c) No Loan Party will, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date hereof and businesses reasonably related thereto.

(d) No Loan Party will, nor will it permit any Subsidiary to, change its fiscal year from the basis in effect on the Effective Date.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) Permitted Investments, subject to control agreements in favor of the Administrative Agent for the benefit of the Secured Parties or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Secured Parties;

(b) investments in existence on the date hereof and described in Schedule 6.04;

(c) investments by the Borrowers and their Subsidiaries in Equity Interests in their respective Subsidiaries, provided that (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement (provided that the foregoing shall not be applicable to Equity Interests of a Foreign Subsidiary) and (ii) the aggregate amount of investments by Loan Parties in Subsidiaries that are not Loan Parties (together with outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such investment, the Loan Parties would fail to comply with clause (ii) of the above proviso, such investment shall be permitted under this Section 6.04(c) if the Payment Condition is satisfied with respect thereto;

(d) loans or advances made by any Loan Party to any Subsidiary and made by any Subsidiary to a Loan Party or any other Subsidiary, provided that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the Security Agreement and (ii) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such loan or advance, the Loan Parties would fail to comply with clause (ii) of the above proviso, such loan or advance shall be permitted under this Section 6.04(d) if the Payment Condition is satisfied with respect thereto;

(e) Guarantees constituting Indebtedness permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such guarantee, the Loan Parties would fail to comply with the above proviso, such guarantee shall be permitted under this Section 6.04(e) if the Payment Condition is satisfied with respect thereto;

(f) loans or advances made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of $50,000 in the aggregate at any one time outstanding;

(g) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) investments of any Person existing at the time such Person becomes a Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(j) investments received in connection with Dispositions permitted by Section 6.05;

(k) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances"; and

(l) Permitted Acquisitions.

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, Dispose of any asset (other than real property), including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

(a) Dispositions of (i) Inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business;

(b) Dispositions of assets to any Borrower or any Subsidiary, provided that any such Dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;

(c) Dispositions of Accounts in connection with the compromise, settlement or collection thereof;

(d) Dispositions of Permitted Investments and other investments permitted by Section 6.04 (other than other than Equity Interests in a Subsidiary);

(e) Sale and Leaseback Transactions permitted by Section 6.06;

(f) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and

(g) Dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets Disposed of in reliance upon this paragraph (g) shall not exceed $1,000,000 during any fiscal year of the Company;

provided that all Dispositions permitted hereby (other than those permitted by paragraphs (b) and (f) above) shall be made for fair value and for at least 75% cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property (other than real property) used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), except for any such sale of any fixed or capital assets by any Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after such Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed 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 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Borrowers may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, (iii) the Borrowers may make Restricted Payments, not exceeding $500,000 during any fiscal year of the Company, pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrowers and their Subsidiaries and (iv) the Borrowers may make other Restricted Payments subject to the satisfaction of the Payment Condition with respect to any such Restricted Payment.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment of Indebtedness created under the Loan Documents;

(ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;

(iii) refinancings of Indebtedness to the extent permitted by Section 6.01; and

(iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05.

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Loan Parties not involving any other Affiliate, (c) any investment permitted by Sections 6.04(c) or 6.04(d), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04, (g) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of such Borrower or Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrowers or their Subsidiaries in the ordinary course of business and (h) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by a Borrower's board of directors.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary 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 Loan Party 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 of its Equity Interests or to make or repay loans or advances to any Borrower or any other Subsidiary or to Guarantee Indebtedness of any Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (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 that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness or (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, to the extent any such amendment, modification or waiver would be adverse to the Lenders.

SECTION 6.12. Financial Covenants.

(a) Fixed Charge Coverage Ratio. The Borrowers will not permit the Fixed Charge Coverage Ratio, as of the end of any calendar month, to be less than 1.10 to 1.00 for the trailing twelve month period then ending.

ARTICLE VII

Events of Default.

If any of the following events ("Events of Default") shall occur:

(a) the Borrowers 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) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure continues unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof 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 other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially 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(a), 5.03(a) (with respect to a Loan Party's existence) or 5.08 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article), or any other Loan Document, and such failure shall continue unremedied for a period of (i) 5 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.03, 5.04, 5.06, 5.10, 5.11 or 5.13 of this Agreement or (ii) 30 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement or any other Loan Document;

(f) [Reserved];

(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 to the extent such sale or transfer is permitted by Section 6.05;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or 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 Loan Party or Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or 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 Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar offi-cial for such Loan Party or Subsidiary or for a substan-tial part of its assets, (iv) file an answer admit-ting 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 fore-going;

(j) any Loan Party or Subsidiary shall become unable, admit in writing its inability, or publicly declare its intention not to, or fail generally to pay its debts as they become due;

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of $3,000,000 shall be rendered against any Loan Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (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 Loan Party or Subsidiary to enforce any such judgment; or (ii) any Loan Party or Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, 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) the occurrence of any "Event of Default", as defined in the Security Agreement.

(o) the Loan Guaranty 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 the Loan Guaranty, or any Loan Guarantor shall fail to comply in any material respect with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08;

(p) except as permitted by the terms of any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral 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 Collateral Document;

(r) any material provision of any 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 that evidences its 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

(s) any Loan Party is criminally indicted or convicted under any law that may reasonably be expected to have a Material Adverse Effect;

then, and in every such event (other than an event with respect to the Borrowers described in clause (h) or (i) of this Article), 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 Borrower Representative, take any or all of the following actions, at the same or different times: (i) terminate the Commitments whereupon the Commitments shall terminate immediately, (ii) declare the Loans then out-standing to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrowers accrued hereunder and under any other Loan Document, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j) hereof; and in the case of any event with respect to the Borrowers described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrowers accrued hereunder and under any other Loan Documents, shall automatically become due and payable, in each case without present-ment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII

The Administrative Agent.

SECTION 8.01. Authorization and Action.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower, any other Loan Party, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(d) The Administrative Agent may perform any 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 of their respective duties and exercise their respective rights and powers 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 pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub agent 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-agent.

(e) No Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement 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 any Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(iii) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(iv) 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 proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party 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, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrowers' right to consent pursuant to and subject to the conditions set forth in this Article, no Borrower nor any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

SECTION 8.02. Administrative Agent's Reliance, Limitation of Liability, Etc.

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of 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 to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower Representative, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower Representative, a Lender or the Issuing Bank. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 8.03. Posting of Communications.

(a) The Borrowers agree that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Bank and each Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Bank and each Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, Issuing Bank and each Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04. The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent 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 or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Bank.

SECTION 8.05. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Bank and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, (i) the Administrative Agent may appoint one of its Affiliates as a successor Administrative Agent and (ii) if the Administrative Agent has not appointed one of its Affiliates as a successor Administrative Agent within 10 days of such resignation pursuant to clause (i) above, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, (other than if the Administrative Agent appoints one of its Affiliates as a successor Administrative Agent pursuant to clause (i) above), such appointment shall be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

SECTION 8.06. Acknowledgements of Lenders and Issuing Bank.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and informa-tion (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to a Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

SECTION 8.07. Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate as determined by Administrative Agent in its sole discretion to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(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 or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.08. Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (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, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, 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 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

SECTION 8.09. 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, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent, any Arranger, or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.10. Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous.

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case 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 facsimile, as follows:

(i) if to any Loan Party, to the Borrower Representative at:

Friedman Industries, Incorporated
1121 Judson Road Suite 124,
Longview, TX
Attention: Alex LaRue
Facsimile No: 903 758 2265

(ii) if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
2200 Ross Avenue, 9th Floor
Dallas, TX 75201
Attention: Timothy J. Whitefoot
Facsimile No: 214 965 4731

(iii) if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to any Borrower, any Loan Party, the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or 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. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the 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 Bank 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 Loan Party 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 effec-tive 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 Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase) and subject to Section 2.14(c), (d) and (e) and Section 9.02(e) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (B) 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 payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (B)), (C) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (D) change Section 2.09(c) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (E) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of the Required Revolving Lenders, (F) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (G) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (H) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.06 without the prior written consent of the Administrative Agent and the Issuing Banks. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the Payment in Full of all Secured Obligations, and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of by a Loan Party in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any certificate of such Loan Party certifying that the sale or disposition is made in compliance with the terms of this Agreement, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of $1,000,000 during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Limitation of Liability; Indemnity; Etc. (a) Expenses. The Loan Parties shall, jointly and severally, pay all (i) 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 and distribution (including, without limitation, via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provi-sions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, 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. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

(A) Subject to the terms of Section 5.12, appraisals and insurance reviews;

(B) Subject to the terms of Section 5.06, field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;

(C) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;

(D) Taxes, fees and other charges for (1) lien and title searches and title insurance and (2) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(E) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(F) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) Limitation of Liability. To the extent permitted by applicable law (i) neither any Borrower nor any Loan Party shall assert, and each Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve any Borrower or any Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent, each Arranger, the 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 Liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee (but excluding Taxes, which shall be governed exclusively by Section 2.17, and Excluded Taxes), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder 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 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 a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, or (iv) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and 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 Liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. WITHOUT LIMITATION OF THE FOREGOING, IT IS THE INTENTION OF EACH LOAN PARTY AND EACH LOAN PARTY AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNITEE WITH RESPECT TO LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR), WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNITEE. This Section 9.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by any Loan Party under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, each Issuing Bank and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent-Related Person") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; provided, further, that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the Payment in Full of the Secured Obligations.

(e) Payments. All amounts due under this Section 9.03 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 the Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may 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 any 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 the 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 Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)(i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative 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;

(B) the Administrative Agent; and

(C) the Issuing Bank.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the 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 each of the Borrower Representative (such consent not to be unreasonably withheld or delayed) and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other 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 terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than 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.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to clause (c), such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business or (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obliga-tions 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 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary 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 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 Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, 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, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(d), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than a Loan Party or a Subsidiary or other Affiliate of a Loan Party in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and/or 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. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. 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(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under this Agreement) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) 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 instru-ments 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, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstand-ing and unpaid or any Letter of Credit is outstanding and so long as the 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 Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. (a) 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 (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of the Issuing Bank 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.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each Loan Party 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, the Borrowers and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or their respective Affiliates shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the Issuing Bank or such Affiliate shall notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral or the consummation or administration of the transactions contemplated hereby or thereby shall be construed in accordance with and governed by the law of the State of New York.

(c) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or New York state court sitting in New York, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, 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 (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its proper-ties in the courts of any jurisdiction.

(d) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or here-after have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (c) 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.

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

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY 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 AGREE-MENT 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 Bank 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 Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (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 under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative (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, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrowers, or (i) on a confidential basis to (1) any rating agency in connection with rating any Borrower or its Subsidiaries or the credit facilities provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein.

For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers 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.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13. Several Obligations; Nonreliance; 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 (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15. Disclosure. Each Loan Party, each Lender and the Issuing Bank 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 Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17. 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 appli-cable 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 Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. Marketing Consent.

The Borrowers hereby authorize JPMCB and its affiliates (collectively, the "JPMCB Parties"), at their respective sole expense, and without any prior approval by the Borrowers, to include any Borrower's name and logo in advertising, marketing, tombstones, case studies and training materials, and to give such other publicity to this Agreement as the JPMCB Parties may from time to time determine in their sole discretion. The foregoing authorization shall remain in effect unless and until the Borrower Representative notifies JPMCB in writing that such authorization is revoked.

SECTION 9.19. 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 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:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.20. No Fiduciary Duty, Etc.. (a) Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, Tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto.

(b) Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

SECTION 9.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.22. Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks and the Lenders for the Secured Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender or any other Person. Each Borrower's liability for the Secured Obligations shall not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank and each Lender have been paid in full and all of the Secured Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower's joint and several liability hereunder with respect to the Secured Obligations shall, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Secured Obligations or of any other document evidencing all or any part of the Secured Obligations, (ii) the absence of any attempt to collect any of the Secured Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the amendment, modification, waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Secured Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (iv) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Secured Obligations or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Secured Obligations, (vi) any increase in the amount of the Secured Obligations beyond any limits imposed herein or in the amount of any interest, fees or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (vii) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all of Loan Parties to collect and recover all or any part of the Secured Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Secured Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Secured Obligations.

SECTION 9.23. Renewal, Extension or Rearrangement. This Agreement amends and restates in its entirety the Existing Credit Agreement. This Agreement and the other Loan Documents govern the present relationship among the Loan Parties, Administrative Agent, the Lenders and the other Persons a signatory hereto. This Agreement, however, is in no way intended, nor shall it be construed, to affect, replace, impair or extinguish the creation, attachment, perfection or priority of the security interests in, and other Liens on, the Collateral, which security interests and other Liens each of the Loan Parties, by this Agreement, acknowledges, reaffirms and confirms to Administrative Agent and the Lenders. The Loan Parties agree that any outstanding commitment under the Existing Credit Agreement to make advances or otherwise extend credit or credit support to any Loan Party and each other obligation under the Existing Credit Agreement of any Person (other than a Loan Party) which is a party to the Existing Credit Agreement are hereby terminated.

ARTICLE X

Loan Guaranty.

SECTION 10.01. Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank or any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. Termination. Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under clause (o) of Article VII hereof as a result of any such notice of termination.

SECTION 10.09. Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

SECTION 10.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11. Contribution.

(d) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(e) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(f) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(g) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(h) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 10.12. Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 10.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE XI

The Borrower Representative.

SECTION 11.01. Appointment; Nature of Relationship. Friedman Industries, Incorporated is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Accounts, at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount shall not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

SECTION 11.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 11.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 11.04. Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default or Event of Default hereunder referring to this Agreement describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

SECTION 11.05. Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

SECTION 11.06. Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

SECTION 11.07. Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

BORROWER:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By: _____
Name: Alex LaRue
Title: Chief Financial Officer

JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent, Issuing Bank and Swingline Lender

By: _____
Name: Timothy Whitefoot
Title: Authorized Officer

COMMITMENT SCHEDULE

Lender	Revolving Commitment
JPMorgan Chase Bank, N.A.	$75,000,000
Total	**$75,000,000**

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*][1]]

3. Borrowers: _____

4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: The Amended and Restated Credit Agreement dated as of May 19, 2021 among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower, the other Loan Parties party thereto, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents parties thereto

6. Assigned Interest:

[1] *Select as applicable.*

Facility Assigned[2]	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans[3]
	$	$	%
	$	$	%
	$	$	%

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other 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.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

[2] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment," etc.)

[3] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[Consented to and][4] Accepted:

JPMORGAN CHASE BANK, N.A., as
[Administrative Agent, Issuing Bank and Swingline Lender]

By_____
Title:

[Consented to:][5]

[NAME OF RELEVANT PARTY]

By_____
Title:

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[4] To be added only if the consent of the Administrative Agent, Issuing Bank and/or Swingline Lender, as applicable, is required by the terms of the Credit Agreement.

[5] To be added only if the consent of the Borrowers and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

EXHIBIT A

ANNEX 1
ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or to charge interest at the rate set forth therein from time to time, or (v) the performance or observance by any Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of this type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT A

EXHIBIT B

COMPLIANCE CERTIFICATE

To: The Lenders parties to the
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement dated as of ____, (as amended, modified, renewed or extended from time to time, the "Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (collectively, the "Borrowers"), the other Loan Parties, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, ON ITS BEHALF AND ON BEHALF OF THE BORROWERS, THAT:

1. I am the duly elected _____ of the Borrower Representative;

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Company and its Subsidiaries during the accounting period covered by the attached financial statements [**for quarterly or monthly financial statements add:** and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrowers and their consolidated Subsidiaries on a consolidated basis in accordance with GAAP consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes];

3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (i) the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement;

4. I hereby certify that no Loan Party has changed (i) its name, (ii) its chief executive office, (iii) principal place of business, (iv) the type of entity it is or (v) its state of incorporation or organization without having given the Administrative Agent the notice required by Section 4.15 of the Security Agreement; and

5. Schedule I attached hereto sets forth financial data and computations evidencing the Borrowers' compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct[29];

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the (i) nature of the condition or event, the period during which it has existed and the action which the Borrowers have taken, are taking, or propose to take with respect to each such condition or event or (i) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

_____

_____

_____

The foregoing certifications, together with the computations set forth in Schedule I and Schedule II hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this ___ day of _____, ___.

_____

_____, as
Borrower Representative

By: _____
Name: _____
Title: _____

[29] *Schedule I must include detailed calculation tables for all components of the financial covenant calculations.*

SCHEDULE I

Compliance as of _____, ____ with
Provisions of ____ and ____ of the Agreement

[Schedule I must include detailed calculation tables for all components of the financial covenant calculations.]

EXHIBIT C

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of _____, ____, 20__, is entered into between _____, a _____ (the "New Subsidiary") and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the "Administrative Agent") under that certain Amended and Restated Credit Agreement dated as of May 19, 2021 (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and the Administrative Agent for the Lenders. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a [Borrower][Loan Party] under the Credit Agreement and a "Loan Guarantor" for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Loan Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, (b) all of the covenants set forth in Articles V and VI of the Credit Agreement and (c) all of the guaranty obligations set forth in Article X of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Sections 10.10 and 10.13 of the Credit Agreement, hereby guarantees, jointly and severally with the other Loan Guarantors, to the Administrative Agent and the Lenders, as provided in Article X of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other Loan Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

_____
_____
_____
_____

4. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name: _____
Title: _____

Acknowledged and accepted:

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

By: _____
Name: _____
Title: _____

EXHIBIT D

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:
Date: _____, __, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by a withholding statement together with an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

Exhibit 10.7

SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT AND FIRST AMENDMENT TO SECURITY AGREEMENT

This **SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT AND FIRST AMENDMENT TO SECURITY AGREEMENT** (this "Amendment"), dated as of April 29, 2022, is by and among **FRIEDMAN INDUSTRIES, INCORPORATED**, a Texas corporation (the "Borrower") and **JPMORGAN CHASE BANK, N.A.**, a national banking association, as a Lender, Issuing Bank and Swingline Lender (as each is defined in the below-referenced Credit Agreement) (in such capacities, the "Lender") and as Administrative Agent (the "Administrative Agent"). Capitalized terms used in this Amendment, to the extent not otherwise defined herein, shall have the same meaning as in the Credit Agreement, as amended hereby.

RECITALS:

WHEREAS, the Borrower, the other Loan Parties, the Lender and the Administrative Agent are parties to that certain Amended and Restated Credit Agreement, dated as of May 19, 2021 (as the same has been and may be amended or modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower, the other Loan Parties and the Administrative Agent are parties to that certain Pledge and Security Agreement, dated as of May 19, 2021 (as the same may be amended or modified from time to time, the "Security Agreement");

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of April 29, 2022, by and among the Borrower, Plateplus Inc. and the sole stockholder of Plateplus Inc. (the "Plateplus Purchase Agreement") and the Borrower will purchase certain assets of Plateplus, Inc. and enter into that certain Transition Services Agreement (the "Transition Services Agreement") dated as of April 29, 2022, by and between the Borrower and Plateplus, Inc. (collectively, the "Plateplus Acquisition");

WHEREAS, the Borrower and the other Loan Parties have requested that the Lender and Administrative Agent amend certain provisions of the Credit Agreement and the Security Agreement in the manner and on the terms and conditions provided for herein; and

NOW, THEREFORE, in consideration of the foregoing and the agreements, promises and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1: Amendments to Credit Agreement. Effective as of the Effective Date, the Credit Agreement is hereby amended (a) to delete the stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the marked copy of the Credit Agreement (and to the extent provided in Exhibit A hereto, the exhibits, schedules and appendices to the Credit Agreement) attached hereto as Exhibit A and made a part hereof for all purposes.

SECTION 2: Amendments to Security Agreement.

(a) Effective as of the Effective Date, Section 7.1 of the Security Agreement is hereby amended by adding a new clause (c) thereto to read as follows:

"(c) notwithstanding anything to the contrary set forth in Section 7.1(b) with respect to the direction of Account Debtor payments or set forth in Section 7.2 with respect to the establishment of Deposit Accounts, the proceeds of sales of inventory acquired in connection with the Plateplus Acquisition and payments in respect of Receivables thereof shall be permitted, for a period of 120 days following the Second Amendment Effective Date, to be received in certain accounts with MUFG Bank, New York Branch held by Plateplus, Inc. (the "MUFG Accounts"), so long as, and solely to the extent that, the following conditions are strictly complied with at all times during such 120 day period: (1) each Grantor whose payments will be received in the MUFG Accounts shall have entered on or prior to the Second Amendment Effective Date, and maintain at all times in full force and effect, an agreement with Plateplus, Inc. requiring Plateplus, Inc. (x) to hold all funds collected on accounts receivable owned by such Grantor in trust on behalf of such Grantor and (y) to wire, on a daily basis, all such funds on deposit in the MUFG Accounts to the Collection Account and (2) the Grantors shall take all commercially reasonable measures to wind down all activity related to the MUFG Accounts as soon as practicable after the Second Amendment Effective Date and to collect such funds directly in the Collection Account no later than the end of such 120 day period."

(b) Effective as of the Effective Date, Section 7.3 of the Security Agreement is hereby amended and restated in its entirety to read as follows:

7.3. Application of Proceeds; Deficiency. All amounts deposited in the Collection Account shall be deemed received by the Administrative Agent in accordance with Section 2.18 of the Credit Agreement and shall, after having been credited to the Collection Account, be applied (and allocated) by Administrative Agent in accordance with Section 2.10(b) of the Credit Agreement; provided that, so long as no Default has occurred and is continuing, and Availability is not less than (a) for the ninety (90) day period beginning on the Second Amendment Effective Date, the greater of (i) 8.3% of the Aggregate Revolving Commitment or (ii) $12,500,000, and (b) thereafter, the greater of (i) 15% of the Aggregate Revolving Commitment or (ii) $22,500,000, collections which are received into the Collection Account shall be deposited into the Borrower's Funding Account rather than being used to reduce amounts owing under the Credit Agreement. All proceeds of the Collateral shall be applied in the order set forth in Section 2.18 of the Credit Agreement unless a court of competent jurisdiction shall otherwise direct. The balance, if any, after all of the Secured Obligations have been satisfied, shall be deposited by the Administrative Agent into such Borrowers' general operating account with the Administrative Agent. The Grantors shall remain liable, jointly and severally, for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Secured Obligations, including any attorneys' fees and other expenses incurred by Administrative Agent or any other Secured Party to collect such deficiency.

(c) Effective as of the Effective Date, the Exhibits to the Security Agreement are hereby deleted and replaced with the Exhibits to the Security Agreement set forth on Annex I attached hereto.

SECTION 3: No Waiver. Nothing contained in this Amendment shall be construed as a waiver by the Administrative Agent of any covenant or provision of the Credit Agreement, the other Loan Documents, this Amendment, or of any other contract or instrument between any Loan Party and the Administrative Agent, and the failure of the Administrative Agent at any time or times hereafter to require strict performance by any Loan Party of any provision thereof shall not waive, affect or diminish any rights of the Administrative Agent to thereafter demand strict compliance therewith. The Administrative Agent hereby reserves all rights granted under the Credit Agreement, the other Loan Documents, this Amendment and any other contract or instrument between any Loan Party and the Administrative Agent.

SECTION 4: Representations and Warranties. To induce the Administrative Agent to enter into this Amendment, each Loan Party represents and warrants that:

(a) No Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing as of the date hereof;

(b) Representations and Warranties. As of the Effective Date and, after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects on and as of the date hereof to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date; and

(c) Authority. (i) The execution, delivery and performance by each Loan Party of this Amendment are within its respective organizational powers and have been duly authorized by all necessary corporate or limited liability company action on the part of such Person, (ii) this Amendment is the legal, valid and binding obligation of each Loan Party enforceable against such Person in accordance with its terms and (iii) neither the execution, delivery or performance by each Loan Party of this Amendment (1) violates any law or regulation, or any order or decree of any governmental authority, (2) conflicts with or results in the breach or termination of, constitutes a default under or accelerates any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Person is a party or by which such Person or any of its property is bound, (3) results in the creation or imposition of any Lien upon any of the Collateral (other than any Lien in favor of the Administrative Agent or a Lender), (4) violates or conflicts with the organizational or governing documentation of such Person, or (5) requires the consent, approval or authorization of, or declaration or filing with, any other Person, except for those already duly obtained.

(d) Organizational Documents. No amendment, restatement, supplement or other modification has been made to the certificate or articles of incorporation or organization of the Borrower or to the by-laws or operating, management or partnership agreement, or any other organizational or governing documents of the Borrower since May 19, 2021.

SECTION 5: Conditions Precedent. This Amendment shall become effective only upon the satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions have been satisfied being herein called the ("Effective Date")):

(a) Documentation. The Administrative Agent shall have received each of the following, each in form and substance satisfactory to the Administrative Agent, in its sole discretion, and, where applicable, each duly executed by each party thereto, other than the Administrative Agent (each of which shall be deemed to constitute a "Loan Document" pursuant to the Credit Agreement):

(i) this Amendment or counterparts hereof;

(ii) a Negative Pledge Agreement with respect to real property acquired from Plateplus, Inc.;

(iii) a Collateral Assignment of Purchase Documents with respect to the Asset Purchase Agreement and Transition Services Agreement;

(iv) the Fee Letter by and between Administrative Agent and the Borrowers, dated as of the date hereof (the "Second Amendment Fee Letter");

(v) a written opinion of Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders, in form and substance reasonably satisfactory to the Administrative Agent and its counsel; and

(vi) such other documents, instruments, and agreements as the Administrative Agent may reasonably request in connection with the transactions contemplated by this Amendment and the other Loan Documents, each in form and substance reasonably satisfactory to the Administrative Agent.

(b) Acquisition. Each of the following will be satisfied with respect to the Plateplus Acquisition to the satisfaction of Administrative Agent, in its sole discretion:

(i) Administrative Agent shall have received the Plateplus Purchase Agreement, the Transition Services Agreement, and each material document executed in connection with the Plateplus Acquisition, each having satisfactory terms and conditions (including, without limitation, the amount and forms of the consideration to be paid in connection with the Acquisition) to the Administrative Agent, in its sole discretion, and each duly executed by each party thereto;

(ii) the Plateplus Acquisition shall be closed in escrow without any waiver of any condition precedent thereunder, unless approved by Administrative Agent, and subject only to the release of funds thereunder on the Effective Date;

(iii) each of the representations and warranties set forth in the Plateplus Purchase Agreement and the Transition Services Agreement shall be and remain true and correct in all material respects as of said time;

(iv) No consent or approval of, registration or filing with, or any other action by, any Governmental Authority or approval, consent or authorization of any Person is required for the execution, delivery and performance of the Plateplus Purchase Agreement by the parties thereto, except such as have been obtained or made and are in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the Plateplus Acquisition, the financing thereof, or the transactions contemplated thereby.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of the Company, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of the Company authorized to sign the Loan Documents to which it is a party and, in the case of each Borrower, its Financial Officers, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of the Company certified by the relevant authority of the jurisdiction of organization of the Company and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for the Company from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for the Company from the appropriate governmental officer in such jurisdiction.

(d) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdictions where the Company and Plateplus, Inc. are organized and where the assets of the Company and Plateplus, Inc. are located, which shall be satisfactory to Administrative Agent in its sole discretion.

(e) Solvency. The Administrative Agent shall have received a solvency certificate signed by a Financial Officer dated the Effective Date.

(f) Borrowing Base Certificate. The Administrative Agent shall have received a pro forma Borrowing Base Certificate which calculates the Borrowing Base as of a recent date determined by the Administrative Agent and giving effect to the Plateplus Acquisition, together with customary supporting documentation and supplemental reporting to be agreed upon between the Administrative Agent and the Borrower.

(g) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability shall not be less than $20,000,000.

(h) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or requested by the Administrative Agent in its sole discretion to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02 of the Credit Agreement), shall be in proper form for filing, registration or recordation.

(i) [Reserved].

(j) Diligence. The Administrative Agent and its counsel shall have completed all legal due diligence, and all legal (including tax implications) and regulatory matters shall be satisfactory to the Administrative Agent in its sole discretion. The Administrative Agent shall have completed all business diligence related to the transactions contemplated by this Amendment, including the Plateplus Acquisition.

(k) Warranties and Representations. After giving effect to this Amendment and the transactions contemplated hereby, the warranties and representations of the Loan Parties contained in the Loan Documents shall be true and correct in all material respects as of the Effective Date, with the same effect as though made on such date, except to the extent that such warranties and representations expressly relate to an earlier date, and all of such representations and warranties (except those relating to an earlier date) are hereby remade by the Loan Parties as of the Effective Date.

(l) Payment of Fees. Borrower shall have paid to Administrative Agent and Lenders (i) all fees and other amounts due and payable on the Effective Date pursuant to the Second Amendment Fee Letter and (ii) any fees and expenses owing to the Administrative Agent pursuant to Section 9.03(a) of the Credit Agreement.

(m) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

SECTION 6: Post-Closing Covenant. Within fourteen (14) days of the date of this Amendment, Borrowers shall deliver to the Administrative Agent evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 of the Credit Agreement and Section 4.12 of the Security Agreement, including all certificates of insurance and endorsements required thereby. The parties agree that the failure to comply with the requirements of this Section 6 shall constitute an "Event of Default" under the Credit Agreement.

SECTION 7: Ratification; Reference to and Effect on Loan Documents.

(a) Ratification. Except as specifically amended above, the Credit Agreement and the other Loan Documents shall remain in full force and effect. Notwithstanding anything contained herein, the terms of this Amendment are not intended to and do not effect a novation of the Credit Agreement or any other Loan Document. Each of the Loan Parties hereby ratifies and reaffirms each of the terms and conditions of the Loan Documents to which it is a party and all of its obligations thereunder. Each of the Loan Parties hereby agrees that all liens and security interests securing payment of the Obligations under the Credit Agreement and each of the other Loan Documents are hereby collectively renewed, ratified and brought forward as security for the payment and performance of the Obligations.

(b) References. Upon the effectiveness of this Amendment, each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

SECTION 8: Miscellaneous.

(a) Successors and Assigns. This Amendment shall be binding on and shall inure to the benefit of the Loan Parties, the Administrative Agent and their respective successors and assigns.

(b) Entire Agreement. This Amendment constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all other understandings, oral or written, with respect to the subject matter hereof.

(c) Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) Severability. Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

(e) Counterparts. This Amendment may be executed in any number of separate original counterparts (or telecopied counterparts with original execution copy to follow) and by the different parties on separate counterparts, each of which shall be deemed to be an original, but all of such counterparts shall together constitute one agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopy shall be effective as delivery of a manually executed counterpart of this Amendment.

(f) Incorporation of Credit Agreement Provisions. The provisions contained in Section 9.09 (Governing Law; Jurisdiction; Consent to Service of Process) and Section 9.10 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(g) RELEASE. FOR AND IN CONSIDERATION OF LENDERS' AGREEMENTS CONTAINED HEREIN, BORROWER, TOGETHER WITH ITS PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND ITS CURRENT AND FORMER OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND ITS PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, "**RELEASORS**") HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER WAIVES AND DISCHARGES LENDER AND EACH OF ITS PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS CURRENT AND FORMER DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND EACH OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, THE "**RELEASED PARTIES**") FROM ALL POSSIBLE CLAIMS, COUNTERCLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AMENDMENT IS EXECUTED THAT ANY OF THE RELEASORS MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION ARISING DIRECTLY OR INDIRECTLY FROM ANY LAWSUIT, ANY PRIOR OR EXISTING LOANS BETWEEN RELEASORS AND RELEASED PARTIES, ANY OF THE LOAN DOCUMENTS, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER ANY OF THE LOAN DOCUMENTS AND/OR NEGOTIATION FOR AND EXECUTION OF THIS AMENDMENT, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. EACH OF THE RELEASORS WAIVES THE BENEFITS OF ANY LAW, WHICH MAY PROVIDE IN SUBSTANCE: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MUST HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE DEBTOR." EACH OF THE RELEASORS UNDERSTANDS THE FACTS IT BELIEVES TO BE TRUE AT THE TIME OF MAKING THE RELEASE PROVIDED FOR HEREIN MAY LATER TURN OUT TO BE DIFFERENT THAN IT NOW BELIEVES, AND INFORMATION NOT NOW KNOWN OR SUSPECTED MAY LATER BE DISCOVERED. EACH OF THE RELEASORS ACCEPTS THIS POSSIBILITY, AND EACH OF THEM ASSUMES THE RISK OF THE FACTS TURNING OUT TO BE DIFFERENT AND NEW INFORMATION BEING DISCOVERED AND EACH OF THEM FURTHER AGREES THE RELEASE PROVIDED FOR HEREIN SHALL IN ALL RESPECTS CONTINUE TO BE EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BECAUSE OF ANY DIFFERENCE IN SUCH FACTS OR ANY NEW INFORMATION.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Amendment has been executed on the date first written above, to be effective upon satisfaction of the conditions set forth herein.

BORROWER:

FRIEDMAN INDUSTRIES, INCORPORATED

By: /s/ Alex LaRue
Name: Alex LaRue
Title: Chief Financial Officer

LENDER:

JPMORGAN CHASE BANK, N.A.,
individually and as Administrative Agent, Issuing

By: /s/ Thomas Vertin
Name: Thomas Vertin
Title: Authorized Officer

Exhibit A

Amended Credit Agreement

[See Attached]

Annex I

Exhibits to the Security Agreement

[See Attached]

J.P.Morgan

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

May 19, 2021

among

Friedman Industries, Incorporated

each of the other Persons party hereto as a Borrower,

each of the Persons party hereto as a Loan Guarantor,

The Lenders Party Hereto

and

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

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

TABLE OF CONTENTS

	Page
ARTICLE I – Definitions	5
SECTION 1.01. Defined Terms	5
SECTION 1.02. Classification of Loans and Borrowings.	43
SECTION 1.03. Terms Generally.	43
SECTION 1.04. Accounting Terms; GAAP	43
SECTION 1.05. Interest Rates; Benchmark Notifications	44
SECTION 1.07. Status of Obligations	45
SECTION 1.08. Letters of Credit	45
SECTION 1.09. Divisions	45
ARTICLE II – The Credits	45
SECTION 2.01. Commitments	45
SECTION 2.02. Loans and Borrowings	46
SECTION 2.03. Requests for Revolving Borrowings	46
SECTION 2.04. Protective Advances.	48
SECTION 2.05. Swingline Loans and Overadvances.	47
SECTION 2.06. Letters of Credit	48
SECTION 2.07. Funding of Borrowings.	54
SECTION 2.08. Interest Elections.	54
SECTION 2.09. Termination of Commitments; Increase in Revolving Commitments	56
SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt.	57
SECTION 2.11. Prepayment of Loans	58
SECTION 2.12. Fees.	59
SECTION 2.13. Interest	60
SECTION 2.14. Alternate Rate of Interest; Illegality.	61
SECTION 2.15. Increased Costs.	63
SECTION 2.16. Break Funding Payments.	64
SECTION 2.17. Withholding of Taxes; Gross-Up.	64
SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs	68
SECTION 2.19. Mitigation Obligations; Replacement of Lenders.	70
SECTION 2.20. Defaulting Lenders.	71
SECTION 2.21. Returned Payments	73
SECTION 2.22. Banking Services and Swap Agreements	73
ARTICLE III – Representations and Warranties	73
SECTION 3.01. Organization; Powers	73
SECTION 3.02. Authorization; Enforceability	73
SECTION 3.03. Governmental Approvals; No Conflicts.	74
SECTION 3.04. Financial Condition; No Material Adverse Change	74
SECTION 3.05. Properties	74
SECTION 3.06. Litigation and Environmental Matters.	75
SECTION 3.07. Compliance with Laws and Agreements; No Default.	75
SECTION 3.08. Investment Company Status.	75
SECTION 3.09. Taxes.	75
SECTION 3.10. ERISA	75

SECTION 3.11. Disclosure. 75
SECTION 3.12. Material Agreements 76
SECTION 3.13. Solvency. 76
SECTION 3.14. Insurance. 76
SECTION 3.15. Capitalization and Subsidiaries. 77
SECTION 3.16. Security Interest in Collateral 77
SECTION 3.17. Employment Matters 77
SECTION 3.18. Margin Regulations 77
SECTION 3.19. Use of Proceeds 77
SECTION 3.20. No Burdensome Restrictions 77
SECTION 3.21. Anti-Corruption Laws and Sanctions 78
SECTION 3.22. Common Enterprise 78
SECTION 3.23. EEA Financial Institutions 78
SECTION 3.24. Plan Assets; Prohibited Transactions 78
SECTION 3.25 Margin Regulations 78
ARTICLE IV - Conditions 78
SECTION 4.01. Effective Date 78
SECTION 4.02. Each Credit Event. 82
ARTICLE V – Affirmative Covenants 83
SECTION 5.01. Financial Statements; Borrowing Base and Other Information 83
SECTION 5.02. Notices of Material Events. 86
SECTION 5.03. Existence; Conduct of Business 88
SECTION 5.04. Payment of Obligations. 88
SECTION 5.05. Maintenance of Properties 88
SECTION 5.06. Books and Records; Inspection Rights 88
SECTION 5.07. Compliance with Laws and Material Contractual Obligations. 89
SECTION 5.08. Use of Proceeds. 89
SECTION 5.09. Accuracy of Information. 89
SECTION 5.10. Insurance. 89
SECTION 5.11. Casualty and Condemnation 90
SECTION 5.12. Appraisals 90
SECTION 5.13. Depository Banks 90
SECTION 5.14. Additional Collateral; Further Assurances 90
ARTICLE VI – Negative Covenants 91
SECTION 6.01. Indebtedness. 91
SECTION 6.02. Liens. 93
SECTION 6.03. Fundamental Changes. 94
SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions 94
SECTION 6.05. Asset Sales 96
SECTION 6.06. Sale and Leaseback Transactions 96
SECTION 6.07. Swap Agreements 97
SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. 97
SECTION 6.09. Transactions with Affiliates. 97
SECTION 6.10. Restrictive Agreements. 98
SECTION 6.11. Amendment of Material Documents 98
SECTION 6.13. Financial Covenants 98
ARTICLE VII – Events of Default 98

ARTICLE VIII – The Administrative Agent 101
SECTION 8.01. Authorization and Action 101
SECTION 8.02. Administrative Agent's Reliance, Limitation of Liability, Etc. 103
SECTION 8.03. Posting of Communications 104
SECTION 8.04. The Administrative Agent Individually 105
SECTION 8.05. Successor Administrative Agent 106
SECTION 8.06. Acknowledgements of Lenders and Issuing Bank 107
SECTION 8.07. Collateral Matters 108
SECTION 8.08. Credit Bidding 109
SECTION 8.09. Certain ERISA Matters 109
SECTION 8.10. Flood Laws 111
ARTICLE IX - Miscellaneous 111
SECTION 9.01. Notices 111
SECTION 9.02. Waivers; Amendments. 112
SECTION 9.03. Expenses; Limitation of Liability; Indemnity; Etc. 114
SECTION 9.04. Successors and Assigns 116
SECTION 9.05. Survival 120
SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. 120
SECTION 9.07. Severability 121
SECTION 9.08. Right of Setoff. 121
SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. 122
SECTION 9.10. WAIVER OF JURY TRIAL. 123
SECTION 9.11. Headings. 123
SECTION 9.12. Confidentiality. 123
SECTION 9.13. Several Obligations; Nonreliance; Violation of Law 124
SECTION 9.14. USA PATRIOT Act. 124
SECTION 9.15. Disclosure 124
SECTION 9.16. Appointment for Perfection 124
SECTION 9.17. Interest Rate Limitation 124
SECTION 9.18. Marketing Consent 125
SECTION 9.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions 125
SECTION 9.20. No Fiduciary Duty, Etc. 125
SECTION 9.21. Acknowledgement Regarding Any Supported QFCs 126
SECTION 9.22. Joint and Several 127
SECTION 9.23. Renewal, Extension or Rearrangement 127
ARTICLE X – Loan Guaranty 128
SECTION 10.01. Guaranty. 128
SECTION 10.02. Guaranty of Payment 128
SECTION 10.03. No Discharge or Diminishment of Loan Guaranty 128
SECTION 10.04. Defenses Waived. 129
SECTION 10.05. Rights of Subrogation 129
SECTION 10.06. Reinstatement; Stay of Acceleration. 129
SECTION 10.07. Information 130
SECTION 10.08. Termination 130
SECTION 10.09. Taxes. 130

SECTION 10.10. Maximum Liability 130
SECTION 10.11. Contribution 130
SECTION 10.12. Liability Cumulative 131
SECTION 10.13. Keepwell 131
ARTICLE XI – The Borrower Representative 131
SECTION 11.01. Appointment; Nature of Relationship 131
SECTION 11.02. Powers 132
SECTION 11.03. Employment of Agents 132
SECTION 11.04. Notices 132
SECTION 11.05. Successor Borrower Representative 132
SECTION 11.06. Execution of Loan Documents; Borrowing Base Certificate 132
SECTION 11.07. Reporting 132

SCHEDULES:

Commitment Schedule
Schedule 3.05 -- Properties
Schedule 3.06 -- Disclosed Matters
Schedule 3.12 -- Material Agreements
Schedule 3.14 -- Insurance
Schedule 3.15 -- Capitalization and Subsidiaries
Schedule 6.01 -- Existing Indebtedness
Schedule 6.02 -- Existing Liens
Schedule 6.04 -- Existing Investments
Schedule 6.10 -- Existing Restrictions

EXHIBITS:

Exhibit A -- Form of Assignment and Assumption
Exhibit B -- Form of Borrowing Base Certificate
Exhibit C -- Form of Compliance Certificate
Exhibit D -- Joinder Agreement
Exhibit E-1 -- U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-2 -- U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-3 -- U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-4 -- U.S. Tax Certificate (For Foreign that are Partnerships for U.S. Federal Income Tax Purposes)

AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 19, 2021 (as it may be amended or modified from time to time, this "Agreement") among Friedman Industries, Incorporated, a Texas corporation (the "Company") and each other Person joined hereto from time to time as a borrower (together with the Company, collectively, the "Borrowers" and each, individually, a "Borrower"), the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

WHEREAS, the Lenders have extended to the Company a line of credit in an amount not to exceed $20,000,000 at one time outstanding pursuant to that certain Credit Agreement, dated March 4, 2021, by and between the Company and the Lenders, as amended by that certain First Amendment to Credit Agreement, dated April 12, 2021, by and between the Company and the Lenders (the "Existing Credit Agreement");

WHEREAS, amounts advanced to the Company by the Lenders pursuant to the Existing Credit Agreement are evidenced by, and are payable in accordance with the terms of, that certain Line of Credit Note, dated March 4, 2021 and executed by the Company, as amended by that certain Note Modification Agreement, dated April 12, 2021, by and between the Company and the Lenders (the "Existing Note"); and

WHEREAS, the Company and the other Loan Parties desire to amend and restate the Existing Credit Agreement in the form of this Agreement, and in connection therewith, repay all indebtedness outstanding under the Existing Note.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Borrowers, the Loan Parties, Administrative Agent and Lenders hereby agree that the Existing Credit Agreement is hereby amended and restated in its entirety on the terms and conditions set forth herein. It is the intention of the Borrowers, the Loan Parties, Administrative Agent and Lenders that this Agreement supersede and replace the Existing Credit Agreement in its entirety; provided, that, (a) such amendment and restatement shall operate to renew, amend and modify the rights and obligations of the parties under the Existing Credit Agreement, as applicable and as provided herein, but shall not effect a novation thereof, and (b) the liens securing the Obligations under and as defined in the Existing Credit Agreement shall not be extinguished, but shall be carried forward and shall secure such Obligations as renewed, amended, restated, modified and increased hereby. The Borrowers, the Loan Parties, Administrative Agent and Lenders hereby further agree as follows:

ARTICLE I

Definitions

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

"Account" has the meaning assigned to such term in the Security Agreement.

"Account Debtor" means any Person obligated on an Account.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, 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 which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

"Adjusted Daily Simple SOFR" means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted Term SOFR Rate" means for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%, provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for purposes of this Agreement.

"Administrative Agent" means JPMorgan Chase Bank, N.A. (or any of its designated branch offices or affiliates), 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 specified Person.

"Agent-Related Person" has the meaning assigned to it in Section 9.03(d).

"Aggregate Credit Exposure" means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

"Aggregate Revolving Commitment" means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Second Amendment Effective Date, the Aggregate Revolving Commitment is $150,000,000.

"Aggregate Revolving Exposure" means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

"Ancillary Document" has the meaning assigned to it in Section 9.06(b).

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Parties" has the meaning assigned to it in Section 8.03(c).

"Applicable Percentage" means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment (provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the Aggregate Revolving Exposure at that time), and (b) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender's Commitment shall be disregarded in the calculations under clauses (a) and (b) above.

"Applicable Rate" means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth under the applicable caption below:

Revolver CBFR Spread	Revolver Term Benchmark Spread	Commitment Fee Rate
-1.00%	1.70%	0.25%

"Approved Electronic Platform" has the meaning assigned to it in Section 8.03(a).

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

"Arranger" means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption agreement 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 (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Availability" means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base *minus* (b) the Aggregate Revolving Exposure, all as determined by the Administrative Agent in its sole discretion.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Available Revolving Commitment" means, at any time, the Aggregate Revolving Commitment *minus* the Aggregate Revolving Exposure.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date 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 clause (g) of Section 2.14.

"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).

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

"Banking Services Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Banking Services Reserves" means all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Event" means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Benchmark" means, initially, with respect to any Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR 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 clause (b) of Section 2.14.

"Benchmark Replacement" means, for any Available Tenor, 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 Adjusted Daily Simple SOFR;

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above 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, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor 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 Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/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 Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definitions of "CB Floating Rate," and "CBFR", the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period," 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 in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark 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 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, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) 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

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in any 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 (1) or (2) with respect to any such 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, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) 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 of administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, 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), in each case, 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

(3) 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, or as of a specified date will no longer be, representative.

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

"Benchmark Unavailability Period" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"BHC Act Affiliate" 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.

"Blocking Regulation" has the meaning assigned to it in Section 3.21.

"Borrower" or "Borrowers" have the meanings assigned to such terms in the recitals to this Agreement.

"Borrower Representative" has the meaning assigned to such term in Section 11.01.

"Borrowing" means (a) Revolving Borrowing, (b) a Swingline Loan, (c) a Protective Advance and (d) an Overadvance.

"Borrowing Base" means, at any time, the sum of (a) 90% of the Borrowers' Eligible Accounts at such time, *plus* (b) the product of 85% *multiplied by* the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent *multiplied by* the Borrowers' Eligible Inventory, valued at the lower of cost or market value, determined on a weighted average cost basis, *plus* (c) the M&E Component at such time, *minus* (d) Reserves; provided, that the amount of the Borrowing Base with respect to Eligible Inventory under clause (b) shall be limited to 75% of the acquired cost of such Eligible Inventory; further provided, that until all collateral due diligence is completed to the satisfaction of the Administrative Agent in its sole discretion, (x) the amount of the Borrowing Base attributable to assets acquired from Plateplus Inc. or arising from the sale of such assets acquired from Plateplus Inc. shall be limited to (i) with respect to Eligible Accounts arising from the sale of Inventory acquired from Plateplus Inc., $0, (ii) with respect to Eligible Inventory, until Administrative Agent shall have received an inventory appraisal satisfactory in Administrative Agent's sole discretion, 65% of the acquired cost of such Eligible Inventory and (y) the total amount of the Borrowing Base attributable to assets acquired from Plateplus Inc. shall not exceed $45,000,000.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(g) of this Agreement

"Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit B or another form which is acceptable to the Administrative Agent in its sole discretion.

"Borrowing Request" means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

"Burdensome Restrictions" means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.10.

"Business Day" means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago.

"Capital Expenditures" means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP.

"Capital Lease Obligations" of any Person means 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 financing 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.

"CB Floating Rate" means, the greater of the Prime Rate or 2.5%. Any change in the CB Floating Rate due to a change in the Prime Rate shall be effective from and including the effective date of such change in the Prime Rate.

"CBFR", when used in reference to: (a) a rate of interest, refers to the CB Floating Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the CB Floating Rate.

"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 SEC thereunder as in effect on the date hereof) other than Permitted Holders, of Equity Interests representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were not (i) directors of the Company on the date of this Agreement, nominated, appointed or approved for consideration by shareholders for election by the board of directors of the Company (ii) approved by the board of directors of the Company as director candidates prior to their election, nor (iii) appointed by directors so nominated, appointed or approved; or (c) the acquisition of direct or indirect Control of the Company by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than Permitted Holders; or (d) the Company shall cease to own, directly or indirectly, free and clear of all Liens or other encumbrances, at least 100% of the outstanding voting Equity Interests of the other Loan Parties on a fully diluted basis.

"Change in Law" means the occurrence after the date of this Agreement of any of the following: (a) the adoption of or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) 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, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.17.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, Protective Advances or Overadvances.

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR (or a successor administrator).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations, provided that, Collateral shall not include any real property owned by such Person.

"Collateral Access Agreement" has the meaning assigned to such term in the Security Agreement.

"Collateral Assignment of Purchase Documents" means that certain Collateral Assignment of Purchase Documents (including any and all supplements thereto), dated as of the Second Amendment Effective Date, between the Company and the Administrative Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Collateral Documents" means, collectively, the Security Agreement and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"Collection Account" has the meaning assigned to such term in the Security Agreement.

"Commercial LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

"Commitment" means, with respect to each Lender, the sum of such Lender's Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Commitment Schedule" means the Schedule attached hereto identified as such.

"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.

"Commodities Intermediary" has the meaning assigned to such term in Section 8.03(c)

"Commodities Intermediary Account" has the meaning assigned to such term in Section 4.01(j).

"Communications" has the meaning assigned to such term in Section 4.01(j).

"Company" has the meaning assigned to such term in the recitals to this Agreement.

"Compliance Certificate" means a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit C.

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

"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.

"Controlled Disbursement Account" means the account maintained with the Administrative Agent having an account # ending in -6576, and any replacement or additional accounts of the Borrowers maintained with the Administrative Agent as a zero balance, cash management account pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and amended from time to time, and through which all disbursements of a Borrower, any other Loan Party and any designated Subsidiary of a Borrower are made and settled on a daily basis with no uninvested balance remaining overnight.

"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.

"Covenant Testing Period" means a period (a) commencing on the last day of the fiscal month of Borrowers most recently ended prior to a Covenant Trigger Event for which Borrowers have delivered (or are required to have delivered) to Administrative Agent monthly, quarterly or annual financial statements pursuant to Schedule 5.01 to this Agreement, and (b) continuing through and including the first day thereafter that Availability has equaled or exceeded (i) for the ninety (90) day period beginning on the Second Amendment Effective Date, the greater of (A) 8.3% of the Aggregate Revolving Commitment or (B) $12,500,000, and (ii) thereafter, the greater of (A) 15% of the Aggregate Revolving Commitment or (B) $22,500,000.

"Covenant Trigger Event" means if at any time Availability is less than (i) for the ninety (90) day period beginning on the Second Amendment Effective Date, the greater of (A) 8.3% of the Aggregate Revolving Commitment or (B) $12,500,000, and (ii) thereafter, the greater of (A) 15% of the Aggregate Revolving Commitment or (B) $22,500,000.

"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).

"Covered Party" has the meaning assigned to it in Section 9.21.

"Credit Exposure" means, as to any Lender at any time, the sum of such Lender's Revolving Exposure at such time.

"Credit Party" means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

"Daily Simple SOFR" means, for any day, a ("SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (i) such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

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

"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.

"Defaulting Lender" means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

"Deficiency Funding Date" has the meaning assigned to such term in Section 2.05(a).

"Designated Account Debtor" means any Account Debtor obligated with respect to Accounts having 90-day payment terms that is approved in writing by Administrative Agent in its sole discretion, and for which such approval has not been rescinded in writing by Administrative Agent.

"Disclosed Matters" means the actions, suits, proceedings and environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division."

"Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Division Successor" means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

"Document" has the meaning assigned to such term in the Security Agreement.

"dollars" or "$" refers to lawful money of the U.S.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the U.S.

"EBITDA" means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period net of tax refunds, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any extraordinary non-cash charges for such period and (v) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period and any non-cash charge that relates to the write-down or write-off of inventory), *minus* (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(v) taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"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 EEA Financial Institution.

"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 Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Eligible Accounts" means, at any time, the Accounts of a Borrower which the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Accounts shall not include any Account of a Borrower:

(a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent;

(c) (i) with respect to which the scheduled due date is more than 60 days (or, with respect to Accounts owing by any Designated Account Debtor, 90 days) after the date of the original invoice therefor, (ii) which is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date therefor ("Overage"), provided, that when calculating the amount under this clause (ii), for the same Account Debtor, the Administrative Agent shall include the net amount of such Overage and add back any credits, but only to the extent that such credits do not exceed the total gross receivables from such Account Debtor, or (iii) which has been written off the books of such Borrower or otherwise designated as uncollectible;

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) above;

(e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Borrowers exceeds 20% of the aggregate amount of Eligible Accounts of all Borrowers;

(f) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been breached or is not true in each case in any material respect (other than any covenant, representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such covenant, representation or warranty shall be true and correct in all respects);

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon such Borrower's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or substantially all of its assets;

(l) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of, and is directly drawable by, the Administrative Agent;

(m) which is owed in any currency other than U.S. dollars;

(n) which is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of, and is directly drawable by, the Administrative Agent, or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;

(o) which is owed by any Affiliate of any Loan Party or any employee, officer, director, agent or stockholder of any Loan Party or any of its Affiliates;

(p) which, for any Account Debtor, exceeds a credit limit determined by the Administrative Agent, to the extent of such excess;

(q) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(r) which is subject to any counterclaim, deduction, defense, setoff or dispute (in each case, only to the extent of such counterclaim, deduction, defense, setoff or dispute);

(s) which is evidenced by any promissory note, chattel paper or instrument;

(t) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Borrower to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Borrower has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(u) with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business and only to the extent of such reduction, or any Account which was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;

(v) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(w) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or which indicates any party other than such Borrower as payee or remittance party;

(x) which was created on cash on delivery terms;

(y) if acquired in connection with a Permitted Acquisition, (i) the Administrative Agent shall have received a field examination of such Account, the results of which shall are satisfactory to the Administrative Agent and (ii) such Account does not secure any Indebtedness permitted by Section 6.01(j); or

(z) which the Administrative Agent determines may not be paid by reason of the Account Debtor's inability to pay or which the Administrative Agent otherwise reasonably determines is unacceptable for any reason whatsoever.

In the event that an Account of a Borrower which was previously an Eligible Account ceases to be an Eligible Account hereunder, such Borrower or the Borrower Representative shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate. In determining the amount of an Eligible Account of a Borrower, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account.

"Eligible Equipment" means the Equipment owned by a Borrower and meeting each of the following requirements:

(a) Administrative Agent shall have received the results of an appraisal with respect to such Equipment, conducted by an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent;

(b) such Borrower has good title to such Equipment;

(c) such Borrower has the right to subject such Equipment to a Lien in favor of the Administrative Agent; such Equipment is subject to a first priority perfected Lien in favor of the Administrative Agent and is free and clear of all other Liens of any nature whatsoever (except for Permitted Encumbrances which do not have priority over the Lien in favor of the Administrative Agent);

(d) the full purchase price for such Equipment has been paid by such Borrower;

(e) such Equipment is located on premises (i) owned by such Borrower, or (ii) leased by such Borrower where (x) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its sole discretion;

(f) such Equipment is in good working order and condition (ordinary wear and tear excepted) and is used or held for use by such Borrower in the ordinary course of business of such Borrower;

(g) such Equipment (i) is not subject to any agreement which restricts the ability of such Borrower to use, sell, transport or dispose of such Equipment or which restricts the Administrative Agent's ability to take possession of, sell or otherwise dispose of such Equipment and (ii) has not been purchased from a Sanctioned Person; and

(h) such Equipment does not constitute "Fixtures" under the applicable laws of the jurisdiction in which such Equipment is located.

"Eligible Finished Goods" means, Eligible Inventory constituting finished goods to be sold by a Borrower in the ordinary course of business of such Borrower.

"Eligible Inventory" means, at any time, the Inventory of a Borrower which the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Inventory of a Borrower shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent;

(c) which is, in the Administrative Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been breached or is not true in each case in any material respect (other than any covenant, representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such covenant, representation or warranty shall be true and correct in all respects) and which does not conform in all material respects to all standards imposed by any Governmental Authority;

(e) in which any Person other than such Borrower shall (i) have any direct or indirect ownership, interest or title or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which, unless such Inventory is Eligible Finished Goods or Eligible Raw Materials, does not constitute finished goods, work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or is in transit with a common carrier from vendors and suppliers.

(h) which is located in any location leased by such Borrower unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its sole discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) an appropriate Reserve has been established by the Administrative Agent in its sole discretion;

(j) which is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party location or outside processor; provided that, with respect to Inventory that is a Plateplus Asset and located at a location of Plateplus Inc., such Inventory will not be rendered ineligible solely by virtue of this clause (j) (i) during the period of thirty (30) days after the Second Amendment Effective Date (or such later date as may be agreed in writing by the Administrative Agent in its sole discretion) or (ii) to the extent that Borrowers have delivered to Administrative Agent a Collateral Access Agreement executed by Plateplus Inc. and such other documentation as the Administrative Agent may require;

(k) which is a discontinued product or component thereof;

(l) which is the subject of a consignment by such Borrower as consignor;

(m) which is perishable;

(n) which contains or bears any intellectual property rights licensed to such Borrower unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(o) which is not reflected in a current perpetual inventory report of such Borrower;

(p) for which reclamation rights have been asserted by the seller;

(q) which has been acquired from a Sanctioned Person;

(r) if acquired in connection with a Permitted Acquisition, (i) the Administrative Agent shall have received an appraisal and field examination of such Inventory, the results of which shall be satisfactory to the Administrative Agent in its Permitted Discretion and (ii) such Inventory does not secure any Indebtedness permitted by Section 6.01(j); and

(s) which the Administrative Agent otherwise determines in its Permitted Discretion is unacceptable for any reason whatsoever.

In the event that Inventory of a Borrower which was previously Eligible Inventory ceases to be Eligible Inventory hereunder, such Borrower or the Borrower Representative shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

"Eligible Raw Materials" means, Eligible Inventory of a Borrower constituting raw materials used or consumed by a Borrower in the ordinary course of business in the manufacture or production of other inventory, excluding Eligible Finished Goods of such Borrower.

"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 (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release or threatened Release of any Hazardous Material or (d) 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 any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning assigned to such term in the Security Agreement.

"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 of the foregoing, but excluding any debt securities convertible into any of the foregoing.

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

"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 Section 4001(14) of ERISA 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 failure to satisfy the "minimum funding standard" (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 ERISA Affiliate 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 ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate 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 upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excess Availability" means, at any time, an amount equal to (a) Availability *minus* (b) aggregate amount of all outstanding trade payables of the Borrowers which have been unpaid for more than 60 days after the due date therefor (other than trade payables being contested or disputed in good faith), all as determined by the Administrative Agent in its sole discretion.

"Excluded Swap Obligation" means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor's failure for any reason to constitute an ECP at the time the Guarantee of such Loan Guarantor or the grant of such security interest becomes or would become 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.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

"Extenuating Circumstance" means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System, and (b) to accept a Borrowing Request or Interest Election Request telephonically.

"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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions (as determined in such manner as shall be set forth on the NYFRB's Website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fee Letter" means that certain Fee Letter by and among Administrative Agent and the Borrowers, dated as of May 19, 2021, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of a Borrower.

"First Amendment Effective Date" means March 11, 2022.

"Fixed Charge Coverage Ratio" means, at any date, the ratio of (a) EBITDA *minus* Unfinanced Capital Expenditures to (b) Fixed Charges *plus* an amount equal to the M&E Component Reduction for such period, all calculated for the period of twelve consecutive calendar months ended on such date (or, if such date is not the last day of a calendar month, ended on the last day of the calendar month most recently ended prior to such date).

"Fixed Charges" means, for any period, without duplication, cash Interest Expense, *plus* scheduled principal payments on Indebtedness actually made, *plus* expenses for Taxes paid in cash, *plus* Restricted Payments paid in cash, *plus* Capital Lease Obligation payments, *plus* cash contributions to any Plan, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Flood Laws" has the meaning assigned to such term in Section 8.10.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR as of the Second Amendment Effective Date shall be 0%.

"Foreign Lender" means (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"Funding Accounts" has the meaning assigned to such term in Section 4.01(h).

"GAAP" means generally accepted accounting principles in the U.S.

"Governmental Authority" means the government of the U.S., 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.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guaranteed Obligations" has the meaning assigned to such term in Section 10.01.

"Hazardous Materials" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

"IBA" has the meaning assigned to such term in Section 1.05.

"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 Guarantees 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, (k) obligations under any earn-out (which for all purposes of this Agreement shall be valued at the maximum potential amount payable with respect to such earn-out) (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction. 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.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in the foregoing clause (a) hereof, Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(c).

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Information" has the meaning assigned to such term in Section 9.12.

"Interest Election Request" means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08.

"Interest Expense" means, for 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' acceptances and net costs under Swap 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 CBFR Loan (other than a Swingline Loan), the first Business Day of each calendar month and the Maturity Date, and (b) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Benchmark 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 the Maturity Date.

"Interest Period" means, with respect to any Term Benchmark 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 (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower Representative 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 shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" has the meaning assigned to such term in the Security Agreement.

"IRS" means the United States Internal Revenue Service.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Issuing Bank" means, individually and collectively, each of JPMCB, in its capacity as the issuer of Letters of Credit hereunder and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank, with the consent of such Revolving Lender and the Administrative Agent, and their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"Issuing Bank Sublimit" means, as of the Second Amendment Effective Date, (a) $15,000,000, in the case of JPMCB and (b) such amount as shall be designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; provided that any Issuing Bank shall be permitted at any time to increase or reduce its Issuing Bank Sublimit upon providing five (5) days' prior written notice thereof to the Administrative Agent and the Borrower Representative.

"Joinder Agreement" means a Joinder Agreement in substantially the form of Exhibit D.

"JPMCB" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means any payment made by an Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender-Related Person" has the meaning assigned to such term in Section 9.03(b).

"Lenders" means the Persons listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and the Issuing Bank.

"Letters of Credit" means the letters of credit issued pursuant to this Agreement, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"Letter of Credit Agreement" has the meaning assigned to it in Section 2.06(b).

"Liabilities" means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"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.

"Loan Documents" means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, the Negative Pledge Agreement, the Collateral Assignment of Purchase Documents, each Compliance Certificate, the Loan Guaranty, the Fee Letter, the Second Amendment Fee Letter and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications and any agreements between the Borrower Representative and the Issuing Bank regarding the Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the applicable Borrower and the Issuing Bank in connection with the issuance by the Issuing Bank of Letters of Credit, 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 this Agreement or the transactions contemplated hereby. Any reference in this 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 this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guarantor" means each Loan Party.

"Loan Guaranty" means Article X of this Agreement.

"Loan Parties" means, collectively, the Borrowers, the Borrowers' Domestic Subsidiaries and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their respective successors and assigns, and the term "Loan Party" shall mean any one of them or all of them individually, as the context may require.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances and Protective Advances.

"M&E Component" means, at the time of any determination, an amount equal to the lessor of (a) 85% of the Net Orderly Liquidation Value of the Borrowers' Eligible Equipment and (b) the M&E Component Limit; provided, that until the Administrative Agent has received the results of an appraisal with respect to such Eligible Equipment on a basis satisfactory to the Administrative Agent in its sole discretion, the M&E Component shall be $0.

The M&E Component shall be updated (i) from time to time upon receipt of periodic valuation updates received from the Administrative Agent's asset valuation experts, (ii) concurrently with the sale or commitment to sell any assets constituting part of the M&E Component, (iii) in the event such assets are idled for any reason other than routine maintenance or repairs for a period in excess of ten (10) consecutive days, and (iv) in the event that the value of such assets is otherwise impaired, as determined by the Administrative Agent in its Permitted Discretion.

"M&E Component Limit" means, initially, $5,000,000, provided, that on the first Business Day of the first calendar month to occur after Agent has received the results of an appraisal with respect to such Eligible Equipment and the Borrowing Base is increased by the M&E Component (the "M&E Inclusion Date", and on the first Business Day of each calendar month thereafter, such amount shall be reduced by an amount equal to (x) $5,000,000 *divided by* (y) the total number of calendar months from the M&E Inclusion Date through and including the month in which the Maturity Date is scheduled to occur (the "M&E Component Reduction").

"Margin Stock" means margin stock within the meaning of Regulations T, U and X, as applicable, of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"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 other Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Administrative Agent's Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents.

"Material Agreements" means all material agreements and contracts identified in Section 3.12 of the Disclosure Certificate.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding $1,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrowers or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means May 19, 2026 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

"Maximum Rate" has the meaning assigned to such term in Section 9.17.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Negative Pledge Agreement" means that certain Negative Pledge Agreement (including any and all supplements thereto), dated as of the Second Amendment Effective Date, among the Loan Parties and the Administrative Agent, and any other negative pledge agreement entered into by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Net Income" means, for any period, the consolidated net income (or loss) of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Company or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"Net Orderly Liquidation Value" means, with respect to Inventory, Equipment or intangibles of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all Taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d).

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called "synthetic lease" transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases)

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or any Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Overadvance" has the meaning assigned to such term in Section 2.05(b).

"Paid in Full" or "Payment in Full" means, (a) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the indefeasible payment in full in cash of the accrued and unpaid fees, (d) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

"Participant" has the meaning assigned to such term in Section 9.04(c).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Payment Condition" shall be deemed to be satisfied in connection with a Subject Transaction if:

(a) no Default has occurred and is continuing or would result immediately after giving effect to such Subject Transaction;

(b) immediately after giving effect to and at all times during the 30-day period immediately prior to such Subject Transaction, the Borrowers shall have (A) Availability calculated on a pro forma basis after giving effect to such Subject Transaction of not less than the greater of (1) 20% of the Aggregate Revolving Commitment and (2) (x) with respect to the Plateplus Acquisition, $20,000,000, and (y) with respect to any other Subject Transaction, $30,000,000 and (B) a Fixed Charge Coverage Ratio for the most recently completed trailing twelve month period for which the Borrowers are required to have delivered financial statements to the Administrative Agent in accordance with the terms of this Agreement, calculated on a pro forma basis as if such Subject Transaction had been made on the last day of such period, of not less than 1.25 to 1.00; and

(c) the Borrower Representative shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent certifying as to the items described in (a) and (b) above and attaching calculations for item (b).

With respect to any Subject Transaction that is a Permitted Acquisition, item (b) above shall be calculated as if all consideration given in connection with such Acquisition, other than Equity Interests of the applicable Borrower delivered to the seller(s) in such Acquisition, is paid in cash at the time of making such Acquisition.

For purposes of this definition, "Subject Transaction" shall mean any (i) Restricted Payment, (ii) Permitted Acquisition or (iii) an investment, loan, advance or guaranty described in Section 6.04(c), (d) or (e).

"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 by any Loan Party in a transaction that satisfies each of the following requirements:

(a) such Acquisition is not a hostile or contested acquisition;

(b) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under applicable U.S. and state laws, and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;

(c) both before and after giving effect to such Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct (except any such representation or warranty which relates to a specified prior date) in all material respects (other than any representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such representation or warranty shall be true and correct in all respects) and no Default (including any Default in compliance (on a pro forma basis) with the covenants contained in Section 6.12(a)) exists, will exist, or would result therefrom;

(d) as soon as available, but not less than thirty (30) days prior to such Acquisition, the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent including pro forma financial statements, statements of cash flow, and Availability projections;

(e) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person shall become a Wholly-Owned Subsidiary of a Borrower or a Loan Party pursuant to the terms of this Agreement;

(f) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Borrower or another Loan Party shall acquire such assets;

(g) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(h) if such Acquisition involves a merger or a consolidation involving a Borrower or any other Loan Party, such Borrower or such Loan Party, as applicable, shall be the surviving entity;

(i) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, Tax, litigation, or other matters) that could reasonably be expected to have a Material Adverse Effect;

(j) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person (other than Liens permitted by Section 6.02) shall be terminated unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets (other than Liens permitted by Section 6.02) shall be terminated;

(k) unless (i) the total consideration (including the maximum potential total amount of all deferred payment obligations (including earn-outs) and Indebtedness assumed or incurred) of such Acquisition does not exceed $2,000,000 or (ii) the purchase price for such Acquisition is paid exclusively with (a) the proceeds of a cash equity contribution to the Company, (b) the proceeds of the issuance by the Company of any Equity Interests or (c) Equity Interests of the Company delivered to the seller(s) in such Acquisition, or a combination thereof, then, with respect to such Acquisition, the Payment Condition has been satisfied;

(l) all actions required to be taken with respect to any newly acquired or formed Wholly-Owned Subsidiary of a Borrower or a Loan Party, as applicable, required under Section 5.14 shall have been taken; and

(m) the Borrower Representative shall have delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within 10 days following the consummation thereof.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"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 thirty (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 Article VII;

(f) Liens of the Commodities Intermediary in the Commodities Intermediary Account, provided that such Liens secure obligations permitted by this Agreement.

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

"Permitted Holders" shall mean (i) Dimensional Fund Advisors LP and their Affiliates (ii) Renaissance Technologies Holdings Corporation and their Affiliates and (iii) members of management of the Company who are holders of Equity Interests of the Company on the Effective Date.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), 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, bankers' 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 U.S. or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer 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.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Plateplus Acquisition" means the acquisition, on or about the Second Amendment Effective Date, by the Company of certain assets of Plate Plus, Inc. pursuant to and in accordance with the Plateplus Purchase Agreement.

"Plateplus Assets" means, the assets acquired by the Borrowers in connection with the Plateplus Acquisition.

"Plateplus Purchase Agreement" means, the Asset Purchase Agreement, dated as of April 26, 2022, by and among the Company, Plateplus Inc. and the sole stockholder of Plateplus Inc.

"Prepayment Event" means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or Subsidiary, other than Dispositions described in Section 6.05; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party or Subsidiary with a fair value immediately prior to such event equal to or greater than $100,000.

(c) the issuance by the Company of any Equity Interests, or the receipt by the Company of any capital contribution (unless, in each case, the proceeds thereof are used to finance a substantially contemporaneous Permitted Acquisition); or

(d) the incurrence by any Loan Party or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Proceeding" means any claim, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

"Projections" has the meaning assigned to such term in Section 5.01(f).

"Protective Advance" has the meaning assigned to such term in Section 2.04.

"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.

"Public-Sider" means a Lender whose representatives may trade in securities of the Company or its Controlling Person or any of its Subsidiaries while in possession of the financial statements provided by the Company under the terms of this Agreement.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.21.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

"Reference Time" with respect to any setting of the then-current Benchmark means the time determined by the Administrative Agent in its reasonable discretion.

"Refinance Indebtedness" has the meaning assigned to such term in Section 6.01(f).

"Register" has the meaning assigned to such term in Section 9.04(b).

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person's Affiliates.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

"Relevant Governmental Body" means the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"Report" means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

"Required Lenders" means, subject to Section 2.20, (a) at any time prior to the earlier of the Loans becoming due and payable pursuant to Article VII or the Commitments terminating or expiring, Lenders having Credit Exposures and Unfunded Commitments representing at least 66.70% of the sum of the Aggregate Credit Exposure and Unfunded Commitments at such time; provided that, as long as there are only two Lenders, Required Lenders shall mean both Lenders; provided further that, solely for purposes of declaring the Loans to be due and payable pursuant to Article VII, the Unfunded Commitment of each Lender shall be deemed to be zero in determining the Required Lenders and (b) for all purposes after the Loans become due and payable pursuant to Article VII or the Commitments expire or terminate, Lenders having Credit Exposures representing at least 66.70% of the Aggregate Credit Exposure at such time; provided that, as long as there are only two Lenders, Required Lenders shall mean both Lenders.

"Required Revolving Lenders" means, at any time, Lenders (other than Defaulting Lenders) having Revolving Exposures and unused Revolving Commitments representing at least 66.70%% of the sum of the Aggregate Revolving Exposure and unused Revolving Commitments at such time; provided that, as long as there are only two Revolving Lenders, Required Revolving Lenders shall mean both Revolving Lenders

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), 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.

"Reserves" means any and all reserves which the Administrative Agent deems necessary, in its sole discretion, to maintain (including, without limitation, an availability reserve, reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee's, warehousemen's and bailee's charges, reserves for dilution of Accounts, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation and reserves for Taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the president, Financial Officer or other executive officer of a Borrower.

"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 or any option, warrant or other right to acquire any such Equity Interests.

"Reuters" means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

"Revolving Borrowing" means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

"Revolving Commitment" means, with respect to each Lender, the amount set forth on the Commitment Schedule opposite such Lender's name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C) pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04; provided, that at no time shall the Revolving Exposure of any Lender exceed its Revolving Commitment. As of the Second Amendment Effective Date, the aggregate amount of the Lenders' Revolving Commitment is $150,000,000.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure and its Swingline Exposure at such time, *plus* (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time *plus* (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

"Revolving Lender" means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" means a Loan made pursuant to Section 2.01.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Leaseback Transaction" has the meaning assigned to such term in Section 6.06.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission of the U.S.

"Second Amendment Effective Date" means April 29, 2022.

"Second Amendment Fee Letter" means that certain Fee Letter by and among Administrative Agent and the Borrowers, dated as of the Second Amendment Effective Date, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Secured Obligations" means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of "Secured Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"Secured Parties" means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

"Security Agreement" means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Settlement" has the meaning assigned to such term in Section 2.05(d).

"Settlement Date" has the meaning assigned to such term in Section 2.05(d).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's Website, 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.

"Standby LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time *plus* (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

"Statements" has the meaning assigned to such term in Section 2.18(f).

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of 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 and/or one or more subsidiaries of the parent.

"Subsidiary" means any direct or indirect subsidiary of the Company or a Loan Party, as applicable.

"Supported QFC" has the meaning assigned to it in Section 9.21.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; 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 Borrowers or the Subsidiaries shall be a Swap Agreement.

"Swap Agreement Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

"Swap Obligation" means, with respect to any Loan 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 or any rules or regulations promulgated thereunder.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMCB (or any of its designated branch offices or affiliates), in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as Administrative Agent or Issuing Bank shall be deemed given by JPMCB in its capacity as Swingline Lender.

"Swingline Loan" has the meaning assigned to such term in Section 2.05(a).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Benchmark" 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 Term SOFR Rate.

"Term SOFR Rate" means, with respect to any Term Benchmark Borrowing for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m. Dallas time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

"Term SOFR Reference Rate" means, for any day and time (such day, the "Term SOFR Determination Day"), and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 p.m. (City of Dallas time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term, SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

"Transactions" means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"Transition Services Agreement" means, the Transition Services Agreement, dated as of April 29, 2022, by and between the Company and Plateplus Inc.

"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 Term SOFR Rate or the CBFR.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"UK Financial Institutions" 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 applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unfinanced Capital Expenditures" means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

"Unfunded Commitment" means, with respect to each Lender, the Revolving Commitment of such Lender *less* its Revolving Exposure.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

"U.S." means the United States of America.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 9.21.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"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 "Term Benchmark Loan") or by Class and Type (e.g., a "Term Benchmark Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "Term Benchmark Borrowing") or by Class and Type (e.g., a "Term Benchmark 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 mascu-line, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. 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, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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, (e) 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, (f) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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. (a) 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 after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative 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 migration or change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. In the event that historical accounting practices, systems or reserves relating to the components of the Borrowing Base are modified in a manner that is adverse to the Lenders in any material respect, the Borrowers will agree to maintain such additional reserves (for purposes of computing the Borrowing Base) in respect of the components of the Borrowing Base and make such other adjustments (which may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base). Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness under Financial Accounting Standards Board Accounting Standards Codification 470-20 or 2105-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of "Capital Lease Obligations," any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("FAS 842"), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

SECTION 1.05. Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may be in the future become the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative successor or replacement reference rate will be similar to, or produce the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments hereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in it reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, 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 1.06. Reserved.

SECTION 1.07. Status of Obligations. In the event that any Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.08. Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrowers and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Aggregate Revolving Exposure exceeding the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.04, by making immediately available funds available to the Administrative Agent's designated account, not later than 2:00 p.m., Chicago time. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, Overadvance and any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of CBFR Loans or Term Benchmark Loans as the Borrower Representative may request in accordance herewith, provided that all Borrowings made on the Second Amendment Effective Date must be made as CBFR Borrowings but may be converted into Term Benchmark Borrowings in accordance with Section 2.08. Each Swingline Loan shall be a CBFR Loan. Each Lender at its option may make any Term Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accord-ance with the terms of this Agreement. After giving effect to each requested Term Benchmark Borrowing, including those which are converted from a CBFR Borrowing in accordance with Section 2.08, there shall not be outstanding more than five (5) Term Benchmark Borrowings, in the aggregate at any time.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $1,000,000. CBFR Borrowings may be in any amount.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not 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 Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) not later than (a) in the case of a Term Benchmark Borrowing, 10:00 a.m., Chicago time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, noon, Chicago time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of such proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower(s);

(ii) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be a CBFR Borrowing or a Term Benchmark Borrowing; and

(v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a CBFR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower(s) 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 Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Protective Advances. (a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) if an Event of Default under clauses (a), (b), (h) or (i) of the definition thereof or resulting from a breach of Section 6.12 has occurred and is continuing, to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement that have not been paid by Borrowers on or before the date required, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, the Aggregate Revolving Exposure after giving effect to the Protective Advances being made shall not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be CBFR Borrowings. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by 100% of the Lenders (other than any Defaulting Lender). Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

SECTION 2.05. Swingline Loans and Overadvances.

(a) The Administrative Agent, the Swingline Lender and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a CBFR Borrowing, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to a Funding Accounts (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "Swingline Loan"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan shall be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago time, on each Business Day, make available to the Borrowers by means of a credit to a Funding Accounts, the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers shall be deemed to have requested a CBFR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. The Swingline Lender shall not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans shall be CBFR Borrowings.

(b) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation), on behalf of the Revolving Lenders, (x) make Revolving Loans to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (y) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that, no Overadvance shall result in a Default due to Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute CBFR Borrowings. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed an amount equal to ten percent (10%) of Availability at any time, no Overadvance may remain outstanding for more than thirty days and no Overadvance shall cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Revolving Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof.

(c) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(d) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

SECTION 2.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request any Issuing Bank to issue Letters of Credit for its own account or for the account of another Borrower denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to such Issuing Bank, at any time and from time to time during the Availability Period, and such Issuing Bank may, but shall have no obligation, to issue such requested Letters of Credit pursuant to this Agreement.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the respective Issuing Bank) to an Issuing Bank selected by it and to the Administrative Agent (reasonably in advance of, but in any event prior to 9:00 am, Chicago time, at least three (3) Business Days prior to the requested date of issuance, amendment or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment 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 or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the applicable Borrower shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application in each case, as required by the respective Issuing Bank and using such Issuing Bank's standard form (each, a "Letter of Credit Agreement"). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) the aggregate LC Exposure shall not exceed $15,000,000, (ii) no Revolving Lender's Revolving Exposure shall exceed its Revolving Commitment and (iii) the Aggregate Revolving Exposure shall not exceed the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of this Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) 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 (or, in the case of any extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such extension) 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 Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving 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 or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago time, on (a) (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Chicago time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m. Chicago time on the day of receipt; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a CBFR Borrowing in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting CBFR Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank, as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or Swingline Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrowers' joint and several 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, any Letter of Credit Agreement or this Agreement, or any term or provision therein or herein, (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) any payment by the respective 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 Borrowers' obligations hereunder. Neither the Administrative Agent, the Revolving Lenders, nor any Issuing Bank or any of their respective 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, any error in translation or any consequence arising from causes beyond the control of the respective Issuing Bank; provided that the foregoing shall not be construed to excuse an Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any 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, an 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 Issuing Bank for any Letter of Credit shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment if 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 Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank for any Letter of Credit shall make any LC Disbursement, then, unless the Borrowers 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 Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrowers fail 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 such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) Replacement and Resignation of an Issuing Bank.

(i) An Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(c). From and after the effective date of any such replacement, (A) 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 (B) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous 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 then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower Representative and the Lenders, in which case, such resigning Issuing Bank shall be replaced in accordance with Section 2.06(i)(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus 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 any Borrower described in clause (h) or (i) of Article VII. Such Borrower also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Sections 2.10(b), 2.11(b) or 2.20. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Borrowers shall immediately deposit in the LC Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. 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 Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrowers are 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 Borrowers within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Administrative Agent.

(k) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank that is not the Administrative Agent shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, and amendments, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends or extends any Letter of Credit, the date of such issuance, amendment or extension, and the stated amount of the Letters of Credit issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(l) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) shall reimburse, indemnify and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrowers, and that each Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that, Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to a Funding Account; provided that CBFR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance or an Overadvance shall be retained by the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each 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 Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing, provided, that any interest received from a Borrower by the Administrative Agent during the period beginning when Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

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 Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative 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, Overadvances or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and each such telephonic Interest Election Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(c) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

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

(iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark 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 Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers 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 Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term Benchmark 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 a CBFR 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 Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing shall be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination of Commitments; Increase in Revolving Commitments. (a) Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate the Revolving Commitments upon the Payment in Full of the Secured Obligations.

(c) The Borrower Representative shall notify the Administrative Agent of any election to terminate the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(d) The Borrowers shall have the right to increase the Revolving Commitments by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase shall be in a minimum amount of $5,000,000, (ii) the Borrower Representative, on behalf of the Borrowers, may make a maximum of two (2) such requests, (iii) after giving effect thereto, the sum of the total of the additional Commitments does not exceed $25,000,000, (iv) the Administrative Agent and the Issuing Bank have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedure described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(e) Any amendment hereto for such an increase or addition shall be in form and substance satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrowers and each Lender being added or increasing its Commitment subject only to the approval of all Lenders if any such increase or addition would cause the Revolving Commitments to exceed $175,000,000. As a condition precedent to such an increase or addition, the Borrowers shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, (2) no Default exists and (3) the Borrowers are in compliance (on a pro forma basis) with the covenants contained in Section 6.12(a) and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(f) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Term Benchmark Loan, shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, and (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent.

(b) At all times that full cash dominion is in effect pursuant to Section 7.3 of the Security Agreement, on each Business Day, the Administrative Agent shall apply all funds credited to the Collection Account on the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available) first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and third if an Event of Default has occurred and is continuing, to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds shall be subject to Section 2.11(c).

(c) 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.

(d) 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 the Borrowers 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.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; 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.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11. Prepayment of Loans. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (e) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(b) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base, the Borrowers shall prepay the Revolving Loans, LC Exposure and/or Swingline Loans or cash collateralize the LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by any Loan Party, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(d) below in an aggregate amount equal to (x) in the case of a prepayment event described in clause (c) of the definition of the term "Prepayment Event", 20% of such Net Proceeds and (y) in the case of all other Prepayment Events, 100% of such Net Proceeds, provided that, (x) in the case of a prepayment event described in clause (c) of the definition of the term "Prepayment Event", unless an Event of Default has occurred and is continuing, there shall be no requirement to cash collateralize the LC Exposure, and (y) in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", if the Borrower Representative shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 180 days after receipt of such Net Proceeds, to acquire (or replace or rebuild) equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties, and certifying that no Default has occurred and is continuing, then either (i) so long as full cash dominion is not in effect, no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate or (ii) if full cash dominion is in effect, then, if the Net Proceeds specified in such certificate are to be applied to acquire, replace or rebuild such assets by (A) the Borrowers, such Net Proceeds shall be applied by the Administrative Agent to reduce the outstanding principal balance of the Revolving Loans (without a permanent reduction of the Revolving Commitment) and upon such application, the Administrative Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied and (B) any Loan Party that is not a Borrower, such Net Proceeds shall be deposited in a cash collateral account, and in the case of either (A) or (B), thereafter, such funds shall be made available to the applicable Loan Party as follows:

(1) the Borrower Representative shall request a Revolving Borrowing (specifying that the request is to use Net Proceeds pursuant to this Section) or the applicable Loan Party shall request a release from the cash collateral account be made in the amount needed;

(2) so long as the conditions set forth in Section 4.02 have been met, the Revolving Lenders shall make such Revolving Borrowing or the Administrative Agent shall release funds from the cash collateral account; and

(3) in the case of Net Proceeds applied against the Revolving Borrowing, the Reserve established with respect to such insurance proceeds shall be reduced by the amount of such Revolving Borrowing;

provided that to the extent of any such Net Proceeds therefrom that have not been so applied by the end of such 180-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied.

(d) All prepayments made pursuant to Section 2.11(a) shall be applied, if made with respect to the Revolving Loans or the Swingline Loans, to prepay such Loans in accordance with the Lenders' respective Applicable Percentages without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure. All such amounts pursuant to Section 2.11(c) shall be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and, if required in accordance with Section 2.11(c), to cash collateralize outstanding LC Exposure.

(e) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 10:00 a.m., Chicago time, (A) in the case of prepayment of a Term Benchmark Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of a CBFR Revolving Borrowing, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each 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 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 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 Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

SECTION 2.12. Fees. (a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each calendar month and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay Administrative Agent for its own account, all fees and other amounts required to be paid pursuant to the Fee Letter and the Second Amendment Fee Letter, at the times and in the amounts as specified therein.

(c) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Revolving Loans during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, which shall accrue at the rate of 0.125% per annum on the daily maximum amount then available to be drawn under such Letter of Credit, during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment or extension of any Letter of Credit and other processing fees and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of each calendar month shall be payable on the first Business Day of each calendar month 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 Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (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).

(d) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(e) All fees payable hereunder shall be paid on the dates due, in dollars 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 CBFR Borrowings (including all Swingline Loans) shall bear interest at the CBFR plus (or minus) the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each Protective Advance and each Overadvance shall bear interest at the CBFR plus (or minus) the Applicable Rate for Revolving Loans plus 2%.

(d) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(e) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) 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 a CBFR Revolving 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 Term Benchmark 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.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating 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 CB Floating Rate and the Adjusted Term SOFR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14 if:

(i) The Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) prior to commencement of any Interest Period for a Term Benchmark Borrowing, that the adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period (each a "Relevant Rate"); or

(ii) The Administrative Agent is advised by the Required Lenders that prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such interest period;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for a CBFR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan is outstanding on the date the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, a CBFR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.14), if a Benchmark 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 (x) if a Benchmark Replacement is determined in accordance with clause (1) 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 (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 any Benchmark setting at or after 5:00 p.m. (City of Dallas time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, 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 further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) an occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) of 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, 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.

(e) 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), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) 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 (B) 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" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) 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" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark 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 for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to a CBFR Borrowing. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, a CBFR Loan.

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

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receiv-able by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the 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 Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or the 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 the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the 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 Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(c) and is revoked in accordance therewith), or (d) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Benchmark Loan had such event not occurred, at the Adjusted Term SOFR Rate that would have been applicable to such Term Benchmark 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 Term Benchmark 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 U.S. market. A certifi-cate 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 Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Withholding of Taxes; Gross-Up. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than (i) Indemnified Taxes that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Recipient or (ii) interest or penalties attributable to the failure or delay by such Recipient to make a written demand to the Loan Party within 180 days of receiving written notice that such Taxes subject to indemnification under this Section 2.17 have been levied, imposed or asserted against it). A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative 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(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative 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 Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) an executed copy of IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form) (with proper attachments), as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, 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 E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative 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 Borrower Representative 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 U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative 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 Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document (including the Payment in Full of the Secured Obligations).

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Setoffs. (a) The Borrowers shall make each payment or prepayment required to be made by them 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 2:00 p.m., Chicago time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment 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 its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, except payments to be made directly to the 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. Unless otherwise provided for herein, 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 shall be made in dollars.

(b) All payments and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established, ratably, seventh, to payment of any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22 and to the extent not paid pursuant to clause sixth above, and eighth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Term Benchmark Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements 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 similarly situated 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 all such 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 or Swingline Loans to any assignee or participant, other than to the Borrowers 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 setoff 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.

(e) Unless the Administrative Agent shall have received, prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank pursuant to the terms hereof or any other Loan Document (including any date that is fixed for prepayment by notice from the Borrower Representative to the Administrative Agent pursuant to Section 2.11(e)), notice from the Borrower Representative that the Borrowers will not make such payment or prepayment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the 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 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts 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 reasonable 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 requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unrea-sonably be withheld, (ii) such 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 assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) 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 2.18(b) 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 Swingline Lender hereunder; third, to cash collateralize the LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower Representative may request (so long as no 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 Borrower Representative, 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 future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; 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 Section 4.02 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 the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) 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 Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(c) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(d) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within five (5) Business Days following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(c) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(c) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(e) so long as such Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrowers or such Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrowers and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

SECTION 2.21. Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22. Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party shall deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof shall deliver to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed. For the avoidance of doubt, so long as JPMCB or its Affiliate is the Administrative Agent, neither JPMCB nor any of its Affiliates providing Banking Services for, or having Swap Agreements with, any Loan Party shall be required to provide any notice described in this Section 2.22 in respect of such Banking Services or Swap Agreements.

ARTICLE III

Representations and Warranties.[1]

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each Loan Party and each Subsidiary is duly organized or formed, 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, and is in good standing, in every juris-diction where such qualification is required.

[1] Please provide updated schedules to the Credit Agreement and the Security Agreement to the extent necessary.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, 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 Transactions (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 and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, or give rise to a right thereunder to require any payment to be made by any Loan Party or any Subsidiary, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to the Loan Documents. No consent or approval of, registration or filing with, or any other action by, any Governmental Authority or approval, consent or authorization of any Person is required for the execution, delivery and performance of the Plateplus Purchase Agreement and the Transition Services Agreement by the parties thereto, except such as have been obtained or made and are in full force and effect.

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 (i) as of and for the fiscal year ended March 31, 2020, reported on by Moss Adams LLP, independent public accountants, (ii) as of and for the fiscal month and the portion of the fiscal year ended February 28, 2021, certified by a Financial Officer and (iii) a draft of the consolidated balance sheet and statements of income, stockholders equity and cash flows of the Company for the fiscal year ended March 31, 2021. Such financial state-ments 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, subject to normal year-end audit adjustments (all of which, when taken as a whole, would not be materially adverse) and the absence of footnotes in the case of the statements referred to in clause (ii) and (iii) above.

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since March 31, 2020.

SECTION 3.05. Properties. (a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each of the Loan Parties and each of its Subsidiar-ies has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement.

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 any Loan Party, threatened against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possi-bility of an adverse determination and that, if adversely deter-mined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters (i) no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) 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, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. No Loan Party or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each Loan Party and each Subsidiary has timely filed (taking into account extensions) or caused to be filed all income and other material Tax returns required to have been filed and has paid or caused to be paid all income and other material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party 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 be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. 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 by more than $50,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $50,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Disclosure. (a) The Loan Parties have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary 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. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (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, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

(b) As of the Effective Date, to the best knowledge of any Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12. Material Agreements. All material agreements and contracts to which any Loan Party is a party or is bound as of the date of this Agreement are listed on Schedule 3.12. No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (a) any material agreement to which it is a party or (b) any agreement or instrument evidencing or governing Indebtedness, in each case which could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.13. Solvency. (a) Immediately after the consummation of the Transactions to occur on the Second Amendment Effective Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Second Amendment Effective Date.

(b) No Loan Party intends to, nor will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.14. Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Second Amendment Effective Date. As of the Second Amendment Effective Date, all premiums in respect of such insurance have been paid. Each Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15. Capitalization and Subsidiaries. Schedule 3.15 sets forth as of the Second Amendment Effective Date (a) a correct and complete list of the name and relationship to the Company of each and all of the Company's Subsidiaries, (b) a true and complete listing of each class of each Borrower's authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (c) the type of entity of the Company and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. As of the Second Amendment Effective Date, there are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

SECTION 3.16. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

SECTION 3.17. Employment Matters. As of the Second Amendment Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

SECTION 3.18. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.19. Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.20. No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

SECTION 3.21. Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or, to the knowledge of any such Loan Party or Subsidiary, employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.22. Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.23. EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

SECTION 3.24. Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

SECTION 3.25. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

ARTICLE IV

Conditions.

SECTION 4.01. Effective Date. The obligations of the Lenders to amend and restate the Existing Credit Agreement in the form of this Agreement, and the obligation to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document and (iii) such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a customary legal opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders, all in form and substance satisfactory to the Administrative Agent and its counsel.

(b) Financial Statements and Projections. The Lenders shall have received (i) audited consolidated financial statements of the Company for the fiscal years ending March 2018, March 2019, March 2020 (ii) to the extent available as of the Effective Date, a draft of the consolidated financial statements of the Company for the fiscal year ending March 2021, (iii) unaudited interim consolidated financial statements of the Company for each fiscal month ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph and on or prior to February 28, 2021, and such financial statements shall not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of the Company, as reflected in the audited, consolidated financial statements described in clause (i) of this paragraph and (iv) satisfactory projections for the fiscal years of the Company ending March 2022 and March 2023.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of each Borrower, its Financial Officers, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(d) No Default Certificate. The Administrative Agent shall have received a certificate, signed by a Financial Officer of the Company, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(e) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(f) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(g) Pay-Off Letter. The Administrative Agent shall have received satisfactory pay-off letters for all existing Indebtedness to be repaid from the proceeds of the initial Borrowing, confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with such payment and all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized or supported by a Letter of Credit.

(h) Funding Account. The Administrative Agent shall have received a notice setting forth the deposit accounts of the Borrowers (the "Funding Accounts") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(i) Customer List. The Administrative Agent shall have received a true and complete customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number and shall be certified as true and correct by a Financial Officer of the Borrower Representative.

(j) Collateral Access and Control Agreements. The Administrative Agent shall have received (i) each Collateral Access Agreement required to be provided pursuant to Section 4.13 of the Security Agreement, (ii) each Deposit Account Control Agreement required to be provided pursuant to Section 4.14 of the Security Agreement and (iii) a control agreement acceptable to Administrative Agent in its Permitted Discretion, executed by StoneX Financial Inc. (the "Commodities Intermediary") with respect to Account #462-24461 maintained with the Commodities Intermediary (the "Commodities Intermediary Account").

(k) Solvency. The Administrative Agent shall have received a solvency certificate signed by a Financial Officer dated the Effective Date.

(l) Borrowing Base Certificate. The Administrative Agent shall have received a Borrowing Base Certificate which calculates the Borrowing Base as of a recent date determined by the Administrative Agent.

(m) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability shall not be less than $20,000,000.

(n) Pledged Equity Interests; Stock Powers; Pledged Notes. The Administrative Agent shall have received (i) the certificates representing the Equity Interests pledged pursuant to the Security Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(o) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or requested by the Administrative Agent in its sole discretion to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(p) Insurance. Unless required to be delivered by a later date pursuant to Section 5.16, the Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof and Section 4.12 of the Security Agreement.

(q) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent shall have received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable). The Borrowers shall have executed the Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(r) Tax Withholding. The Administrative Agent shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(s) Corporate Structure. The corporate structure, capital structure and other material debt instruments, material accounts and governing documents of the Borrowers and their Affiliates shall be acceptable to the Administrative Agent in its sole discretion.

(t) Field Examination. The Administrative Agent or its designee shall have conducted, at the sole cost and expense of the Lenders, a field examination of the Borrower's Accounts, Inventory and related working capital matters and of the Borrowers' related data processing and other systems, the results of which shall be satisfactory to the Administrative Agent in its sole discretion. The Loan Parties shall have no obligation to reimburse the Administrative Agent or the Lenders for the cost of such field examination notwithstanding Section 4.01(e).

(u) Legal Due Diligence. The Administrative Agent and its counsel shall have completed all legal due diligence, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(v) Appraisals. The Administrative Agent shall have received an appraisal of the Borrowers' Inventory from one or more firms satisfactory to the Administrative Agent, which appraisal shall be satisfactory to the Administrative Agent in its sole discretion.

(w) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrowers requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrowers at least ten (10) days prior to the Effective Date, and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrowers at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(x) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

The Administrative Agent shall notify the Borrowers, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 2:00 p.m., Chicago time, on the 5th Business Day following the date of this Agreement (and, in the event such conditions are not so satisfied or waived, the Commitments may be terminated at such time by written notice to Borrower Representative delivered by Administrative Agent.).

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment or extension of such Letter of Credit, as applicable, (i) no Default shall have occurred and be continuing and (ii) no Protective Advance shall be outstanding.

(c) After giving effect to any Borrowing or the issuance of any Letter of Credit, Availability shall not be less than zero.

(d) No event shall have occurred and no condition shall exist which has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment 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), (b), (c) and (d) of this Section.

Notwithstanding the failure to satisfy the conditions precedent set forth in paragraphs (a) or (b) of this Section, unless otherwise directed by the Required Lenders, the Administrative Agent may, but shall have no obligation to, continue to make Loans and an Issuing Bank may, but shall have no obligation to, issue, amend or extend, or cause to be issued, amended or extended, any Letter of Credit for the ratable account and risk of Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending or extending, or causing the issuance, amendment or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE V

Affirmative Covenants.

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 5.01. Financial Statements; Borrowing Base and Other Information. The Borrowers will furnish to the Administrative Agent and each Lender:

(a) As soon as available and in any event within 5 days after the date on which such financial statements are required to be filed with the SEC for such fiscal year (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 90 days after the end of each such fiscal year) the audited consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for each fiscal year of the Company, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification, commentary 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) As soon as available and in any event within 5 days after the date on which such financial statements are required to be filed with the SEC for such fiscal quarter (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 45 days after the end of each such fiscal quarter), the consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for each fiscal quarter of the Company and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Finan-cial Officer of the Borrower Representative 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within thirty (30) days after the end of each fiscal month of the Company, the consolidated balance sheet of the Company and its Subsidiaries and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal month 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 a Finan-cial Officer of the Borrower Representative 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a Compliance Certificate (i) certifying, in the case of the financial statements delivered under clause (b) or (c), 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 consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12 and (iv) 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;

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) as soon as available but in any event no later than 30 days following the end of each fiscal year of the Company, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and cash flow statement) of the Company for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(g) as soon as available but in any event within 20 days of the end of each calendar month, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request; provided, that, at any time that Availability is less than (i) for the ninety (90) day period beginning on the Second Amendment Effective Date, the greater of (A) 8.3% of the Aggregate Revolving Commitment or (B) $12,500,000, and (ii) thereafter, the greater of (A) 15% of the Aggregate Revolving Commitment or (B) $22,500,000, Borrowers shall deliver the reports set forth in this clause (g) on a weekly basis within 3 Business Days of the end of each calendar week;

(h) as soon as available but in any event within 20 days of the end of each calendar month and at such other times as may be requested by the Administrative Agent, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent:

(i) a detailed aging of the Borrowers' Accounts, including all invoices aged by invoice date and due date (with an explanation of the terms offered), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name, address, and balance due for each Account Debtor;

(ii) a schedule detailing the Borrowers' Inventory, in form satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a weighted average cost basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, and (2) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by Borrowers and complaints and claims made against the Borrowers);

(iii) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(iv) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above and (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (g) above as of such date; and

(v) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement;

(i) as soon as available but in any event within 20 days of the end of each calendar month and at such other times as may be requested by the Administrative Agent, as of the month then ended, a schedule and aging of the Borrowers' accounts payable, delivered electronically in a text formatted file acceptable to the Administrative Agent;

(j) promptly upon the Administrative Agent's request:

(i) copies of invoices issued by the Borrowers in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(iv) an updated customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number, delivered electronically in a text formatted file acceptable to the Administrative Agent and certified as true and correct by a Financial Officer of the Borrower Representative.

(k) [Reserved.];

(l) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Govern-mental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be; and

(m) promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan;

(n) if requested by Administrative Agent, as soon as possible and in any event within twenty (20) Business Days of filing thereof, copies of all U.S. federal income tax returns filed by any Loan Party with the U.S. Internal Revenue Service.

(o) promptly after receipt thereof by any Borrower or any Subsidiary, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by the SEC or such other agency regarding financial or other operational results of any Borrower or any Subsidiary thereof;

(p) promptly following any request therefor and to the extent requested, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Borrower by independent accountants in connection with the accounts or books of such Borrower or any Subsidiary, or any audit of any of them as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

Documents required to be delivered pursuant to Section 5.01(a), (b) or (l) (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 such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on a Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether made available by the Administrative Agent); provided that: (A) upon written request by the Administrative Agent (or any Lender through the Administrative Agent) to the Borrower Representative, the Borrower Representative shall deliver paper copies of such documents to the Administrative Agent or such Lender until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower Representative shall notify the Administrative Agent and each Lender (by fax or through Electronic Systems) of the posting of any such documents and provide to the Administrative Agent through Electronic Systems electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by any Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents to it and maintaining its copies of such documents.

The Company represents and warrants that each of it, and its Controlling and Controlled entities, in each case, if any (collectively with the Borrowers, the "Relevant Entities"), either (i) has no SEC registered or unregistered, publicly traded securities outstanding, or (ii) files its financial statements with the SEC and/or makes its financial statements available to potential holders of its securities, and, accordingly, the Company hereby (A) authorizes the Administrative Agent to make the financial statements to be provided under Section 5.01(a) and (b) above (collectively or individually, as the context requires, the "Financial Statements"), along with the Loan Documents, available to Public-Siders and (B) agree that at the time such Financial Statements are provided hereunder, they shall already have been made available to holders of any such securities. The Company will not request that any other material be posted to Public-Siders without expressly representing and warranting to the Administrative Agent in writing that such materials do not constitute material non-public information within the meaning of the federal securities laws or that the Relevant Entities have no outstanding SEC registered or unregistered, publicly traded securities. Notwithstanding anything herein to the contrary, in no event shall the Company request that the Administrative Agent make available to Public-Siders budgets or any certificates, reports or calculations with respect to the Borrowers' compliance with the covenants contained herein or with respect to the Borrowing Base.

SECTION 5.02. Notices of Material Events. The Borrowers will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) within two (2) Business Days after obtaining knowledge thereof, the occurrence of any Default;

(b) within ten (10) Business Days following receipt, receipt of any notice of any investigation by a Governmental Authority or any litigation or Proceeding commenced or threatened against any Loan Party or any Subsidiary that (i) seeks damages in excess of $100,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of $100,000 in respect of any Tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(c) within two (2) Business Days after obtaining knowledge thereof, any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral;

(d) within two (2) Business Days after obtaining knowledge thereof, any loss, damage, or destruction to the Collateral in the amount of $100,000 or more, whether or not covered by insurance;

(e) within five (5) Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located;

(f) within ten (10) Business Days after the execution thereof, all material amendments to any Material Agreement, together with a copy of each such amendment;

(g) within five (5) Business Days after the execution thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(h) within ten (10) Business Days after obtaining knowledge thereof, the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding $100,000;

(i) within ten (10) Business Days after the implementation thereof, any material change in accounting or financial reporting practices by any Borrower or any Subsidiary;

(j) within two (2) Business Days after obtaining knowledge thereof, any other development that results, or could reasonably be expected to result in, a Material Adverse Effect;

(k) within two (2) Business Days after the occurrence thereof, any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(l) within five (5) Business Days following the formation or acquisition thereof, any Subsidiary is formed or acquired after the date of this Agreement.

Each notice delivered under this Section (i) shall be in writing, (ii) shall contain a heading or a reference line that reads “Notice under Section 5.02 of Amended and Restated Credit Agreement dated May 19, 2021” and (iii) shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative 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. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to maintain its legal existence, (b) except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, do all things necessary to maintain and preserve the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and all requisite authority to conduct its business in each jurisdiction in which its business is currently conducted, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03, and (c) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04. Payment of Obligations. Each Loan Party will, and will cause each Subsidiary to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropri-ate proceedings, (b) such Loan Party or 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 . Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (a) 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 and (b) permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers, agents and appraisers retained by the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to conduct at such Loan Party's premises field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (and hereby authorizes the Administrative Agent and each Lender to contact its independent accountants directly) and to provide contact information for each bank where each Loan Party has a depository and/or securities account and each such Loan Party hereby authorizes the Administrative Agent and each Lender to contact the bank(s) in order to request bank statements and/or balances, all at such reasonable times and as often as reasonably requested. Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to each Loan Party's assets for internal use by the Administrative Agent and the Lenders. The Loan Parties shall be responsible for the costs and expenses of one (1) field examination during any 12-month period and one (1) additional field examination (for the total of two (2) such field examinations during any 12-month period) conducted at any time that Availability is less than (i) for the ninety (90) day period beginning on the Second Amendment Effective Date, the greater of (A) 8.3% of the Aggregate Revolving Commitment or (B) $12,500,000, and (ii) thereafter, the greater of (A) 15% of the Aggregate Revolving Commitment or (B) $22,500,000; provided, that the Loan Parties shall be responsible for the costs and expenses of all field examinations conducted while an Event of Default has occurred and is continuing; provided, further, the Loan Parties shall not be responsible for the costs and expenses of the initial field examination conducted in connection with entering into this Agreement.

SECTION 5.07. Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (a) comply with each Requirement of Law applicable to it or its property (including without limitation Environmental Laws) except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (b) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds.

(a) The proceeds of the Loans and the Letters of Credit will be used only (i) to repay certain indebtedness of the Company existing prior to the Effective Date, (ii) to finance certain Capital Expenditures related to the businesses in which the Loan Parties are engaged on the Effective Date, (iii) to finance a portion of the Plateplus Acquisition on the Second Amendment Effective Date and (iv) other working capital and general organizational purposes in the ordinary course of business. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (i) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X or (ii) to make any Acquisition other than Permitted Acquisitions.

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (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, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no 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, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 5.10. Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including, without limitation: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.11. Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.12. Appraisals. Subject to the limitations below, at the request of the Administrative Agent, the Borrowers will provide the Administrative Agent with appraisals or updates thereof of the Inventory and/or Equipment of the Loan Parties from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent in its Permitted Discretion, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law. The Loan Parties shall be obligated to arrange or facilitate, and shall be responsible for the costs and expenses of, up to three (3) Inventory per calendar year and one Equipment appraisal during any calendar year that the Borrowing Base is increased by the M&E Component. Additionally, there shall be no limitation on the number or frequency of Inventory and/or Equipment appraisals if an Event of Default has occurred and is continuing, and the Loan Parties shall be responsible for the costs and expenses of any such appraisals conducted while an Event of Default has occurred and is continuing. Notwithstanding the foregoing, an appraisal of the Equipment of the Loan Parties shall be required as a condition to the inclusion thereof in the Borrowing Base, but no appraisal of Equipment shall be required unless and until the Borrowers elect to so include such Equipment in the Borrowing Base.

SECTION 5.13. Depository Banks. Each Borrower and each Subsidiary will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity and other deposit accounts for the conduct of its business. Additionally, the Administrative Agent shall be the principal provider of other Banking Services to the Borrowers and their Subsidiaries.

SECTION 5.14. Additional Collateral; Further Assurances. (a) Subject to applicable Requirement of Law, each Loan Party will cause each Domestic Subsidiary formed or acquired after the date of this Agreement to become a Loan Party by executing a Joinder Agreement. In connection therewith, the Administrative Agent shall have received all documentation and other information regarding such newly formed or acquired Domestic Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act. Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral.

(b) Each Loan Party will cause 100% of the issued and outstanding Equity Interests of each of its Domestic Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Domestic Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, request in its sole discretion to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(d) If any material assets are acquired by any Loan Party after the Effective Date (other than real property and other than assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon acquisition thereof), the Borrower Representative will (i) notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing the Secured Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or requested by the Administrative Agent in its sole discretion to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

SECTION 5.15. Merger of Subsidiary. Within sixty (60) days after the Effective Date, Borrowers shall deliver to the Administrative Agent a plan of merger and certificate of merger, satisfactory to Administrative Agent in its Permitted Discretion, filed with and accepted by the Secretary of State of the state of Texas and giving effect to the merger of Friedman/Decatur L.L.C., an Alabama limited liability company, with and into the Company, with the Company being the surviving entity following the effectiveness of such merger.

SECTION 5.16. Insurance. Within twenty (20) days after the Effective Date, or such longer period as may be agreed to by the Administrative Agent in its Permitted Discretion, Borrowers shall deliver to the Administrative Agent all endorsements necessary to comply with the provisions of Section 4.12(b) of the Security Agreement, in each case, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion.

SECTION 5.17. Enforcement of Rights. The Company shall Enforce all of its rights under the Acquisition Agreement and the Transition Services Agreement including, but not limited to, all indemnification rights and pursue all remedies available to it with diligence and in good faith in connection with the enforcement of any such rights.

ARTICLE VI

Negative Covenants.

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any extensions, renewals, refinancings and replacements of any such Indebtedness in accordance with clause (f) hereof;

(c) Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;

(d) Guarantees by any Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(e) Indebtedness of any Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), 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 in accordance with clause (f) below; 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) together with any Refinance Indebtedness in respect thereof permitted by clause (f) below, shall not exceed $8,000,000 at any time outstanding;

(f) Indebtedness which represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clauses (b), (e), (i), (j) and (k) hereof (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness other than fees and interests are not less favorable to the obligor thereunder than the original terms of such Original Indebtedness and (vi) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) Subordinated Indebtedness in an aggregate principal amount not exceeding $5,000,000 at any time outstanding;

(j) Indebtedness of any Person that becomes a Subsidiary after the date hereof in connection with a Permitted Acquisition or that is assumed by a Borrower in connection with a Permitted Acquisition; provided that (i) such Indebtedness exists at the time such Permitted Acquisition is consummated and is not created in contemplation of or in connection therewith and (ii) the aggregate principal amount of Indebtedness permitted by clause (i) above, together with any Refinance Indebtedness in respect thereof permitted by Section 6.01(f) (it being understood that Indebtedness under clause (i) above shall constitute "Original Indebtedness" for purposes of Section 6.01(f)), shall not exceed $10,000,000 at any time outstanding;

(k) other unsecured Indebtedness in an aggregate principal amount not exceeding $5,000,000 at any time outstanding.

SECTION 6.02. Liens. No Loan Party will, nor will it 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) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower 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 such Borrower or Subsidiary or any other Borrower or 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;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such Liens 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 80% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(e) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisi-tion or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party 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 Loan Party, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06; and

(h) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (1) Accounts, other than those permitted under clause (a) of the definition of Permitted Encumbrances and clause (a) above and (2) Inventory, other than those permitted under clauses (a) and (b) of the definition of Permitted Encumbrances and clause (a) above.

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it 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 otherwise Dispose of all or substantially all of its assets, or all or substantially all of the stock 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 shall have occurred and be continuing (i) with respect to an acquisition of assets or Equity Interests of another Person in connection with a Permitted Acquisition, any Person may merge into a Borrower in a transaction in which the surviving entity is a Borrower, (ii) any Person may merge into any Subsidiary in a transaction in which the surviving entity is a Subsidiary and, if any party to such merger is a Loan Party, such surviving entity is a Loan Party or becomes a Loan Party concurrently with such merger and (iii) any Subsidiary may liquidate or dissolve if the Borrower which owns such Subsidiary determines in good faith that such liquidation or dissolution is in the best interests of such Borrower and is not materially disadvantageous to the Lenders; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will consummate a Division as the Dividing Person, without the prior written consent of Administrative Agent. Without limiting the foregoing, if any Loan Party that is a limited liability company consummates a Division (with or without the prior consent of Administrative Agent as required above), each Division Successor shall be required to comply with the obligations set forth in Section 5.14 and the other further assurances obligations set forth in the Loan Documents and become a Loan Party under this Agreement and the other Loan Documents.

(c) No Loan Party will, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date hereof and businesses reasonably related thereto.

(d) No Loan Party will, nor will it permit any Subsidiary to, change its fiscal year from the basis in effect on the Effective Date.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) Permitted Investments, subject to control agreements in favor of the Administrative Agent for the benefit of the Secured Parties or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Secured Parties;

(b) investments in existence on the date hereof and described in Schedule 6.04;

(c) investments by the Borrowers and their Subsidiaries in Equity Interests in their respective Subsidiaries, provided that (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement (provided that the foregoing shall not be applicable to Equity Interests of a Foreign Subsidiary) and (ii) the aggregate amount of investments by Loan Parties in Subsidiaries that are not Loan Parties (together with outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such investment, the Loan Parties would fail to comply with clause (ii) of the above proviso, such investment shall be permitted under this Section 6.04(c) if the Payment Condition is satisfied with respect thereto;

(d) loans or advances made by any Loan Party to any Subsidiary and made by any Subsidiary to a Loan Party or any other Subsidiary, provided that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the Security Agreement and (ii) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such loan or advance, the Loan Parties would fail to comply with clause (ii) of the above proviso, such loan or advance shall be permitted under this Section 6.04(d) if the Payment Condition is satisfied with respect thereto;

(e) Guarantees constituting Indebtedness permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d)) shall not exceed $1,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs); provided, further, if after giving effect to such guarantee, the Loan Parties would fail to comply with the above proviso, such guarantee shall be permitted under this Section 6.04(e) if the Payment Condition is satisfied with respect thereto;

(f) loans or advances made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of $50,000 in the aggregate at any one time outstanding;

(g) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) investments of any Person existing at the time such Person becomes a Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(j) investments received in connection with Dispositions permitted by Section 6.05;

(k) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances"; and

(l) Permitted Acquisitions.

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, Dispose of any asset (other than real property), including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

(a) Dispositions of (i) Inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business;

(b) Dispositions of assets to any Borrower or any Subsidiary, provided that any such Dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;

(c) Dispositions of Accounts in connection with the compromise, settlement or collection thereof;

(d) Dispositions of Permitted Investments and other investments permitted by Section 6.04 (other than other than Equity Interests in a Subsidiary);

(e) Sale and Leaseback Transactions permitted by Section 6.06;

(f) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and

(g) Dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets Disposed of in reliance upon this paragraph (g) shall not exceed $1,000,000 during any fiscal year of the Company;

provided that all Dispositions permitted hereby (other than those permitted by paragraphs (b) and (f) above) shall be made for fair value and for at least 75% cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property (other than real property) used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), except for any such sale of any fixed or capital assets by any Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after such Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed 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 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Borrowers may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, (iii) the Borrowers may make Restricted Payments, not exceeding $500,000 during any fiscal year of the Company, pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrowers and their Subsidiaries and (iv) the Borrowers may make other Restricted Payments subject to the satisfaction of the Payment Condition with respect to any such Restricted Payment.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment of Indebtedness created under the Loan Documents;

(ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;

(iii) refinancings of Indebtedness to the extent permitted by Section 6.01; and

(iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05.

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Loan Parties not involving any other Affiliate, (c) any investment permitted by Sections 6.04(c) or 6.04(d), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04, (g) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of such Borrower or Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrowers or their Subsidiaries in the ordinary course of business and (h) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by a Borrower's board of directors.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary 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 Loan Party 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 of its Equity Interests or to make or repay loans or advances to any Borrower or any other Subsidiary or to Guarantee Indebtedness of any Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (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 that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, to the extent any such amendment, modification or waiver would be adverse to the Lenders or (c) the Plateplus Purchase Agreement, the Transition Services Agreement, or any related agreements.

SECTION 6.12. Financial Covenants.

(a) Fixed Charge Coverage Ratio. The Borrowers will not permit the Fixed Charge Coverage Ratio, as of the last day of any calendar month ending during a Covenant Testing Period, to be less than 1.10 to 1.00 for the trailing twelve month period then ending.

ARTICLE VII

Events of Default.

If any of the following events ("Events of Default") shall occur:

(a) the Borrowers 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) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure continues unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof 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 other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially 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(a), 5.03(a) (with respect to a Loan Party's existence) or 5.08 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article), or any other Loan Document, and such failure shall continue unremedied for a period of (i) 5 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.03, 5.04, 5.06, 5.10, 5.11 or 5.13 of this Agreement or (ii) 30 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement or any other Loan Document;

(f) [Reserved];

(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 to the extent such sale or transfer is permitted by Section 6.05;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or 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 Loan Party or Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or 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 Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar offi-cial for such Loan Party or Subsidiary or for a substan-tial part of its assets, (iv) file an answer admit-ting 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 fore-going;

(j) any Loan Party or Subsidiary shall become unable, admit in writing its inability, or publicly declare its intention not to, or fail generally to pay its debts as they become due;

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of $3,000,000 shall be rendered against any Loan Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (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 Loan Party or Subsidiary to enforce any such judgment; or (ii) any Loan Party or Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, 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) the occurrence of any "Event of Default", as defined in the Security Agreement.

(o) the Loan Guaranty 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 the Loan Guaranty, or any Loan Guarantor shall fail to comply in any material respect with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08;

(p) except as permitted by the terms of any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral 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 Collateral Document;

(r) any material provision of any 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 that evidences its 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

(s) any Loan Party is criminally indicted or convicted under any law that may reasonably be expected to have a Material Adverse Effect;

then, and in every such event (other than an event with respect to the Borrowers described in clause (h) or (i) of this Article), 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 Borrower Representative, take any or all of the following actions, at the same or different times: (i) terminate the Commitments whereupon the Commitments shall terminate immediately, (ii) declare the Loans then out-standing to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrowers accrued hereunder and under any other Loan Document, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j) hereof; and in the case of any event with respect to the Borrowers described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrowers accrued hereunder and under any other Loan Documents, shall automatically become due and payable, in each case without present-ment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII

The Administrative Agent.

SECTION 8.01. Authorization and Action.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower, any other Loan Party, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(d) The Administrative Agent may perform any 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 of their respective duties and exercise their respective rights and powers 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 pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub agent 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-agent.

(e) No Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement 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 any Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(iii) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(iv) 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 proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party 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, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrowers' right to consent pursuant to and subject to the conditions set forth in this Article, no Borrower nor any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

SECTION 8.02. Administrative Agent's Reliance, Limitation of Liability, Etc.'

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of 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 to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower Representative, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower Representative, a Lender or the Issuing Bank. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 8.03. Posting of Communications.

(a) The Borrowers agree that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent
from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Bank and each Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Bank and each Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, Issuing Bank and each Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04. The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent 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 or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Bank.

SECTION 8.05. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Bank and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, (i) the Administrative Agent may appoint one of its Affiliates as a successor Administrative Agent and (ii) if the Administrative Agent has not appointed one of its Affiliates as a successor Administrative Agent within 10 days of such resignation pursuant to clause (i) above, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, (other than if the Administrative Agent appoints one of its Affiliates as a successor Administrative Agent pursuant to clause (i) above), such appointment shall be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

SECTION 8.06. Acknowledgements of Lenders and Issuing Bank.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and informa-tion (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to a Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

SECTION 8.07. Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate as determined by Administrative Agent in its sole discretion to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(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 or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.08. Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (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, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, 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 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

SECTION 8.09. 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, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent, any Arranger, or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.10. Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous.

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case 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 facsimile, as follows:

(i) if to any Loan Party, to the Borrower Representative at:

Friedman Industries, Incorporated
1121 Judson Road Suite 124,
Longview, TX
Attention: Alex LaRue
Facsimile No: 903 758 2265

(ii) if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
2200 Ross Avenue, 9th Floor
Dallas, TX 75201
Attention: Timothy J. Whitefoot
Facsimile No: 214 965 4731

(iii) if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to any Borrower, any Loan Party, the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or 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. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the 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 Bank 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 Loan Party 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 effec-tive 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 Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase) and subject to Section 2.14(c), (d) and (e) and Section 9.02(e) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (B) 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 payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (B)), (C) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (D) change Section 2.09(c) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (E) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of the Required Revolving Lenders, (F) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (G) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (H) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.06 without the prior written consent of the Administrative Agent and the Issuing Banks. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the Payment in Full of all Secured Obligations, and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of by a Loan Party in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any certificate of such Loan Party certifying that the sale or disposition is made in compliance with the terms of this Agreement, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of $1,000,000 during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Limitation of Liability; Indemnity; Etc. (a) Expenses. The Loan Parties shall, jointly and severally, pay all (i) 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 and distribution (including, without limitation, via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provi-sions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, 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. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

(A) Subject to the terms of Section 5.12, appraisals and insurance reviews;

(B) Subject to the terms of Section 5.06, field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;

(C) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;

(D) Taxes, fees and other charges for (1) lien and title searches and title insurance and (2) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(E) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(F) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) Limitation of Liability. To the extent permitted by applicable law (i) neither any Borrower nor any Loan Party shall assert, and each Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve any Borrower or any Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent, each Arranger, the 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 Liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee (but excluding Taxes, which shall be governed exclusively by Section 2.17, and Excluded Taxes), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder 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 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 a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, or (iv) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and 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 Liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. WITHOUT LIMITATION OF THE FOREGOING, IT IS THE INTENTION OF EACH LOAN PARTY AND EACH LOAN PARTY AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNITEE WITH RESPECT TO LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR), WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNITEE. This Section 9.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by any Loan Party under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, each Issuing Bank and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent-Related Person") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; provided, further, that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the Payment in Full of the Secured Obligations. (e) Payments. All amounts due under this Section 9.03 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 the Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may 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 any 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 the 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 Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)(i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative 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;

(B) the Administrative Agent; and

(C) the Issuing Bank.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the 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 each of the Borrower Representative (such consent not to be unreasonably withheld or delayed) and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other 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 terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than 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.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to clause (c), such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business or (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obliga-tions 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 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary 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 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 Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, 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, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(d), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than a Loan Party or a Subsidiary or other Affiliate of a Loan Party in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and/or 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. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. 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(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under this Agreement) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) 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 instru-ments 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, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstand-ing and unpaid or any Letter of Credit is outstanding and so long as the 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 Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. (a) 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 (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of the Issuing Bank 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.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each Loan Party 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, the Borrowers and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or their respective Affiliates shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the Issuing Bank or such Affiliate shall notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral or the consummation or administration of the transactions contemplated hereby or thereby shall be construed in accordance with and governed by the law of the State of New York.

(c) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or New York state court sitting in New York, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, 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 (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its proper-ties in the courts of any jurisdiction.

(d) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or here-after have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (c) 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.

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

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY 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 AGREE-MENT 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 Bank 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 Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (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 under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative (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, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrowers, or (i) on a confidential basis to (1) any rating agency in connection with rating any Borrower or its Subsidiaries or the credit facilities provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein.

For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers 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.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13. Several Obligations; Nonreliance; 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 (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15. Disclosure. Each Loan Party, each Lender and the Issuing Bank 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 Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17. 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 appli-cable 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 Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. Marketing Consent.

The Borrowers hereby authorize JPMCB and its affiliates (collectively, the "JPMCB Parties"), at their respective sole expense, and without any prior approval by the Borrowers, to include any Borrower's name and logo in advertising, marketing, tombstones, case studies and training materials, and to give such other publicity to this Agreement as the JPMCB Parties may from time to time determine in their sole discretion. The foregoing authorization shall remain in effect unless and until the Borrower Representative notifies JPMCB in writing that such authorization is revoked.

SECTION 9.19. 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 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:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.20. No Fiduciary Duty, Etc.. (a) Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, Tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto.

(b) Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

SECTION 9.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.22. Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks and the Lenders for the Secured Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender or any other Person. Each Borrower's liability for the Secured Obligations shall not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank and each Lender have been paid in full and all of the Secured Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower's joint and several liability hereunder with respect to the Secured Obligations shall, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Secured Obligations or of any other document evidencing all or any part of the Secured Obligations, (ii) the absence of any attempt to collect any of the Secured Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the amendment, modification, waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Secured Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (iv) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Secured Obligations or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Secured Obligations, (vi) any increase in the amount of the Secured Obligations beyond any limits imposed herein or in the amount of any interest, fees or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (vii) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all of Loan Parties to collect and recover all or any part of the Secured Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Secured Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Secured Obligations.

SECTION 9.23. Renewal, Extension or Rearrangement. This Agreement amends and restates in its entirety the Existing Credit Agreement. This Agreement and the other Loan Documents govern the present relationship among the Loan Parties, Administrative Agent, the Lenders and the other Persons a signatory hereto. This Agreement, however, is in no way intended, nor shall it be construed, to affect, replace, impair or extinguish the creation, attachment, perfection or priority of the security interests in, and other Liens on, the Collateral, which security interests and other Liens each of the Loan Parties, by this Agreement, acknowledges, reaffirms and confirms to Administrative Agent and the Lenders. The Loan Parties agree that any outstanding commitment under the Existing Credit Agreement to make advances or otherwise extend credit or credit support to any Loan Party and each other obligation under the Existing Credit Agreement of any Person (other than a Loan Party) which is a party to the Existing Credit Agreement are hereby terminated.

ARTICLE X

Loan Guaranty.

SECTION 10.01. Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank or any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. Termination. Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under clause (o) of Article VII hereof as a result of any such notice of termination.

SECTION 10.09. Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

SECTION 10.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11. Contribution.

(d) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(e) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(f) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(g) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(h) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 10.12. Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 10.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE XI

The Borrower Representative.

SECTION 11.01. Appointment; Nature of Relationship. Friedman Industries, Incorporated is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Accounts, at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount shall not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

SECTION 11.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 11.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 11.04. Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default or Event of Default hereunder referring to this Agreement describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

SECTION 11.05. Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

SECTION 11.06. Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

SECTION 11.07. Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

BORROWER:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By: _____
Name: Alex LaRue
Title: Chief Financial Officer

JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent, Issuing Bank and Swingline Lender

By: _____
Name: Timothy Whitefoot
Title: Authorized Officer

COMMITMENT SCHEDULE

Lender	Revolving Commitment
JPMorgan Chase Bank, N.A.	$**150,000,000**
Total	**$150,000,000**

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*][1]]

3. Borrowers: _____

4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: The Amended and Restated Credit Agreement dated as of May 19, 2021 among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower, the other Loan Parties party thereto, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents parties thereto

6. Assigned Interest:

[1] *Select as applicable.*

EXHIBIT A

Facility Assigned[2]	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans[3]
	$	$	%
	$	$	%
	$	$	%

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other 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.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

[2] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment," etc.)
[3] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[Consented to and][4] Accepted:

JPMORGAN CHASE BANK, N.A., as
[Administrative Agent, Issuing Bank and Swingline Lender]

By_____
Title:

[Consented to:][5]

[NAME OF RELEVANT PARTY]

By_____
Title:

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[4] To be added only if the consent of the Administrative Agent, Issuing Bank and/or Swingline Lender, as applicable, is required by the terms of the Credit Agreement.

[5] To be added only if the consent of the Borrowers and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

EXHIBIT A

ANNEX 1
ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or to charge interest at the rate set forth therein from time to time, or (v) the performance or observance by any Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of this type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT A

EXHIBIT B
BORROWING BASE CERTIFICATE

COMPLIANCE CERTIFICATE

To: The Lenders parties to the
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement dated as of , ___ (as amended, modified, renewed or extended from time to time, the "Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (collectively, the "Borrowers"), the other Loan Parties, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, ON ITS BEHALF AND ON BEHALF OF THE BORROWERS, THAT:

1. I am the duly elected _____ of the Borrower Representative;

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Company and its Subsidiaries during the accounting period covered by the attached financial statements [**for quarterly or monthly financial statements add:** and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrowers and their consolidated Subsidiaries on a consolidated basis in accordance with GAAP consis-tently applied, subject to normal year-end audit adjustments and the absence of footnotes];

3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (i) the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement;

4. I hereby certify that no Loan Party has changed (i) its name, (ii) its chief executive office, (iii) principal place of business, (iv) the type of entity it is or (v) its state of incorporation or organization without having given the Administrative Agent the notice required by Section 4.15 of the Security Agreement; and

5. Schedule I attached hereto sets forth financial data and computations evidencing the Borrowers' compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct;

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the (i) nature of the condition or event, the period during which it has existed and the action which the Borrowers have taken, are taking, or propose to take with respect to each such condition or event or (i) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

The foregoing certifications, together with the computations set forth in Schedule I and Schedule II hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this day __ of _____, _____.

_____

_____, as
Borrower Representative

By: _____
Name: _____
Title: _____

EXHIBIT C

SCHEDULE I

Compliance as of _____, ____ with
Provisions of ___ and ____ of the Agreement

[Schedule I must include detailed calculation tables for all components of the financial covenant calculations.]

EXHIBIT C

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of _____, ____, 20__, is entered into between _____, a _____ (the "New Subsidiary") and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the "Administrative Agent") under that certain Amended and Restated Credit Agreement dated as of May 19, 2021 (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and the Administrative Agent for the Lenders. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a [Borrower][Loan Party] under the Credit Agreement and a "Loan Guarantor" for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Loan Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, (b) all of the covenants set forth in Articles V and VI of the Credit Agreement and (c) all of the guaranty obligations set forth in Article X of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Sections 10.10 and 10.13 of the Credit Agreement, hereby guarantees, jointly and severally with the other Loan Guarantors, to the Administrative Agent and the Lenders, as provided in Article X of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other Loan Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

_____
_____
_____

4. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name: _____
Title: _____

Acknowledged and accepted:

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

By: _____
Name: _____
Title: _____

EXHIBIT D

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:
Date: _____, __, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN, IRS Form W-8BEN-E or Form W-8IMY (or successor form), as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by a withholding statement together with an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

EXHIBIT E-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of May 19, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Friedman Industries, Incorporated and each other Person party thereto from time to time as a borrower (the "Borrowers"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, __, 20[ ]

Exhibit 10.8

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and among

FRIEDMAN INDUSTRIES, INCORPORATED

PLATEPLUS INC.

and

THE STOCKHOLDER OF PLATEPLUS INC.

dated as of

April 26, 2022

TABLE OF CONTENTS

Article I Definitions		1
Article II Purchase and Sale		12
Section 2.01	Purchase and Sale of Assets	12
Section 2.02	Excluded Assets	14
Section 2.03	Assumed Liabilities	14
Section 2.04	Excluded Liabilities	15
Section 2.05	Purchase Price	17
Section 2.06	Purchase Price Adjustment.	17
Section 2.07	Allocation of Purchase Price	19
Section 2.08	Withholding Tax	20
Section 2.09	Third Party Consents	20
Article III Closing		20
Section 3.01	Closing	20
Section 3.02	Closing Deliverables.	21
Article IV Representations and warranties of seller		23
Section 4.01	Organization and Qualification of Seller	23
Section 4.02	Authority of Seller	23
Section 4.03	No Conflicts; Consents	24
Section 4.04	Financial Statements	24
Section 4.05	Reserved	24
Section 4.06	Absence of Certain Changes, Events and Conditions	24
Section 4.07	Material Contracts.	25
Section 4.08	Title to Purchased Assets	26
Section 4.09	Condition and Sufficiency of Assets	27
Section 4.10	Real Property.	27
Section 4.11	Intellectual Property.	30
Section 4.12	Inventory	32
Section 4.13	Reserved	32
Section 4.14	Customers and Suppliers.	33
Section 4.15	Legal Proceedings; Governmental Orders.	33
Section 4.16	Compliance With Laws; Permits.	33

Section 4.17	Environmental Matters.	34
Section 4.18	Employee Benefit Matters.	35
Section 4.19	Employment Matters.	36
Section 4.20	Taxes	37
Section 4.21	Brokers	38
Section 4.22	Investment Intention	38
Section 4.23	No Additional Representations or Warranties. Except as set forth in this Agreement, none of Seller, any of its Affiliates, including any other Seller Party, or any of their respective Representatives has made, or is making, any representation or warranty, express or implied, regarding the Business, the Purchased Assets, the Assumed Liabilities, or the results of operations, Liabilities, or prospects of the Business, and Seller hereby disclaims any such other representations and warranties, including any representations or warranties with respect to (a) the probable success or profitability of the Business after the Closing, (b) any projections, forecasts, or forward-looking statements provided or made to Buyer, its Affiliates, or their respective Representatives, or (c) any memoranda, charts, summaries, schedules, or other information about the Business, the Purchased Assets, or the Assumed Liabilities provided to Buyer, its Affiliates, or their respective Representatives.	38
Article V Representations and Warranties of Buyer		39
Section 5.01	Organization of Buyer	39
Section 5.02	Authority of Buyer	39
Section 5.03	No Conflicts; Consents	39
Section 5.04	Brokers	39
Section 5.05	Legal Proceedings	39
Section 5.06	Capitalization; Buyer Stock. The authorized capital stock of Buyer consists of 10,000,000 shares of Buyer Stock and 1,000,000 shares of Cumulative Convertible Preferred Stock, $1.00 par value per share. At the close of business on April 25, 2022, 6,856,009 shares of Buyer Stock were issued and outstanding and no shares of Cumulative Convertible Preferred Stock were issued and outstanding. From April 25, 2022 to the date of this Agreement, there have been no issuances by Buyer of shares of Buyer Stock or other equity interests in Buyer. All of the issued and outstanding equity interests in Buyer have been duly authorized and validly issued in accordance with Buyer's governing documents and are fully paid (to the extent required under Buyer's governing documents) and nonassessable and have not been issued in violation of any preemptive rights, rights of first refusal or other similar rights of any Person. Buyer owns, directly or indirectly, all of the outstanding equity interests in Buyer's Subsidiaries. The Buyer Stock issued pursuant to this Agreement will be, when issued, duly authorized and validly issued in accordance with the governing documents of Buyer and will be fully paid and nonassessable and will not be issued in violation of any preemptive rights, rights of first refusal or other similar rights of any Person.	40

Section 5.07	SEC Documents; Buyer Financial Statements; Compliance.	40
Section 5.08	Funds Sufficient. At Closing, Subject to closing of the Financing, Buyer will have sufficient and readily available funds to consummate the Closing hereunder.	41
Section 5.09	No Additional Representations or Warranties. Except as set forth in this Article V, none of Buyer, any of its Affiliates, or any of their respective Representatives has made, or is making, any representation or warranty, express or implied, regarding the Business, the Purchased Assets, the Assumed Liabilities, or the results of operations, Liabilities, or prospects of the Business, and Buyer hereby disclaims any such other representations and warranties, including any representations or warranties with respect to (a) merchantability or fitness for any particular use or purpose, (b) the probable success or profitability of the Business after the Closing, (c) any projections, forecasts, or forward-looking statements provided or made to Buyer, its Affiliates, or their respective Representatives, or (d) any memoranda, charts, summaries, schedules, or other information about the Business, the Purchased Assets, or the Assumed Liabilities provided to Buyer, its Affiliates, or their respective Representatives.	41
Article VI Covenants		41
Section 6.01	Access and Investigation.	41
Section 6.02	Operation of the Businesses of the Acquired Companies.	43
Section 6.03	Employees and Employee Benefits.	45
Section 6.04	Confidentiality	47
Section 6.05	Non-Competition; Non-Solicitation.	47
Section 6.06	Governmental Approvals and Consents.	49
Section 6.07	Books and Records.	50
Section 6.08	Public Announcements	50
Section 6.09	Bulk Sales Laws	50
Section 6.10	Receivables	51
Section 6.11	Tax Matters	51
Section 6.13	Damage or Destruction Prior to Closing; Condemnation.	53
Section 6.14	Further Assurances	55
Section 6.15	Notification	55
Section 6.16	Exclusivity	55
Section 6.17	Financing Cooperation.	56
Section 6.18	Negotiation and Approval of the State of Title to Real Property.	57

Section 6.19	Lock-Up Provisions. Seller hereby agrees not to, during the period commencing from the Closing and ending on the six month anniversary of the Closing (the "Lock-Up Period"): (a) lend, offer, pledge, hypothecate, encumber, assign, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Buyer Stock, (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Buyer Stock, or (c) publicly disclose the intention to do any of the foregoing, whether any such transaction described in clauses (a) or (b) above is to be settled by delivery of Buyer Stock or other securities, in cash or otherwise (any of the foregoing described in clauses (a), (b), or (c), a "Prohibited Transfer"). Notwithstanding the foregoing, "Prohibited Transfer" shall not include (i) transfers of Buyer Stock to Seller's Affiliates, (ii) transfers of Buyer Stock by virtue of the laws of the jurisdiction of Seller's organization and in accordance with Seller's organizational documents upon dissolution of Seller, (iii) transfers of Buyer Stock as a gift or gifts, (iv) transfers of Buyer Stock in the event of Buyer's completion of a liquidation, merger, amalgamation, share exchange, reorganization or other similar transaction which results in the equityholders of Buyer having the right to exchange their equity interests of Buyer for cash, securities or other property or (v) the execution of any trading plan providing for the sale of Buyer Stock after the end of the Lock-Up Period which meets the requirements of Rule 10b5-1(c) under the Exchange Act; provided, that in the case of clauses (i), (ii) and (iii), that any transferee thereof agrees in writing to be bound by the terms of this Section 6.19. Seller further agrees to execute such agreements as may be reasonably requested by Buyer that are necessary to give effect to the foregoing provisions. If any Prohibited Transfer is made or attempted contrary to the provisions of this Agreement, such purported Prohibited Transfer shall be null and void ab initio, and Buyer shall refuse to recognize any such purported transferee of the Buyer Stock as one of its equity holders for any purpose. In order to enforce this Section 6.19, Buyer may impose stop-transfer instructions with respect to the Buyer Stock of Seller until the end of the Lock-Up Period.	59
Section 6.20	Inventory. Within two (2) Business Days prior to Closing, Seller shall conduct a physical inventory of the inventory included in the Purchased Assets in the presence of Representatives of Buyer.	59
Article VII Conditions to Closing		60
Section 7.01	Conditions to Each Party's Obligations	60
Section 7.02	Additional Conditions to Obligations of Buyer	60
Section 7.03	Additional Conditions to Obligations of Seller	61
Section 7.04	Frustration of Closing Conditions	61
Article VIII Termination		61
Section 8.01	Termination	61
Section 8.02	Effect of Termination	62
Article IX Indemnification		62
Section 9.01	Survival	62
Section 9.02	Indemnification By Seller	63
Section 9.03	Indemnification By Buyer	63

Section 9.04	Certain Limitations	64
Section 9.05	Limitations on Environmental Indemnification	65
Section 9.06	Indemnification Procedures	66
Section 9.07	Payments	67
Section 9.08	Tax Treatment of Indemnification Payments	67
Section 9.09	Effect of Investigation	68
Section 9.10	Exclusive Remedies	68
Article X Miscellaneous		68
Section 10.01	Expenses	68
Section 10.02	Notices	68
Section 10.03	Interpretation	69
Section 10.04	Headings	69
Section 10.05	Severability	70
Section 10.06	Entire Agreement	70
Section 10.07	Seller Disclosure Schedules	70
Section 10.08	Successors and Assigns	70
Section 10.09	No Third-party Beneficiaries	70
Section 10.10	Amendment and Modification; Waiver	70
Section 10.11	Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.	71
Section 10.12	Specific Performance	72
Section 10.13	Counterparts	72

Exhibits:

Exhibit A – Bill of Sale
Exhibit B – Assignment and Assumption Agreement
Exhibit C – Third Party Consents
Exhibit D – Transition Services Agreement
Exhibit E – Allocation Methodology
Exhibit F – Working Capital Calculation
Exhibit G – Reserved
Exhibit H – Inventory Valuation Principles

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of April 26, 2022, is entered into by and among (i) Friedman Industries, Incorporated, a Texas corporation ("Buyer"), (ii) Plateplus Inc., a Delaware corporation ("Seller"), and (iii) the sole stockholder of Seller (the "Stockholder", and collectively with Seller, the "Seller Parties"). Buyer and each of Seller Parties may be referred to herein individually as a "Party" and collectively as the "Parties". Capitalized terms used in this Agreement have the meaning specified in Article I.

RECITALS

WHEREAS, Seller is engaged in the business of processing, sourcing, supplying, selling and distributing hot-rolled coil, sheet and plate steel and related products and providing related services (the "Business"); and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, certain specified assets and certain specified liabilities of the Business as operated at Seller's facilities in East Chicago, Indiana and Granite City, Illinois (collectively, the "Acquired Facilities"), subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth 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

The following terms have the meanings specified or referred to in this Article I:

"Acquired Facilities" has the meaning set forth in the Recitals.

"Acquisition Proposal" has the meaning set forth in Section 6.16.

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, examination, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

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

"Agreed Accounting Principles" has the meaning set forth in Section 2.06(a)(i).

"Agreement" has the meaning set forth in the preamble.

"Allocation Methodology" has the meaning set forth in Section 2.07.

"Allocation Schedule" has the meaning set forth in Section 2.07.

"Alternative Financing" has the meaning set forth in Section 6.17(b).

"Ancillary Documents" means the Bill of Sale, the Assignment and Assumption Agreement, the Real Property Deeds, the Transition Services Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

"Assigned Contracts" has the meaning set forth in Section 2.01(c).

"Assignment and Assumption Agreement" has the meaning set forth in Section 3.02(a)(ii).

"Assumed Liabilities" has the meaning set forth in Section 2.03.

"Basket" has the meaning set forth in Section 9.04(a).

"Benefit Plan" has the meaning set forth in Section 4.18(a).

"Bill of Sale" has the meaning set forth in Section 3.02(a)(i).

"Books and Records" has the meaning set forth in Section 2.01(l).

"Business" has the meaning set forth in the recitals.

"Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in Houston, Texas are authorized or required by Law to be closed for business.

"Business IT Systems" means all Software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) in the conduct of the Business.

"Buyer" has the meaning set forth in the preamble.

"Buyer Financial Statements" has the meaning set forth in Section 5.07(b).

"Buyer Fundamental Representations" means the representations and warranties set forth in Section 5.01 (Organization of Buyer), Section 5.02 (Authority of Buyer), Section 5.04 (Brokers) and Section 5.06 (Capitalization; Buyer Stock).

"Buyer Indemnitees" has the meaning set forth in Section 9.02.

"Buyer Savings Plan" has the meaning set forth in Section 6.03(g).

"Buyer SEC Documents" has the meaning set forth in Section 5.07(a).

"Buyer Stock" means the common stock of Buyer, par value $0.01.

"Cap" has the meaning set forth in Section 9.04(a).

"Cash Purchase Price" has the meaning set forth in Section 2.05(a).

"Closing" has the meaning set forth in Section 3.01.

"Closing Date" has the meaning set forth in Section 3.01.

"Closing Working Capital" means: zero minus Current Liabilities of Seller, determined as of the Closing Date, in each case calculated in accordance with the Agreed Accounting Principles.

"Closing Working Capital Statement" has the meaning set forth in Section 2.06(b)(i).

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" means that certain Mutual Confidentiality Agreement, dated as of September 4, 2020, between Buyer and Seller.

"Contracts" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"Current Liabilities" means the accounts payable of the Business conducted at or by the Acquired Facilities included in the line items set forth on Exhibit F, in each case only to the extent assumed pursuant to the terms of this Agreement.

"De Minimis Amount" has the meaning set forth in Section 9.04(a).

"Direct Claim" has the meaning set forth in Section 9.06(c).

"Disclosure Schedules" means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

"Disputed Amounts" has the meaning set forth in Section 2.06(c)(iii).

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

"Employees" has the meaning set forth in Section 4.19(a).

"Encumbrance" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"Environmental Attributes" means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of the Acquired Facilities as of: (a) the date of this Agreement; and (b) future years for which allocations have been established and are in effect as of the date of this Agreement.

"Environmental Claim" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"Environmental Law" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, human exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following to the extent applicable (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and (to the extent it addresses Hazardous Materials) the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

"Environmental Matters" has the meaning set forth in Section 9.05.

"Environmental Notice" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"Environmental Permit" means any Permit required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

"ERISA Affiliate" means each employer or other Person (whether or not incorporated) that, together with Seller or any of its Affiliates, as of any date during the six-year period immediately preceding the Closing Date, was or is required to be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

"Estimated Closing Balance Sheet" has the meaning set forth in **Error! Reference source not found.**.

"Estimated Closing Working Capital" has the meaning set forth in **Error! Reference source not found.**.

"Excluded Assets" has the meaning set forth in Section 2.02.

"Excluded Contracts" has the meaning set forth in Section 2.02(a).

"Excluded Environmental Liabilities" has the meaning set forth in Section 2.04(j).

"Excluded Liabilities" has the meaning set forth in Section 2.04.

"Excluded Tax Liabilities" has the meaning set forth in Section 2.04(b).

"Existing Surveys" has the meaning set forth in Section 4.10(e).

"Existing Title Policies" has the meaning set forth in Section 4.10(a)(i).

"Financial Statements" has the meaning set forth in Section 4.04.

"Financing" has the meaning set forth in Section 6.17(a).

"GAAP" means United States generally accepted accounting principles in effect from time to time.

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Materials" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is regulated by or which forms the basis of Liabilities pursuant to Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"IDEM" has the meaning set forth in Section 9.05(c).

"Improvements" has the meaning set forth in Section 4.10(d).

"Indemnified Party" has the meaning set forth in Section 9.04(f).

"Indemnifying Party" has the meaning set forth in Section 9.04(f).

"Independent Accountant" has the meaning set forth in Section 2.06(c)(iii).

"Intellectual Property" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) industrial designs, issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("Patents"); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing ("Trademarks"); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing ("Copyrights"); (d) internet domain names and social media account or user names (including "handles"), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein ("Trade Secrets"); (f) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof ("Software"); (g) rights of publicity; and (h) all other intellectual or industrial property and proprietary rights.

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

"Intellectual Property Assets" means all Intellectual Property that is owned by Seller and exclusively or primarily used or held for use in the conduct of the Business as currently conducted or proposed to be conducted, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Seller with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof/accruing on or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

"Intellectual Property Registrations" means all Intellectual Property Assets that are subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

"Inventory" has the meaning set forth in Section 2.01(b).

"Inventory Facilities" means Seller's facilities located in Houston, Texas, and Loudon, Tennessee.

"Inventory Valuation Principles" means the principles set forth on Exhibit H attached hereto.

"IRS" means the Internal Revenue Service.

"Issued Buyer Stock" has the meaning set forth in Section 2.05(b).

"Knowledge" means (a) in the case Buyer, the knowledge that the following individuals have after making due inquiry: Mike Taylor and Alex LaRue, and (b) in the case of Seller, the knowledge that the following individuals have after making due inquiry: Akito Nakamura, Kota Ikeuchi or Rick Dougherty.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"Leased Real Property" has the meaning set forth in Section 4.10(b).

"Leases" has the meaning set forth in Section 4.10(b).

"Liabilities" means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

"Licensed Intellectual Property" means all Intellectual Property not owned by Seller but in which Seller holds any rights or interests granted by other Persons, including any of Seller's Affiliates, that is exclusively or primarily used or held for use in the conduct of the Business as currently conducted or proposed to be conducted.

"Lock-Up Period" has the meaning set forth in Section 6.19.

"Losses" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, Taxes, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided*, that "Losses" shall not include consequential or punitive damages except to the extent actually awarded to a Governmental Authority or other third party.

"Material Adverse Effect" means any event, occurrence, fact, condition, change or effect that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis; *provided*, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition, change or effect, directly or indirectly, arising out of or attributable to: (i) general business, economic or political conditions; (ii) conditions generally affecting the industries (or segments) in which the Business operates; (iii) any changes in financial, credit or securities markets in general in the United States (or in any other country in the world); (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) earthquakes, hurricanes, tornadoes, floods, or other natural disasters, weather conditions, epidemics, pandemics or disease outbreak (excluding COVID-19); (vi) any failure by the Business to meet budgets, plans, projections, or forecasts (whether internal or otherwise) for any period (it being understood that the underlying cause of the failure to meet such budgets, plans, projections, or forecasts may be taken into account in determining whether a Material Adverse Effect has occurred to the extent not otherwise excluded by this definition); (vii) any action required or permitted by this Agreement, except pursuant to Section 4.03 and Section 6.06; (viii) any changes in applicable Laws or accounting rules, including GAAP; or (ix) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided*, *further*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (v) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Business compared to other participants in the industries in which the Business operates.

"Material Contracts" has the meaning set forth in Section 4.07(a).

"Material Customers" has the meaning set forth in Section 4.14(a).

"Material Suppliers" has the meaning set forth in Section 4.14(b).

"New Exception" has the meaning set forth in Section 6.18(c).

"New Surveys" has the meaning set forth in Section 6.18(b).

"Open Source License" means any license that is approved by the Open Source Initiative and listed at http://www.opensource.org/licenses or the Free Software Foundation and listed at https://www.gnu.org/licenses/license-list.en.html, and any similar license for "free," "publicly available" or "open source" software, including the Affero General Public License, Server Side Public License (SSPL), GNU General Public License, the Lesser GNU General Public License, the Apache License, the BSD License, Mozilla Public License (MPL), the MIT License, the Open Software License (OSL), or any other similar licenses and arrangements that require disclosure of source code or require derivative works based on such licensed Software to be made publicly available under the same license.

"Ordinary Course of Business" means the ordinary course of business of Seller consistent with past practice in the operation of the business of Seller during calendar year 2021; *provided*, that any violations of Law or of contractual rights of third parties will not be considered the ordinary course of business.

"Outside Date" has the meaning set forth in Section 8.01(b).

"Owned Real Property" has the meaning set forth in Section 4.10(a).

"Paid Time Off" means the Transferred Employees' accrued vacation, sick, holiday or other paid time off.

"Party" and "Parties" have the meanings set forth in the preamble.

"Permits" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"Permitted Encumbrances" has the meaning set forth in Section 4.08.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Post-Closing Adjustment" shall mean the adjustment to the Purchase Price to be made pursuant to Section 2.06(b)(ii).

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning on or before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"Prohibited Transfer" has the meaning set forth in Section 6.19.

"Property Taxes" has the meaning set forth in Section 6.11(b).

"Purchase Price" has the meaning set forth in Section 2.05.

"Purchased Assets" has the meaning set forth in Section 2.01.

"RCG" has the meaning set forth in Section 9.05(c).

"Real Property Deeds" has the meaning set forth in Section 3.02(iii).

"Real Property Permits" has the meaning set forth in Section 4.10(g).

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata).

"Representative" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"Resolution Period" has the meaning set forth in Section 2.06(c)(ii).

"Restricted Entities" has the meaning set forth in Section 6.05(a).

"Restricted Period" has the meaning set forth in Section 6.05(a).

"Restricted Products" has the meaning set forth in Section 6.05(a).

"Review Period" has the meaning set forth in Section 2.06(c)(i).

"Seller" has the meaning set forth in the preamble.

"Seller Fundamental Representation" means the representations and warranties set forth in Section 4.01 (Organization and Qualification of Seller), Section 4.02 (Authority of Seller), Section 4.08 (Title to Purchased Assets), Section 4.20 (Taxes) and Section 4.21 (Brokers).

"Seller Indemnifying Parties" has the meaning set forth in Section 9.02.

"Seller Indemnitees" has the meaning set forth in Section 9.03.

"Seller Parties" has the meanings set forth in the preamble.

"Seller's Savings Plan" has the meaning set forth in Section 4.18(b).

"Statement of Objections" has the meaning set forth in Section 2.06(c)(ii).

"Stockholder" has the meaning set forth in the preamble.

"Straddle Period" has the meaning set forth in Section 6.11(b).

"Subsidiary" means, with respect to any Person, any other Person (a) fifty percent (50%) or more of the voting stock (or any other form of voting or controlling equity interest in the case of a Person that is not a corporation) of which is beneficially owned by such Person directly or indirectly through one or more other Persons or (b) for whom such Person acts as general partner or otherwise controls the board of directors or other governing body.

"Survey Certificates" has the meaning set forth in Section 6.18(b).

"Tangible Personal Property" has the meaning set forth in Section 2.01(g).

"Tax Return" means any return, declaration, report, form, notice, election, filing, claim for refund, information return, statement or other document (whether in written, electronic or other form) relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Taxes" means all federal, state, local, and non-U.S. taxes and other charges, fees, duties (including customs duty), levies or assessments (however denominated) that are imposed, collected or assessed by a Governmental Authority, including, but not limited to, any income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, escheat, abandoned or unclaimed property, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"Third Party Claim" has the meaning set forth in Section 9.06(a).

"Title Commitment(s)" means a written commitment by the Title Company for issuance to Buyer (or such Affiliate of Buyer as Buyer shall designate) for the issuance of a 2021 ALTA OWNER'S POLICY, in the case of Owned Real Property, as such commitments may from time to time be amended in each case together with best available copies of all documents constituting exceptions associated with items appearing in Schedule B-II of such commitments.

"Title Company" means Chicago Title Insurance Company or Fidelity National Title Insurance Company.

"Title Endorsements Requested by Buyer" means access, zoning, comprehensive, non-imputation, contiguity endorsements and any other endorsement requested by Buyer in connection with Buyer's review of title and survey.

"Title Objection Letter" has the meaning set forth in Section 6.18(c).

"Title Objection Period" has the meaning set forth in Section 6.18(c).

"Title Policy" has the meaning set forth in Section 3.02(a)(iv).

"Transferred Employee" has the meaning set forth in Section 6.03(a).

"Transfer Taxes" has the meaning set forth in Section 6.11(a).

"Transition Services Agreement" means that certain Transition Services Agreement by and between Buyer and Seller, in substantially the form attached hereto as Exhibit D.

"TSA Employees" has the meaning set forth in Section 6.03(a)(ii).

"Undisputed Amounts" has the meaning set forth in Section 2.06(c)(iii).

"Union" has the meaning set forth in Section 4.19(b).

"WARN Act" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

ARTICLE II
PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), whether now existing or hereafter acquired (other than the Excluded Assets), which (i) primarily relate to, or (ii) are used or held for use in connection with, the operation of the Business at or by the Acquired Facilities (collectively, the "Purchased Assets"), including, without limitation, the following:

(a) Reserved;

(b) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories located at or used primarily in the operations of the Acquired Facilities or the Inventory Facilities, including that listed on Section 2.01(b) of the Disclosure Schedules (as may be updated by Seller prior to Closing solely to reflect changes in the Ordinary Course of Business after the date of this Agreement) ("Inventory");

(c) all Contracts, including Intellectual Property Agreements, purchase orders for metal inventory and sales orders for products set forth on Section 2.01(c) of the Disclosure Schedules (as may be updated by Seller prior to Closing solely to reflect such new Contracts, agreements, purchase orders or sales orders as are entered into, amended or terminated in the Ordinary Course of Business after the date of this Agreement) (the "Assigned Contracts");

(d) all customer lists, customer history, and customer files;

(e) all know how, trade secrets and other Intellectual Property Assets primarily related to or used exclusively or primarily in connection with the Acquired Facilities or the Inventory Facilities;

(f) fee simple title in and to all Owned Real Property listed on Section 2.01(f) of the Disclosure Schedules, and improvements thereon, together with all of Seller's right, title and interest in and to any and all appurtenances, strips or gores, roads, easements, streets, alleys, drainage facilities and rights-of-way bounding the Owned Real Property; all utility capacity, utilities, water rights, oil, gas and mineral rights, all licenses, Permits, entitlements, consents and bonds, all rights of ingress and egress, and any and all other rights and benefits attributable to the Owned Real Property and improvements thereon;

(g) all furniture; fixtures; equipment; machinery; tools; vehicles; office equipment; supplies; computers; telephones; compressors; engines; electrical systems, fixtures and equipment; plumbing fixtures, systems and equipment; heating and air conditioning fixtures, systems and equipment; maintenance equipment; security and fire alarms; replacement parts; building materials and other tangible personal property of every kind and character located at the Acquired Facilities, including that listed on Section 2.01(g) of the Disclosure Schedules (the "Tangible Personal Property");

(h) all leases (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith) listed on Section 2.01(h) of the Disclosure Schedules;

(i) all Permits, including Environmental Permits, which are held by Seller and required for the conduct of the Business as currently conducted at the Acquired Facilities, including, without limitation, those listed on Section 4.16(b) and Section 4.17(b) of the Disclosure Schedules, as well as all building permits and other permits or approvals heretofore granted by any Governmental Authority with respect to the construction and operation of the Owned Real Property and improvements thereon, and all bonds, warranties, licenses and permits relating to the construction, ownership, use, operation and occupancy of the Owned Real Property and/or the Leased Real Property, in each case to the extent transferable to Buyer;

(j) certain prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes), in each case set forth on Section 2.01(j) of the Disclosure Schedules (as may be updated by Seller prior to Closing solely to reflect changes in the Ordinary Course of Business after the date of this Agreement);

(k) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(l) originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements ("Books and Records"), in each case exclusively or primarily arising from or relating to the Business at the Acquired Facilities, the Purchased Assets or the Assumed Liabilities; *provided*, that Seller will be entitled to retain and use copies of such Books and Records where necessary to comply with any applicable Law or to satisfy Seller's obligations under the Ancillary Documents, including the Transition Services Agreement, in connection with any Action, or in connection with the preparation of tax returns or financial statements or the administration of any Benefit Plans;

(m) all goodwill and the going concern value of the Business at the Acquired Facilities; and

(n) all plans and specifications, site plans, soil and substrata studies, architectural drawings, floor plans and landscape plans relating to the Owned Real Property and/or the Leased Real Property and improvements thereon, as well as any and all construction Contracts, assigned service Contracts.

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets"):

(a) Contracts, including Intellectual Property Agreements and derivative Contracts, that are not Assigned Contracts (the "Excluded Contracts");

(b) all accounts receivable or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing;

(c) the assets, properties and rights primarily related to Seller's operations at its facility in Tulsa, Oklahoma;

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

(e) Owned Real Property, and/or the Leased Real Property, leases, and Tangible Personal Property located at or used in the operations of the Inventory Facilities other than such assets that are expressly included as Purchased Assets in Section 2.01;

(f) all benefit plans and programs of Seller and its Affiliates and assets attributable thereto;

(g) the assets, properties and rights specifically set forth on Section 2.02(g) of the Disclosure Schedules;

(h) all insurance benefits, including rights and proceeds, arising from or relating to the Business;

(i) the rights which accrue or will accrue to Seller under this Agreement and the Ancillary Documents; and

(j) any cash and/or cash equivalents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the "Assumed Liabilities"), and no other Liabilities:

(a) all trade accounts payable of Seller to third parties in connection with the Business at the Acquired Facilities that remain unpaid and are not delinquent as of the Closing Date and that are specifically listed on Section 2.03(a) of the Disclosure Schedules (as may be updated by Seller prior to Closing solely to reflect new accounts payable incurred after the date of this Agreement or payment of previously listed accounts payable);

(b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the Ordinary Course of Business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing Date; and

(c) those Liabilities of Seller set forth on Section 2.03(c) of the Disclosure Schedules.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "Excluded Liabilities"). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

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

(b) any Liability for (i) Taxes of Seller (or any Stockholder or Affiliate of Seller); (ii) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (iii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.11; (iv) Taxes related to the Excluded Assets; or (v) other Taxes of Seller of any kind or description that become a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law (collectively, the "Excluded Tax Liabilities");

(c) any Liabilities related to any derivative Contracts;

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

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

(f) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(g) any recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller;

(h) any Liabilities of Seller arising under or in connection with any benefit plans of Seller or its Affiliates with respect to the Transferred Employees as described in Section 6.03(d);

(i) any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments arising on or before the Closing;

(j) any Environmental Claims or Liabilities under Environmental Laws related to the ownership of the Purchased Assets or the operation of the Business with respect to the Purchased Assets, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing Date (the "Excluded Environmental Liabilities");

(k) any trade accounts payable of Seller (i) to the extent not specifically listed on Section 2.03(a) of the Disclosure Schedules; (ii) which constitute intercompany payables owing to Affiliates of Seller; (iii) which constitute debt, loans or credit facilities to financial institutions; or (iv) which did not arise in the Ordinary Course of Business;

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

(m) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same), except for indemnification of same pursuant to Section 9.03 as Seller Indemnitees;

(n) any Liabilities under the Excluded Contracts;

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

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

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

(r) any claims or Liabilities related to the ownership of the Purchased Assets or the operation of the Business with respect to the Purchased Assets, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing Date that are not expressly Assumed Liabilities;

(s) any Liabilities not primarily related to the Business;

(t) any Liabilities related to the matters disclosed in Section 4.19(c) of the Seller Disclosure Schedules;

(u) any amount due and payable by Seller to Mayer Brown LLP; and

(v) any amount due and payable by Seller to Deloitte.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be the aggregate of Section 2.05(a) and (b) (the "Purchase Price"), plus the assumption of the Assumed Liabilities, in each case as adjusted pursuant to Section 2.06.

(a) $63,817,073.06, in cash, and subject to adjustment pursuant to Section 2.06 (the "Cash Purchase Price"); and

(b) 516,041 shares of Buyer Stock (such number of shares of Buyer Stock, the "Issued Buyer Stock").

Section 2.06 Purchase Price Adjustment.

(a) Closing Adjustment.

(i) No later than three Business Days prior to the Closing Date, Seller will prepare and deliver to Buyer an unaudited balance sheet of Seller prepared on an estimated basis as of the close of business on the Closing Date (the "Estimated Closing Balance Sheet"). The Estimated Closing Balance Sheet will be prepared in accordance with GAAP in a manner consistent with the methods and practices used to prepare the Financial Statements (without giving effect to the transactions contemplated herein) subject to the modifications and limitations set forth on Exhibit F and the valuation of the inventory in accordance with the Inventory Valuation Principles set forth on Exhibit H (collectively, the "Agreed Accounting Principles"). Seller will deliver with the Estimated Closing Balance Sheet (A) a statement setting forth Seller's calculation of the Closing Working Capital based on the Estimated Closing Balance Sheet and reflecting the exclusion of the Excluded Assets and Excluded Liabilities (the "Estimated Closing Working Capital") and (B) a certification of each of Seller's chief executive officer and chief operating officer that the Estimated Closing Balance Sheet was prepared in accordance with the Agreed Accounting Principles.

(b) Post-Closing Adjustment.

(i) Within 90 days after the Closing Date, Buyer shall prepare and deliver to Seller a (A) statement setting forth its calculation of Closing Working Capital, which statement shall be substantially in the form of Exhibit F (the "Closing Working Capital Statement"), and (B) certification of each of Buyer's chief executive officer and chief financial officer that the Closing Working Capital Statement was prepared in accordance with the Agreed Accounting Principles.

(ii) If Closing Working Capital is less than the Estimated Closing Working Capital, Seller will pay Buyer dollar for dollar by the absolute value of the deficiency. If the Closing Working Capital is greater than the Estimated Closing Working Capital, Buyer will pay Seller dollar for dollar by the absolute value of the excess.

(c) Examination and Review.

(i) Examination. After receipt of the Closing Working Capital Statement, Seller shall have 30 days (the "Review Period") to review the Closing Working Capital Statement. During the Review Period, Seller and Seller's Representatives shall have reasonable access to Buyer's work papers as Seller may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below).

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for Seller's disagreement therewith (the "Statement of Objections"). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, (A) only the items and amounts set forth in the Statement of Objections shall be deemed to be in dispute, and the Closing Working Capital Statement shall otherwise be deemed accepted by the Parties and (B) Buyer and Seller shall negotiate in good faith to resolve the items and amounts set forth in the Statement of Objections within 30 days after the delivery of the Statement of Objections (the "Resolution Period"), and, if the same are so resolved within the Resolution Period, then the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding. Buyer and Seller may agree in writing to extend the Resolution Period as necessary.

(iii) Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period (as may be extended pursuant to Section 2.06(c)(ii)), then any amounts remaining in dispute ("Disputed Amounts" and any amounts not so disputed, the "Undisputed Amounts") shall be submitted for resolution to BKD, LLP for resolution, or if that firm is unwilling or unable to serve, Buyer and Seller will engage another mutually agreeable independent accounting firm of recognized national standing, which firm is not the regular auditing firm of Buyer or Seller (or its Affiliates) (the "Independent Accountant"), who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The Parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the Parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as Buyer and Seller shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the Parties hereto.

(vi) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall (A) be due (x) within five Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Seller, as the case may be.

(d) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.06 shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by Law.

Section 2.07 Allocation of Purchase Price. Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all Tax purposes in accordance with the allocation methodology set forth on Exhibit E (the "Allocation Methodology"). Within 90 days following the date that the Post-Closing Adjustment is finalized pursuant to Section 2.06, Buyer shall deliver to Seller an allocation of the Purchase Price and Assumed Liabilities to the Purchased Assets, which allocation shall be prepared in accordance with the Allocation Methodology. If Seller notifies Buyer in writing within fifteen (15) days after receipt of the allocation that Seller objects to one or more items reflected in the allocation, Seller and Buyer shall negotiate in good faith to resolve such dispute; *provided*, that if Seller and Buyer are unable to resolve any dispute within 30 days following Buyer's receipt of the written objection from Seller, such dispute shall be resolved by the Independent Accountant. The Independent Accountant's resolution must be in accordance and consistent with the Allocation Methodology. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. The final allocation of the Purchase Price and Assumed Liabilities as determined by Buyer if Seller does not timely object, as agreed to by Buyer and Seller or as determined by the Independent Accountant, as applicable, shall be referred to as the "Allocation Schedule". Buyer and Seller shall prepare all Tax Returns in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to Section 2.06 herein shall be allocated in a manner consistent with the Allocation Schedule.

Section 2.08 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price and any other amounts payable pursuant to this Agreement all Taxes that Buyer determines in good faith that it is required to deduct and withhold under any provision of applicable Law; *provided*, that Buyer shall provide Seller notice at least two (2) Business Days prior to any withholding and shall cooperate in good faith with Seller in Seller's attempts to reduce or eliminate any such withholding obligation. All such withheld amounts shall be treated as delivered to Seller for all purposes of this Agreement.

Section 2.09 Third Party Consents. To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. Until such consents are obtained and if any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding the foregoing, Seller shall in no event be required to expend money, commence, defend or participate in any litigation, or offer or grant any accommodation (financial or otherwise) to any third party or to remain secondarily liable with respect to any such Contract or Permit.

ARTICLE III
CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "Closing") shall be effective as of midnight, Central Standard Time, on April 30, 2022 or, if the conditions to Closing have not been satisfied by April 29, 2022, such time, on the date that is two (2) Business Days after the date on which each of the conditions set forth in Article VII has been satisfied or, if permitted, waived by the Party entitled to the benefits of such condition (other than any conditions that by their nature can only be satisfied on the Closing Date, but subject to the satisfaction of such conditions on the Closing Date or waiver by the Party entitled to the benefits of such condition), to be held effective as of midnight, Central Standard Time, at the offices of Norton Rose Fulbright US LLP in Houston, Texas, via mutual exchange of executed copies of this Agreement and the Ancillary Documents, or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "Closing Date". The Closing may occur by electronic submission and release of signatures, documents and funds.

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer, or to the Title Company, as applicable, the following:

(i) a bill of sale in the form of Exhibit A hereto (the "Bill of Sale") and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement in the form of Exhibit B hereto (the "Assignment and Assumption Agreement") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) for each parcel of Owned Real Property, a recordable special warranty deed or such other appropriate document or instrument of transfer in accordance with local custom, each in form and substance reasonably satisfactory to Buyer and its counsel, duly executed and acknowledged by Seller (collectively, the "Real Property Deeds");

(iv) documents and instruments expressed as "requirements" to be satisfied by Seller in Schedule B-I of each of the Title Commitments as amended for issuance of the policies of title insurance provided for in the Title Commitments, to wit, (A) a fee owner's title insurance policy issued to Buyer (or such Affiliates of Buyer as Buyer may designate), with respect to each parcel of Owned Real Property, in form and substance satisfactory to Buyer and Buyer's lenders, together with endorsements requested by Buyer, and (B) a leasehold title insurance policy issued to Buyer (or such Affiliates of Buyer as Buyer may designate) each in an amount reasonably determined by Buyer in form and substance satisfactory to Buyer and Buyer's lenders, together with endorsements reasonably requested by Buyer (each, a "Title Policy" and collectively, the "Title Policies"), including without limitation standard owners' affidavits, a GAP indemnity, and FIRPTA, in form and substance acceptable to the Title Company and any and all other documents the Title Company may reasonably require to extend coverage and provide endorsements;

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

(vi) a certificate of good standing (or its equivalent) for Seller from the secretary of state of the state of Delaware;

(vii) an IRS Form W-9, duly executed and completed by Seller;

(viii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are (A) the names and signatures of the officers of Seller authorized to sign this Agreement, the Ancillary Documents, and the other documents to be delivered hereunder and thereunder, and (B) all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(ix) such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the Owned Real Property;

(x) the third party consents listed on Exhibit C; and

(xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be reasonably requested by Buyer to give effect to this Agreement.

(b) At the Closing, Buyer shall:

(i) pay the Cash Purchase Price, by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer;

(ii) irrevocably instruct its transfer agent to issue the Issued Buyer Stock to Seller (or its designee), which Issued Buyer Stock will be subject to the lockup provisions of Section 6.19;

(iii) deliver the Bill of Sale, duly executed by Buyer;

(iv) deliver the Assignment and Assumption Agreement, duly executed by Buyer;

(v) deliver any documents or agreements required by the Title Company to issue the policies of title insurance with extended coverage and all endorsements in connection therewith in form and substance acceptable to the Title Company;

(vi) deliver such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of Buyer and the authority of the person or persons who are executing the various documents on behalf of Buyer in connection with the Owned Real Property;

(vii) deliver Indiana and Illinois Resale Exemption Certificates, including Illinois Form CRT-61, Certificate of Resale, and Indiana Form ST-105, General Sales Tax Exemption Certificate;

(viii) deliver the Transition Services Agreement, duly executed by Buyer; and

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

(c) At the Closing, Buyer shall deliver to the Title Company:

(i) any documents or agreements required by the Title Company to issue the policies of title insurance with extended coverage and all endorsements in connection therewith in form and substance acceptable to the Title Company; and

(ii) such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of Buyer and the authority of the person or persons who are executing the various documents on behalf of Buyer in connection with the Owned Real Property.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to own, operate or lease the Purchased Assets and to carry on the Business as currently conducted at or on the Acquired Facilities. Seller is duly qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted at or on the Acquired Facilities makes such qualification necessary.

Section 4.02 Authority of Seller. Seller has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any Ancillary Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by each other Party hereto) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms. When each Ancillary Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business as currently conducted at or on the Acquired Facilities or the Purchased Assets; (c) except as set forth on Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Assigned Contract or Permit; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. Except as set forth on Section 4.03 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements. Seller has delivered to Buyer a true and correct copy of the Financial Statements attached to Section 4.04 of the Disclosure Schedules (collectively, the "Financial Statements"). The Financial Statements were derived from the books and records of the Business and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved. Having regard for the purpose for which the Financial Statements were prepared, the Financial Statements fairly present in all material respects the financial condition of (i) the Acquired Facilities, (ii) the Inventory Facilities, (iii) Seller's facility in Tulsa, Oklahoma, (iv) Seller's headquarters in The Woodlands, Texas, and (v) Seller's previously-owned facility in Windsor, Colorado as of the respective dates they were prepared and the results of the operations of the Business as currently conducted at or on such facilities and locations for the periods indicated.

Section 4.05 Reserved.

Section 4.06 Absence of Certain Changes, Events and Conditions. Since December 31, 2021, the Business has been operated in the Ordinary Course of Business and there has not been any:

(a) Material Adverse Effect;

(b) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Financial Statements, except for the sale of Inventory in the Ordinary Course of Business;

(c) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance; or

(d) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit.

Section 4.07 Material Contracts.

(a) The applicable subsections of Section 4.07(a) of the Disclosure Schedules (as may be updated by Seller prior to Closing solely to reflect any Contracts that are signed in the Ordinary Course of Business after the date of this Agreement) lists each of the following Contracts (it being understood that some Contracts may need to be listed in more than one subsection) (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller is a party or by which it is bound in connection with the Business as currently conducted at or on the Acquired Facilities or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Leased Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in Section 4.10(b) of the Disclosure Schedules and all Intellectual Property Agreements set forth in Section 4.11(b) of the Disclosure Schedules, being "Material Contracts"):

(i) all Contracts included in the Purchased Assets;

(ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

(iii) all Contracts that provide for the indemnification of any Person other than as part of an ordinary course commercial Contract;

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

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than 30 days' notice;

(vii) all Contracts with any Governmental Authority;

(viii) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(ix) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

(x) all powers of attorney with respect to the Business or any Purchased Asset;

(xi) all collective bargaining agreements or Contracts with any Union; and

(xii) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section 4.07.

(b) Each Material Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to the Knowledge of Seller, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. To the Knowledge of Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. There are no material disputes pending or, to the Knowledge of Seller, threatened under any Material Contract. Seller has delivered complete and correct copies of each Material Contract that are written Contracts (including all modifications, amendments and supplements thereto and waivers thereunder) to Buyer and has provided complete and accurate written descriptions of all Material Contracts that are oral Contracts.

Section 4.08 Title to Purchased Assets. Seller has good, merchantable and valid title to, or a valid leasehold interest in, all of the Tangible Personal Property. All such Tangible Personal Property (including leasehold interests) is free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):

(a) liens for Taxes (with respect to real estate or otherwise) not yet due and payable;

(b) easements, rights of way, zoning ordinances and other similar encumbrances affecting the Owned Real Property which are not, individually or in the aggregate, material to the Business or the Purchased Assets, which do not prohibit or interfere with the current operation of any Owned Real Property and/or were not otherwise objected to and subject to Seller's agreement to cure during the Title Objection Period;

(c) all matters expressed as exceptions to title as set forth in the Existing Title Policies; or

(d) liens arising under original purchase price conditional sales Contracts and equipment leases with third parties entered into in the Ordinary Course of Business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets.

Section 4.09 Condition and Sufficiency of Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair (reasonable wear and tear excepted), and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. Except as set forth on Section 4.09 of the Disclosure Schedules, the Purchased Assets are sufficient for the conduct of the Business as currently conducted at or on the Acquired Facilities immediately after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted at or on the Acquired Facilities.

Section 4.10 Real Property.

(a) Section 4.10(a) of the Disclosure Schedules sets forth a correct legal description, street address and tax parcel identification number of all real property used in or necessary for the conduct of the Business as currently conducted at the Acquired Facilities in which Seller has an ownership interest (the "Owned Real Property"). Seller has delivered to Buyer accurate and complete copies of (i) the existing title policies with respect to the Owned Real Property (the "Existing Title Policies"), as well as a summary of insurance loss history for 2018, 2019, 2020, 2021 and 2022; (ii) all deeds and other instruments (as recorded) by which Seller acquired its interest in the Owned Real Property; (iii) all documents evidencing Encumbrances upon the Owned Real Property (which, for the avoidance of doubt, Seller will cause to be delivered to Buyer by the Title Company in conjunction with the Title Commitments); (iv) all active service Contracts, vending Contracts, warranties, or other agreements affecting the operation of the Owned Real Property or encumbering the Owned Real Property in any manner, including, without limitation, all agreements, guaranties and Contracts affecting the Owned Real Property, excluding any and all mortgage loan documents; (v) a listing of all utilities servicing the Owned Real Property, together with any utility agreements and copies of bills for the most recent twelve (12) months from each utility; (vi) to the extent that the same exist and are in the possession of Seller, the certificates of occupancy, as well as any permits or licenses for the Owned Real Property; (vii) Owned Real Property incident reports for the most recent twelve (12) month periods; and (viii) all other title reports, surveys and title policies, reasonably available to Seller with respect to the Owned Real Property. There are no outstanding options, rights of first offer or rights of first refusal to purchase any Owned Real Property or any portion thereof or interest therein. Seller has the quality of title to the Owned Real Property expressed in the Existing Title Policies.

(b) Section 4.10(b) of the Disclosure Schedules sets forth each parcel of real property leased by Seller and used in or necessary for the conduct of the Business as currently conducted at the Acquired Facilities (the "Leased Real Property"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "Leases"). Seller has delivered to Buyer a true and complete copy of each Lease, as well as each item set forth in Section 4.10(a)(i)–(viii) hereinabove with regard to the Leased Real Property. Furthermore, with respect to each Lease, Seller represents and warrants to Buyer that:

(i) such Lease is valid, binding, enforceable and in full force and effect, subject to those matters set forth in the Existing Title Policies;

(ii) Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(iii) Seller is not in breach or default under such Lease, and, to the Knowledge of Seller, no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent, if any, due and payable under such Lease;

(iv) Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Leases and to Seller's Knowledge, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(v) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(vi) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(c) Seller has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Owned Real Property or the Leased Real Property, (ii) existing, pending or threatened eminent domain, condemnation proceedings or other governmental taking affecting the Owned Real Property or any part thereof or the Leased Real Property or any part thereof, (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or matters relating to any asserted or alleged violation of any law, rule, regulation, restriction, or order or similar matters which could reasonably be expected to adversely affect the ability to operate the Owned Real Property or the Leased Real Property as currently operated, or (iv) pending or threatened litigation or administrative proceeding affecting Seller or the Owned Real Property or the Leased Real Property. Neither the whole nor any material portion of any the Owned Real Property or the Leased Real Property has been damaged or destroyed by fire or other casualty except as has been fully repaired.

(d) Based solely upon the zoning endorsements contained in the Existing Title Policies, use of the Owned Real Property and the Leased Real Property for the various purposes for which it is presently being used is permitted as of right under applicable urbanization, zoning and other land use Laws and is not subject to "permitted non conforming" use or structure classifications except as expressed in the zoning endorsements that are a part of the Existing Title Policies. All buildings, structures, fixtures and other improvements, including the roof, foundation and floors and the heating, ventilation, air conditioning, mechanical, electrical and other building systems, included in the Owned Real Property or Leased Real Property (collectively, the "Improvements") are in material compliance with all applicable Laws, including those pertaining to health and safety, zoning, building and construction requirements and the disabled.

(e) Except as shown on the surveys attached to Section 4.10(e) of the Disclosure Schedules (the "Existing Surveys"), no part of any Improvement encroaches on, or otherwise conflicts with the property rights of, any real property not included in the Owned Real Property or Leased Real Property, and there are no buildings, structures, fixtures or other improvements primarily situated on adjoining property which encroach on any part of the Owned Real Property or Leased Real Property, or otherwise conflict with the property rights and construction requirements of Seller. Each parcel of Owned Real Property and Leased Real Property (i) abuts on and has direct vehicular access to an improved public road or has access to an improved public road via a permanent, irrevocable, appurtenant easement improved with a road benefiting such parcel of Owned Real Property or Leased Real Property and comprising a part of the Owned Real Property or Leased Real Property, (ii) is supplied with public or quasi-public utilities and other services appropriate for the operation of the Improvement located on such parcel and the operation of Seller's business thereon and (iii) is not located within any flood plain or area subject to wetlands regulation or any similar restriction.

(f) The Improvements are structurally sound, are in good operating condition and repair, ordinary wear and tear excepted, have been during the period of Seller's ownership suitable for the purposes for which they are being used and currently planned to be used by Seller and have been maintained in accordance with normal industry practice. The Owned Real Property and the Leased Real Property constitutes all such property used in or necessary to conduct the Business as currently conducted at or on the Acquired Facilities.

(g) Section 4.10(g) of the Disclosure Schedules sets forth a complete and accurate list of all certificates of occupancy, permits, licenses, franchises, approvals and authorizations (collectively, the "Real Property Permits") of all Governmental Authorities, boards of fire underwriters, associations or any other Person having jurisdiction over the Owned Real Property or Leased Real Property that, to Seller's Knowledge, are required or appropriate to use or occupy the Owned Real Property or Leased Real Property or operate the Business as currently conducted thereon. All Real Property Permits have been issued and are in full force and effect. Seller has delivered to Buyer accurate and complete copies of all Real Property Permits. Seller has received no notice from any Governmental Authority or other Person having jurisdiction over the Owned Real Property or Leased Real Property (i) that the Real Property Permits are insufficient for the aforesaid purposes, or (ii) threatening a suspension, revocation, modification or cancellation of any Real Property Permit. To Seller's Knowledge, no event has occurred or circumstance exists that could reasonably be expected to give rise to the issuance of any such notice or the taking of any such action.

(h) Except as set forth on Section 4.10(h) of the Disclosure Schedules, the Real Property Permits are transferable to Buyer without the consent of the issuing Governmental Authority or Person; no disclosure, filing or other action by Seller is required in connection with such transfer; and Buyer will not be required to assume any additional Liabilities under the Real Property Permits as a result of such transfer.

(i) Based solely upon the tax parcel endorsements contained in the Existing Title Policies, the parcels constituting the Owned Real Property and Leased Real Property are assessed separately from all other adjacent property not constituting the Owned Real Property or Leased Real Property for purposes of real estate Taxes assessed to, or paid by, Seller. There are no Taxes, assessments, fees, charges or similar costs or expenses imposed by any Governmental Authority, association or other Person having jurisdiction over the Owned Real Property or Leased Real Property with respect to any Owned Real Property or Leased Real Property or portion thereof that are delinquent and there is no pending or threatened increase or special assessment or reassessment of any such Taxes, costs or expenses.

(j) The Owned Real Property and the Leased Real Property, taken together, are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to conduct the Business as currently conducted.

Section 4.11 Intellectual Property.

(a) Section 4.11(a) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations owned or purported to be owned by Seller exclusively or primarily used or held for use in the Business, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all material unregistered Trademarks included in the Intellectual Property Assets; and (iii) all material proprietary Software included in the Intellectual Property Assets.

(b) Section 4.11(b)(i) and (ii) as applicable of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements, specifying for each the date, title, and parties thereto: (i) under which Seller is a licensor or otherwise grants to any Person any right or interest relating to any Intellectual Property Asset, except for any non-exclusive licenses or sublicenses granted to independent third parties in the Ordinary Course of Business; (ii) under which Seller is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person except for any Open Source Licenses, “shrink wrap” or “click wrap” licenses and licenses for commercially available off-the-shelf software with a replacement value of $25,000 or less. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement listed in Section 4.11(b) of the of the Disclosure Schedules is valid and binding on Seller in accordance with its terms and is in full force and effect. Neither Seller nor to Seller’s Knowledge any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.

(c) Seller is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted at or by the Acquired Facilities, free and clear of Encumbrances other than Permitted Encumbrances. Except as set forth on Section 4.11(c) of the Disclosure Schedules, the Intellectual Property Assets and Licensed Intellectual Property constitute all of the material Intellectual Property necessary to operate the Business as presently conducted at the Acquired Facilities. Seller has entered into binding, valid and enforceable written Contracts with current and former employees and independent contractors who are or were involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with Seller whereby Seller has obtained either, by operation of Law or by valid assignment or transfer, ownership of all such Intellectual Property. Seller has provided Buyer with true and complete copies of all such Contracts.

(d) Except as set forth on Section 4.11(d) of the Disclosure Schedules, neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, or require the consent of any other Person in respect of, Buyer's right to own or use any Intellectual Property Assets or Licensed Intellectual Property in the conduct of the Business as currently conducted and as proposed to be conducted at or on the Acquired Facilities. Except as set forth on Section 4.11(d) of the Disclosure Schedules, immediately following the Closing, all Intellectual Property Assets will be owned or available for use by Buyer on substantially identical terms and conditions as they were owned or available for use by Seller immediately prior to the Closing.

(e) All of the Intellectual Property Assets are, to Seller's Knowledge, valid and enforceable, and all Intellectual Property Registrations are subsisting and in full force and effect. Seller has taken all commercially reasonable and necessary steps to maintain the Intellectual Property Assets and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets. All required filings and fees related to the Intellectual Property Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) The conduct of the Business as currently and formerly conducted and as proposed to be conducted, including the use of the Intellectual Property Assets and Licensed Intellectual Property in connection therewith, and the products, processes, and services of the Business at the Acquired Facilities in the past three years have not infringed, misappropriated, or otherwise violated and will not infringe, misappropriate, or otherwise violate the Intellectual Property of any Person. To Seller's Knowledge, no Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by Seller in the conduct of the Business at the Acquired Facilities; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Assets; or (iii) by Seller or, to Seller's Knowledge, any other Person alleging any infringement, misappropriation, or other violation by any Person of any Intellectual Property Assets. Seller is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. Seller is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Intellectual Property Assets or Licensed Intellectual Property by Buyer in the conduct of the Business at the Acquired Facilities.

(h) All Business IT Systems are in good working condition and are sufficient for the operation of the Business as currently conducted and as proposed to be conducted at the Closing at the Acquired Facilities. In the past two years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Business IT Systems that has resulted or is reasonably likely to result in material disruption or damage to the Business and that has not been remedied. Seller has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Business IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(i) Seller has complied in all material respects with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Business. In the past two years, Seller has not (i) to Seller's Knowledge, experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning its collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, in each case in connection with the conduct of the Business, and to Seller's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

Section 4.12 Inventory. The Inventory is in good and marketable condition and is usable and saleable in the Ordinary Course of Business. The inventory stated on Section 4.12 of the Disclosure Schedules is consistent with the Inventory Valuation Principles set forth on Exhibit H.

Section 4.13 Reserved.

Section 4.14 Customers and Suppliers.

(a) Section 4.14(a) of the Disclosure Schedules sets forth for the most recent fiscal year and for the prior fiscal year (i) the top 25 customers in terms of revenue of the Business at the Acquired Facilities for goods or services rendered in such fiscal year (collectively, the "Material Customers"); and (ii) the amount of consideration paid by each Material Customer during such period. Seller has not received any written notice, and has no Knowledge, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise materially reduce its relationship with the Business.

(b) Section 4.14(b) of the Disclosure Schedules sets forth for the most recent fiscal year and for the prior fiscal year (i) the top 25 suppliers in terms of amounts paid by the Business at the Acquired Facilities to whom Seller has paid consideration for goods or services rendered in such fiscal year (collectively, the "Material Suppliers"); and (ii) the amount of purchases from each Material Supplier during such period. Seller has not received any written notice, and has no Knowledge, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise materially reduce its relationship with the Business.

Section 4.15 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to the Knowledge of Seller, threatened against or by Seller (i) relating to or, to the Knowledge of Seller, affecting the Business at the Acquired Facilities, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Knowledge of Seller, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 4.15(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or, to the Knowledge of Seller, affecting the Business. Seller is in compliance with the terms of each Governmental Order set forth in Section 4.15(b) of the Disclosure Schedules. To the Knowledge of Seller, no event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 4.16 Compliance With Laws; Permits.

(a) Seller is now complying, in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits required for Seller to conduct the Business at the Acquired Facilities as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 4.16(b) of the Disclosure Schedules lists all current Permits issued to Seller which are related to the conduct of the Business as currently conducted at the Acquired Facilities or the ownership and use of the Purchased Assets, including the names of the Permits. To the Knowledge of Seller, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.16(b) of the Disclosure Schedules.

Section 4.17 Environmental Matters.

Except for those matters that are disclosed in the applicable subsection of Section 4.17 of the Disclosure Schedules:

(a) The operations of Seller with respect to the Business at the Acquired Facilities and the Purchased Assets are currently and for the past four (4) years have been in compliance in all material respects with all Environmental Laws. Seller has not received (i) from any Person, with respect to the Business at the Acquired Facilities or the Purchased Assets, any material Environmental Notice or any material Environmental Claim; or (ii) from any Governmental Authority, with respect to the Business at the Acquired Facilities or the Purchased Assets, any material written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller has obtained and is in compliance in all material respects with all Environmental Permits (each of which is disclosed in Section 4.17(b) of the Disclosure Schedules) necessary for the conduct of the Business at the Acquired Facilities or with respect to the Purchased Assets as currently conducted or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller through the Closing Date in accordance with Environmental Law. Seller has not received any Environmental Notice regarding any pending or threatened material adverse change in the status or terms and conditions of the same.

(c) Neither Seller, nor any of its Affiliates or their Representatives (while working on behalf of Seller or its Affiliates) has directly or indirectly Released Hazardous Materials at, on, to, or from the Owned Real Property or the Leased Real Property, and to Seller's Knowledge no other Person has done so, which would reasonably be expected to result in material Liability of Seller under Environmental Law.

(d) Section 4.17(d) of the Disclosure Schedules contains a complete and accurate list of all active aboveground or active or abandoned underground storage tanks owned or operated by Seller in connection with the Purchased Assets.

(e) Seller has provided or otherwise made available to Buyer any and all material environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, and other similar documents with respect to the conduct of the Business at the Acquired Facilities or Purchased Assets which are in the possession or reasonable control of Seller related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials.

(f) Seller is not aware of any existing condition, event or circumstance concerning the Release of Hazardous Materials that would reasonably be expected, after the Closing Date, to materially prevent, materially impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the Business at the Acquired Facilities or the Purchased Assets as currently carried out at the Acquired Facilities in compliance with Environmental Laws.

(g) Seller owns and controls all Environmental Attributes (a complete and accurate list of which is set forth in Section 4.17(g) of the Disclosure Schedules) and has not entered into any contract or pledge to transfer, lease, license, guarantee, sell, mortgage, pledge or otherwise dispose of or encumber any Environmental Attributes as of the date hereof.

Section 4.18 Employee Benefit Matters.

(a) Section 4.18(a) of the Disclosure Schedules contains a true and complete list of each material "employee benefit plan" as that term is defined in Section 3(3) of ERISA (whether or not such plan is subject to ERISA) and each other benefit agreement, program, plan or arrangement including, without limitation, each bonus plan, incentive compensation plan, retention plan, vacation policy or plan, severance pay plan, or paid time off policy, that is sponsored, maintained, administered or contributed to or required to be contributed to by Seller for the benefit of any employee of the Business who becomes employed by Buyer in connection with the transactions contemplated hereby or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability as a result of the transactions contemplated hereby, contingent or otherwise (each, a "Benefit Plan").

(b) With respect to each Benefit Plan that provides benefits to an employee of the Business who will become employed by Buyer in connection with the transactions contemplated hereby, Seller has made available to Buyer accurate, current and complete copies of each of the following, as applicable: (i) summary plan descriptions, summaries of material modifications, summaries of health plan benefits and coverage, and employee handbooks; and (ii) in the case of Coilplus, Inc. Retirement Plan and Trust, the savings plan of Seller from which rollovers described in Section 6.03(g) may be made ("Seller's Savings Plan"), a copy of the most recent determination, opinion or advisory letter from the IRS.

(c) Neither Seller nor any ERISA Affiliate has unsatisfied liability under Title IV or Section 302 of ERISA or Section 412 of the Code or with respect to any multiemployer plan (as defined in Section 3(37) or Section 4001(a)(3) of ERISA) and to no condition exists that presents a material risk to Buyer of incurring any such liability with respect to any benefit plan of Seller or any ERISA Affiliate.

(d) Neither Seller nor any ERISA Affiliate has engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(e) The Seller's Savings Plan is intended to qualify under Section 401(a) of the Code and is so qualified, and its related trust is tax-exempt under the Code. Seller has received a favorable determination letter or, if such plan is a prototype or volume submitter plan, is entitled to rely on a favorable opinion or advisory letter from the IRS, to the effect that such plan is so qualified and its related trust is tax-exempt under the Code. Any such determination, opinion or advisory letter from the IRS remains in effect and has not been revoked. Nothing has occurred since the date of any such determination that would reasonably be expected to affect adversely such qualification or exemption.

Section 4.19 Employment Matters.

(a) Section 4.19(a) of the Disclosure Schedules contains a list of all persons who are employees, individual independent contractors or individual consultants of the Business operated at or from the Acquired Facilities as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized and such other employees of the Business mutually agreed by Buyer and Seller to be included in the transaction (collectively, the "Employees"), and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; and (v) commission, bonus or other incentive-based compensation provided to each such individual as of the date hereof. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions, bonuses or fees.

(b) Except as set forth in Section 4.19(b) of the Disclosure Schedules, Seller is not, and has not been for the past five fiscal years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "Union"), and there is not, and has not been for the past five (5) fiscal years, any Union representing any employee of Seller at any Acquired Facility, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining at the Acquired Facilities. Except as set forth in Section 4.19(b) of the Disclosure Schedules, there has never been, nor to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller or any employees of the Business at the Acquired Facilities. Seller has no duty to bargain with any Union at the Acquired Facilities.

(c) Seller is and has been in compliance with the terms of the collective bargaining agreements and other Contracts listed on Section 4.19(b) of the Disclosure Schedules and all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, interns, consultants and independent contractors of the Business at the Acquired Facilities, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by Seller as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. All employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Seller is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in Section 4.19(c) of the Disclosure Schedules, there are no Actions against Seller pending, or to Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, or intern of the Business at the Acquired Facilities, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(d) Seller has complied with the WARN Act, and it has no plans to undertake any action prior to Closing that would trigger the WARN Act.

Section 4.20 Taxes. Except as set forth in Section 4.20 of the Disclosure Schedules:

(a) All income, sales and use and other material Tax Returns required to be filed by Seller for any Pre-Closing Tax Period have been timely filed. Such Tax Returns are true, complete and correct in all material respects, and were prepared and filed in compliance with all applicable Laws. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been timely paid.

(b) Seller has collected or withheld and paid or remitted each material Tax required to have been collected or withheld and paid or remitted by Seller, and Seller has complied with all related information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes or Tax Returns of Seller with respect to the Purchased Assets or the Business.

(d) All deficiencies asserted, or assessments made, against Seller as a result of any Tax related audit, examination, inquiry, investigation, litigation or other similar proceeding by any Governmental Authority with respect to the Purchased Assets or the Business have been fully paid or finally settled.

(e) There are no pending or, to Seller's Knowledge, threatened audits, examinations, inquires, investigations, litigation or other similar proceedings by any Governmental Authority relating to the Taxes or Tax Returns of Seller with respect to the Purchased Assets or the Business.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets (other than for current Taxes not yet due and payable).

(g) Seller is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(h) None of the Purchased Assets is (i) subject to any lease, Contract or other arrangement the result of which is that Seller is not treated as the owner of such Purchased Assets for US federal income Tax purposes, (ii) subject to Section 168(g)(1)(A) of the Code, (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code, (iv) tax-exempt use property within the meaning of Section 168(h) of the Code, (v) an interest in a Contract, entity or arrangement that is or should be treated as a partnership for income Tax purposes, or (vi) a Tax sharing, Tax allocation, or Tax indemnity Contract or a similar arrangement.

Section 4.21 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Seller.

Section 4.22 Investment Intention. Seller is acquiring the Issued Buyer Stock for its own account, for investment purposes only, and not with a view to the distribution of such Issued Buyer Stock within the meaning of the U.S. securities Laws. Seller understands that the sale of the Issued Buyer Stock has not been registered under the Securities Act and is subject to further restrictions in Section 6.19, the Issued Buyer Stock cannot be offered or re-sold until such offer and sale is subsequently registered under the Securities Act or an exemption from such registration (such as Rule 144 promulgated under the Securities Act) is available to Seller. Seller is an "accredited investor" as that term is defined in Rule 501(a) promulgated under the Securities Act.

Section 4.23 No Additional Representations or Warranties. Except as set forth in this Agreement, none of Seller, any of its Affiliates, including any other Seller Party, or any of their respective Representatives has made, or is making, any representation or warranty, express or implied, regarding the Business, the Purchased Assets, the Assumed Liabilities, or the results of operations, Liabilities, or prospects of the Business, and Seller hereby disclaims any such other representations and warranties, including any representations or warranties with respect to (a) the probable success or profitability of the Business after the Closing, (b) any projections, forecasts, or forward-looking statements provided or made to Buyer, its Affiliates, or their respective Representatives, or (c) any memoranda, charts, summaries, schedules, or other information about the Business, the Purchased Assets, or the Assumed Liabilities provided to Buyer, its Affiliates, or their respective Representatives.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof.

Section 5.01 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Texas.

Section 5.02 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by each other Party hereto) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Legal Proceedings. There are no Actions pending or, to Buyer's Knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Buyer's Knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 5.06 Capitalization; Buyer Stock. The authorized capital stock of Buyer consists of 10,000,000 shares of Buyer Stock and 1,000,000 shares of Cumulative Convertible Preferred Stock, $1.00 par value per share. At the close of business on April 25, 2022, 6,856,009 shares of Buyer Stock were issued and outstanding and no shares of Cumulative Convertible Preferred Stock were issued and outstanding. From April 25, 2022 to the date of this Agreement, there have been no issuances by Buyer of shares of Buyer Stock or other equity interests in Buyer. All of the issued and outstanding equity interests in Buyer have been duly authorized and validly issued in accordance with Buyer's governing documents and are fully paid (to the extent required under Buyer's governing documents) and nonassessable and have not been issued in violation of any preemptive rights, rights of first refusal or other similar rights of any Person. Buyer owns, directly or indirectly, all of the outstanding equity interests in Buyer's Subsidiaries. The Buyer Stock issued pursuant to this Agreement will be, when issued, duly authorized and validly issued in accordance with the governing documents of Buyer and will be fully paid and nonassessable and will not be issued in violation of any preemptive rights, rights of first refusal or other similar rights of any Person.

Section 5.07 SEC Documents; Buyer Financial Statements; Compliance.

(a) Buyer has filed or furnished all required registration statements, prospectuses, reports, schedules, forms, statements, certifications and other documents (including exhibits and all other information incorporated therein) with the SEC since January 1, 2020 (the "Buyer SEC Documents"). As of their respective dates (or, if amended, as of the date of such amendment), the Buyer SEC Documents complied in all material respects with the requirements of applicable Law and the rules and regulations of the SEC promulgated thereunder applicable to the Buyer SEC Documents, and none of the Buyer SEC Documents when filed (or, if amended, as of the date of such amendment) and at their respective effective times, if applicable, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments received from the SEC with respect to any of the Buyer SEC Documents, and, to the Knowledge of Buyer, none of the Buyer SEC Documents is the subject of any outstanding SEC comment or outstanding SEC investigation.

(b) The consolidated financial statements (including all related notes and schedules) of Buyer included in the Buyer SEC Documents (the "Buyer Financial Statements") were prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by the applicable Law) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of Buyer as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which are not material and to any other adjustments described therein, including the notes thereto).

(c) Buyer has disclosed, based on its most recent evaluation prior to the date hereof, to Buyer's auditors and the audit committee of the board of directors of Buyer (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect Buyer's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of Buyer.

(d) Buyer has complied in all material respects since January 1, 2020, and is now complying in all material respects, with all Laws applicable to Buyer and the conduct of its business as currently conducted.

(e) The shares of Buyer Stock are registered under the Exchange Act and are listed on the New York Stock Exchange, and Buyer has not received any notice of delisting. Other than Buyer Stock, Buyer does not have any securities of any kind registered under the Exchange Act. Buyer has not taken any action designed to, or which to the Knowledge of Buyer is likely to have the effect of, terminating the registration of the Buyer Stock under the Exchange Act. Buyer is in compliance, in all material respects, with the applicable criteria for continued listing, maintenance and any other applicable rules and regulations of the New York Stock Exchange applicable to the Buyer Stock, including all applicable corporate governance rules and regulations thereunder.

Section 5.08 Funds Sufficient. At Closing, Subject to closing of the Financing, Buyer will have sufficient and readily available funds to consummate the Closing hereunder.

Section 5.09 No Additional Representations or Warranties. Except as set forth in this Article V, none of Buyer, any of its Affiliates, or any of their respective Representatives has made, or is making, any representation or warranty, express or implied, regarding the Business, the Purchased Assets, the Assumed Liabilities, or the results of operations, Liabilities, or prospects of the Business, and Buyer hereby disclaims any such other representations and warranties, including any representations or warranties with respect to (a) merchantability or fitness for any particular use or purpose, (b) the probable success or profitability of the Business after the Closing, (c) any projections, forecasts, or forward-looking statements provided or made to Buyer, its Affiliates, or their respective Representatives, or (d) any memoranda, charts, summaries, schedules, or other information about the Business, the Purchased Assets, or the Assumed Liabilities provided to Buyer, its Affiliates, or their respective Representatives.

ARTICLE VI
COVENANTS

Section 6.01 Access and Investigation.

(a) From the date hereof until the Closing, subject to applicable Law and upon reasonable advance notice from Buyer, Seller will allow Buyer and its Representatives reasonable access during normal business hours (unless otherwise agreed by Seller) to, and furnish them with all documents, records, work papers and financial and other information with respect to, all of the properties, assets, personnel, books, Contracts, Governmental Orders, reports and records relating to any Purchased Assets and Assumed Liabilities as Buyer may reasonably request; *provided*, that nothing herein will obligate Seller to take any actions that would unreasonably interrupt the normal course of business of Seller or to violate any Law or the terms of any Contract. From the date hereof until the Closing, Seller furnish Buyer and its Representatives with such monthly financial and operating data within a reasonable period of time as Buyer or any of its Representatives may reasonably request.

(b) Seller agrees that from the date hereof until the Closing, or earlier termination of this Agreement, upon reasonable advance notice from Buyer, Buyer personally or through its Representatives, shall be entitled to enter upon the Owned Real Property and the Leased Real Property and the improvements thereon, to conduct such physical and environmental inspections, independent appraisals, and other tests, examinations and studies of the Owned Real Property and the Leased Real Property, and Owned Real Property and Leased Real Property records, as Buyer desires, including, without limitation, inspections of the Owned Real Property records and the Leased Real Property accompanied, in the case of site visits, by Seller or Seller's agent in each instance (but only upon at least twenty-four (24) hours prior notice for each inspection), during normal business hours, *provided*, that (i) such activities do not unreasonably interfere with the operations of the Owned Real Property or the Leased Real Property; (ii) Buyer shall repair any damage to the Owned Real Property or the Leased Real Property caused by such actions should Buyer not proceed to Closing; (iii) Buyer shall indemnify, defend and save Seller harmless of and from any and all damages caused by Buyer during any site visit; *provided*, *further*, that this indemnity shall not include, and shall specifically exclude, any loss, liability, damage, injury, and claims to the extent arising from (A) the negligence, gross negligence or willful misconduct of Seller or Seller's agents, representatives, contractors, or employees, or (B) the mere discovery by Buyer, or its agents, representatives, contractors or employees, acting within the scope of the investigations permitted hereunder, of the presence of any toxic, hazardous substance or Hazardous Materials (as defined herein) in, on, or under the Owned Real Property and/or the Leased Real Property (exclusive of oil, gas and other minerals situated thereunder); and (iv) Buyer shall not conduct any environmental investigations or testing other than a standard "Phase I" environmental site assessment conducted pursuant to ASTM E1527-13.

(c) For a period of three years following the Closing Date, subject to applicable Law, Seller shall, and shall cause is Affiliates to, furnish Buyer promptly with copies of documents, records, work papers and information with respect to, all of the properties, assets, personnel, books, Contracts, Governmental Orders, reports and records to the extent relating to any Purchased Assets and Assumed Liabilities that are in Seller's or its Affiliates' possession as of the Closing Date; *provided*, that nothing herein will obligate Seller to take any actions that would unreasonably interrupt the normal course of business of Seller or to violate any Law or the terms of any Contract. Buyer shall bear all out-of-pocket costs and expenses reasonably incurred by it in connection with its exercise of the rights under this Section 6.01(c).

(d) Notwithstanding anything to the contrary herein, nothing in this Section 6.01 shall require any Party to provide access to (A) personnel records of any employee of such Person relating to individual performance or evaluation records, medical histories or other information which, in such Person's good-faith opinion, could subject such Person to risk of liability, or (B) information the disclosure of which, in such Person's good-faith opinion, (x) would conflict with confidentiality obligations to which such Person is bound, (y) would reasonably be expected to result in the forfeiture or waiver of any attorney-client privilege or similar privilege (*provided*, that, in the case of the foregoing clauses (x) and (y), such Person shall use commercially reasonable efforts to provide, to the extent possible, access to the relevant information in a manner that would not reasonably be expected to result in a violation of such confidentiality obligations or the forfeiture or waiver of any such attorney-client or similar privilege) or (z) cause significant competitive harm to Seller and the Business, if the transactions contemplated by this Agreement are not consummated. Prior to the Closing, Buyer and Seller shall work together in good faith to coordinate communication efforts with any suppliers to, or customers of, the Business.

(e) Seller shall provide Buyer with all keys, key cards or other entry devices for all locks on the Owned Real Property at or immediately following the Closing.

Section 6.02 Operation of the Businesses of the Acquired Companies.

(a) Affirmative Covenants. From the date hereof until the Closing, except (i) as required by applicable Law or any existing contractual obligations or (ii) as expressly consented to by Buyer in writing, which consent shall not be unreasonably conditioned, withheld or delayed, Seller will, with respect to the Business conducted by or at the Acquired Facilities:

(i) conduct the Business only in the Ordinary Course of Business and use its commercially reasonable efforts to preserve and protect its business organization, employment relationship and relationships with customers, strategic partners, landlords, suppliers and distributors;

(ii) pay its accounts payable, Taxes and other obligations when they become due and payable in the Ordinary Course of Business;

(iii) maintain the Purchased Assets (including the Owned Real Property and the Leased Real Property) in good working order and condition, ordinary wear and tear excepted, in the Ordinary Course of Business, including continuing to conduct maintenance and repairs in the Ordinary Course of Business;

(iv) keep, observe and perform its obligations as tenant under leases associated with the Leased Real Property, not terminate or cause the termination of any lease associated with the Leased Real Property, without the prior written consent of Buyer;

(v) perform all of its obligations under all Contracts to which it is a party, by which it or any of the Purchased Assets is bound, and comply with all Laws, judgments and Governmental Orders applicable to it or the Business or the Purchased Assets;

(vi) continue in full force and effect the certificates of insurance, binders and policies that provide coverage for the Purchased Assets and are in effect as of the date of this Agreement;

(vii) refrain from (A) making or accepting any changes in the amount of remuneration payable to any employee, agent, consultant, independent contractor or independent contractor of Seller, (B) making any staff hiring or reduction, (C) entering into or terminating any employment, agency, consultancy or contractor agreements, or (D) entering into, amending or terminating any collective bargaining agreement or other agreement with a labor union, works council or similar organization;

(viii) refrain from terminating or amending or entering into any Material Contract;

(ix) maintain its books and records consistent with its past custom and practice;

(x) preserve and maintain all of its Permits;

(xi) not enter into any Contract outside of the Ordinary Course of Business, including not committing to any contract terms or pricing not consistent with past practice; and

(xii) reasonably confer with Buyer concerning operational matters of a material nature.

(b) Additional Pre-Closing Covenants. In addition, prior to Closing, Seller shall (i) take all actions reasonably necessary to make Seller's Stratix ERP System and general ledger access available for Buyer's utilization of the same as a Service (as defined in the Transition Services Agreement) as provided in the Transition Services Agreement; (ii) take all actions reasonably necessary to make Seller's EDI capabilities associated with both vendors and customers at the Acquired Facilities available for Buyer's utilization of the same as a Service (as defined in the Transition Services Agreement) as provided in the Transition Services Agreement; (iii) provide Buyer with all inventory and customer information related to the Inventory Facilities so that the Buyer can set up this information in its legacy ERP system prior to Closing; and (iv) assist Buyer with establishing all employees of Seller listed in Section 6.03(a)(i) and Section 6.03(a)(ii) of the Disclosure Schedules in Buyer's payroll system and benefit programs. If this Agreement is terminated in accordance with Section 8.01 hereof, Buyer shall promptly deliver to Seller or destroy all data, materials and other information provided to Buyer pursuant to this Section 6.02(b), whether in the possession or control of Buyer, any of Buyer's Affiliates or Representatives or any other Person (with such destruction certified in writing to Seller by an authorized officer of Buyer supervising such destruction), and Buyer and Buyer's Representatives shall not retain any copies, extracts or other reproductions (in whatever medium) in whole or in part of such data, materials and other information.

(c) Negative Covenants. From the date hereof until the Closing, except (i) as expressly permitted by this Agreement, (ii) as required by applicable Law or (iii) as otherwise expressly consented to by Buyer in writing, which consent shall not be unreasonably conditioned, withheld or delayed, Seller will not take any action, or fail to take any action, as a result of which any of the changes, events or conditions described in Section 4.06 would occur or could reasonably be expected to occur.

Section 6.03 Employees and Employee Benefits.

(a) (i) On the Closing Date, Seller shall terminate all employees set forth on Section 6.03(a)(i) of the Disclosure Schedules. (ii) Upon the end of the Service Period (as defined in the Transition Services Agreement) or such date as may be agreed by Buyer and Seller, Seller shall terminate all employees set forth on Section 6.03(a)(ii) of the Disclosure Schedules (the "TSA Employees"). At Buyer's sole discretion, Buyer may offer employment, on an "at will" basis, to any or all of such employees. Buyer's offer of employment in each case shall be effective as of the Closing with respect to employees set forth on Section 6.03(a)(i) of the Disclosure Schedules and as of the next Business Day after termination with respect to employees set forth on Section 6.03(a)(ii) of the Disclosure Schedules and shall be made in writing as soon as reasonably practicable after the date of this Agreement, and shall provide for (A) an annual base salary (or base hourly wage rate, as applicable) during Buyer's fiscal year ending March 31, 2023, that shall be not less than that provided by Seller to the employee immediately prior to the Closing Date as indicated on Section 4.19(a) of the Disclosure Schedules; (B) an annual incentive compensation opportunity during Buyer's fiscal year ending March 31, 2023, that shall be not less than that provided by Seller to the employee immediately prior to the Closing Date as indicated on Section 4.19(a) of the Disclosure Schedules; and (C) employee benefits under Buyer's benefit plans that are provided to similarly-situated employees of Buyer. Each such employee who accepts Buyer's offer of employment shall become an employee of Buyer (or its designated Affiliate) as of the Closing and shall be referred to herein as a "Transferred Employee." Seller shall bear any and all obligations and liability under the WARN Act. TSA Employees may only be terminated by Seller in accordance with the Transition Services Agreement.

(b) Seller shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation, benefits or other amounts payable or to be provided to any current or former employee, officer, director, independent contractor or consultant of the Business, including the Employees, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date (or on or prior to the date of termination with respect to any TSA Employee) and Seller shall pay all such amounts to all entitled persons on or prior to the Closing Date (or on or prior to the date of termination with respect to any TSA Employee).

(c) Seller shall remain solely responsible for the satisfaction of all claims for benefits provided under any benefit plans of Seller and its Affiliates including all medical, dental, life insurance, health, accident, disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business, including the Employees, or the spouses, dependents or beneficiaries thereof. Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date (or on or prior to the date of termination with respect to any TSA Employee). Seller shall pay, or cause to be paid, all such amounts to the appropriate Persons as and when due.

(d) As soon as administratively feasible after the Closing, but in no event later than five (5) Business Days after the Closing (or no later than five (5) Business Days after the date of termination with respect to any TSA Employee), Seller shall have paid out the Liability as of the Closing Date for all unused Paid Time Off with respect to the Transferred Employees to such Transferred Employees.

(e) For purposes of eligibility and vesting under Buyer's post-Closing benefit plans, and for purposes of accrual of vacation and other paid time off and severance benefits under such Buyer benefit plans, each Transferred Employee shall be credited with his or her years of service with Seller before the Closing to the same extent as such Transferred Employee was entitled, before the Closing, to credit for such service under any similar Seller Benefit Plan; *provided*, that Seller has provided to Buyer prior to the Closing all the information reasonably necessary for Buyer to provide any such credit.

(f) In addition, and without limiting the generality of the foregoing, following the Closing (or following their start date with respect to TSA Employees) (i) each Transferred Employee shall be eligible immediately to participate in the post-Closing benefit plans of Buyer and (ii) Buyer shall cause all waiting periods and preexisting condition limitations under such post-Closing benefit plans to be waived for each such employee and his or her covered dependents.

(g) As soon as practicable after the Closing Date, Buyer shall, for the Transferred Employees, designate one or more Buyer benefit plans that are tax-qualified defined contribution plans for the benefit of the Transferred Employees (the "Buyer Savings Plan"). Buyer shall take all actions necessary to allow the Transferred Employees to make eligible rollover contributions to the Buyer Savings Plan of their account balances, including loans, under the Seller's Savings Plan as soon as practicable following the Closing (or following their start date with respect to TSA Employees) provided such "rollover" is in accordance with the provisions of such plan and applicable Law.

(h) Seller shall continue to provide all health, dental, vision and other applicable insurance coverages to the Transferred Employees through the end of the month in which Closing occurs (or the month of their start date with Buyer with respect to the TSA Employees).

(i) Nothing contained in this Section 6.03 shall be deemed to grant any Transferred Employee any right to continued employment or any other rights under this Agreement or, following the Closing, to limit the ability of Buyer or any of its Affiliates to terminate the employment of any employee (including any Transferred Employee) at any time and for any or no reason. In addition, nothing contained in this Section 6.03, express or implied (i) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement, contract, policy or arrangement, or limit the ability of Buyer or any of its Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement, contract, policy or arrangement at any time assumed, established, sponsored or maintained by any of them or (ii) is intended to confer upon any Person (including Transferred Employees, employees, retirees, or dependents or beneficiaries of employees or retirees) any rights as a third-party beneficiary of this Agreement.

Section 6.04 Confidentiality. From and after the Closing, the Seller Parties shall, and shall cause their Affiliates to, hold, and shall cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business at the Acquired Facilities, except to the extent that the Seller Parties can show that such information (a) is generally available to and known by the public through no fault of the Seller Parties, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by the Seller Parties, any of their Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If the Seller Parties or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, the Seller Parties shall promptly notify Buyer in writing and shall disclose only that portion of such information which the Seller Parties are advised by their counsel in writing is legally required to be disclosed, *provided*, that the Seller Parties shall use commercially reasonable efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Buyer acknowledges that any data or information related to the Excluded Assets shall remain the confidential information of Seller. The Parties acknowledge that, except as modified by the terms of this Agreement, (i) all information and documents provided in connection with the transactions contemplated by this Agreement, and (ii) the terms of this Agreement and the Ancillary Documents, are subject to the terms of the Confidentiality Agreement.

Section 6.05 Non-Competition; Non-Solicitation.

(a) Subject to Section 6.03(h), for a period of five (5) years following the Closing (the "Restricted Period"), Seller Parties shall not, and shall not permit any of their Subsidiaries (collectively, the "Restricted Entities") to, directly or indirectly, own, control or operate any equipment or assets anywhere within the United States that convert Hot Rolled Black or Hot Rolled Pickled & Oiled steel coils into temper passed or stretcher-leveled sheet or plate product that falls within a thickness range of 0.0625" through 1.000" and a width range of 48" through 96" (the "Restricted Products"), nor shall any Restricted Entity employ outside toll processing services to convert material owned by any Restricted Entity into Restricted Products; *provided*, that Restricted Entities shall be permitted to provide Restricted Products to their existing customers in quantities substantially similar to those provided prior to the Closing (including through toll processing services). In the event that a Restricted Entity wishes to provide Restricted Products in truckload quantities to new customers or to existing customers outside of current supply arrangements, the Restricted Entity shall first provide to Buyer the opportunity to provide such Restricted Products to the Restricted Entity at prevailing market rates. In the event that Buyer declines to provide such Restricted Products, the Restricted Entity shall be free to source such Restricted Products from alternate suppliers.

(b) In addition, during the Restricted Period, if a Restricted Entity wishes to obtain the capability to produce Restricted Products at a facility which lies outside a 250-mile radius of (i) any of the Acquired Facilities and (ii) any of Buyer's facilities (such Buyer facilities being located in Hickman, Arkansas; Decatur, Alabama; and Sinton, Texas), the Restricted Entity shall have the right to ask permission from Buyer for a waiver from the provisions of this paragraph. Buyer shall be under no obligation to grant any such waiver.

(c) During the Restricted Period the Restricted Entities shall not cause, induce or encourage any material client, customer, supplier or licensor of the Business at the Acquired Facilities as of the Closing Date, or any other Person who has a material business relationship with the Business at the Acquired Facilities as of the Closing Date, to terminate or modify any such relationship.

(d) Notwithstanding the foregoing, a Seller Party may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Seller Party is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 1% or more of any class of securities of such Person. Notwithstanding anything to the contrary herein, this Section 6.05 shall not apply to any Buyer Stock that Seller or its Affiliates may acquire pursuant to this Agreement. During the Restricted Period, neither Seller nor its Affiliates shall acquire any additional Buyer Stock.

(e) During the Restricted Period, Seller Parties shall not, and shall not permit any of their Affiliates (unless otherwise mutually agreed by Buyer and Seller Parties) to, directly or indirectly, solicit any person who is offered employment by Buyer pursuant to Section 6.03 or, to the extent any such person accepts such offer of employment, encourage any such person to leave such employment, except pursuant to a general solicitation which is not directed specifically to any such person; *provided*, that nothing in this Section 6.05(e) shall prevent the Seller Parties or any of their Affiliates from hiring (i) any employee whose employment has been terminated by Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(f) The Seller Parties acknowledge that a breach or threatened breach of this Section 6.05 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by the Seller Parties of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(g) The Seller Parties acknowledge that the restrictions contained in this Section 6.05 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 6.05 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 6.05 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(h) After the Closing, the Seller Parties shall not operate or conduct any business at the Inventory Facilities except (i) for the benefit of Buyer or (ii) with the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed, solely if the Seller provides prior written request that it has unexpected support issues for its Affiliates which need to be fulfilled at the Inventory Facilities on a limited basis.

Section 6.06 Governmental Approvals and Consents.

(a) Each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each Party shall cooperate fully with the other Parties and their Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller and Buyer shall give all notices to, and use commercially reasonable efforts to obtain all consents from, all third parties that are described in Section 6.06(b) of the Disclosure Schedules, if any.

Section 6.07 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of three years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of three years following the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other Party with access to any books or records (including personnel files) pursuant to this Section 6.07 where such access would (i) violate any Law or Contract, or (ii) in such Person's good-faith opinion, (A) would conflict with confidentiality obligations to which such Person is bound, or (B) would reasonably be expected to result in the forfeiture or waiver of any attorney-client privilege or similar privilege (*provided*, that in the case of the foregoing clauses (A) and (B), such Person shall use commercially reasonable efforts to provide, to the extent possible, access to the relevant information in a manner that would not reasonably be expected to result in a violation of such confidentiality obligations or the forfeiture or waiver of any such attorney-client or similar privilege).

Section 6.08 Public Announcements. Promptly after the execution of this Agreement, the Parties shall issue a mutually agreed press release. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no Party or Affiliate thereof shall make any other public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement.

Section 6.09 Bulk Sales Laws. The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of any Party to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction shall be treated as Excluded Liabilities.

Section 6.10 Receivables. From and after the Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Purchased Asset, Seller or its Affiliate shall remit such funds to Buyer within five Business Days after its receipt thereof. From and after the Closing, if Buyer or its Affiliate receives or collects any funds relating to any Excluded Asset, Buyer or its Affiliate shall remit any such funds to Seller within five Business Days after its receipt thereof.

Section 6.11 Tax Matters.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other similar Taxes, charges and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) ("Transfer Taxes") shall be borne and paid 50/50 by Seller and Buyer when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Transfer Taxes or fees (and Buyer shall cooperate with respect thereto as necessary); *provided*, that Seller shall provide such Tax Return to Buyer at least 5 Business Days prior to filing such Tax Return for Buyer's review and comment. Buyer and Seller shall cooperate in good faith and provide such documents and forms as they are legally entitled to provide to reduce or eliminate any Transfer Taxes. Buyer and Seller agree to treat the purchase and sale of the Tangible Personal Property as an occasional, isolated, casual or similar sale, which is not subject to sales or use Taxes in the applicable jurisdictions, to the extent allowed under applicable Law. Buyer and Seller further agree to treat the purchase and sale of the Inventory as sales for resale, which are exempt from sales or use in the applicable jurisdictions, to the extent allowed under applicable Law.

(b) All ad valorem, real or personal property and similar Taxes, installments or special assessments (including payments in lieu of any such Taxes, installments or special assessments) (collectively, "Property Taxes") with respect to the Purchased Assets that are payable with respect to a taxable period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period") whether imposed or assessed before or after the Closing, shall be prorated between Seller and Buyer as of the end of the Closing Date. The amount of Property Taxes that relate to the portion of such Straddle Period ending on the Closing Date shall be the responsibility of Seller and shall be deemed to be the amount of such Property Taxes for the entire period multiplied by a fraction the numerator of which is the number of calendar days from the beginning of the Straddle Period ending through (and including) the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. If any Property Taxes subject to proration pursuant to this Section 6.11(b) are paid by Buyer, on the one hand, or Seller, on the other hand, the proportionate amount of such Taxes paid shall be paid promptly by (or to) the other upon receipt of written notice of the payment of such Taxes.

(c) With respect to the transactions contemplated by this Agreement, Buyer and Seller shall provide each other with such reasonable cooperation and information as any of them may reasonably require of the others in connection with the filing of any Tax Return, the determination of a liability for Taxes, or the preparation for and defense of any examination, litigation or investigation of any claim for Taxes in each case relating to the Purchased Assets for a Pre-Closing Tax Period or Straddle Period. Cooperation shall include the provision of all relevant Tax Returns, and other documents and records, or portions thereof relating to or necessary in connection with the preparation of Tax Returns or in the defense of a Tax contest related to the Purchased Assets for a Pre-Closing Tax Period or Straddle Period, and making employees reasonably available to explain such information. Notwithstanding anything to the contrary in this Agreement, (i) Buyer shall not have any obligation to provide or furnish to Seller any consolidated, combined, unitary, group or other Tax Return or portion thereof (including any work papers or related documentation) of Buyer or its Affiliates, and (ii) Seller shall not have any obligation to provide or furnish to Buyer any consolidated, combined, unitary, group or other Tax Return or portion thereof (including any work papers or related documentation) of Seller or its Affiliates (excluding Tax Returns related solely to the Purchased Assets or the Business for Pre-Closing Tax Periods).

(d) Buyer agrees to give written notice to Seller of the receipt of any written notice by Buyer or any of its Affiliates that involves the assertion of any claim for Taxes or the commencement of any proceeding or audit with respect to Taxes for which Seller could have an indemnification obligation pursuant to this Agreement. Seller shall be entitled to participate fully in the defense of any such claim and to employ counsel of its choice and at its own cost for such purpose and Buyer or any of its Affiliates shall obtain the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed) before entering into any settlement, compromise or other resolution of any such claim.

(e) Any refunds (or credits for overpayment) of Excluded Tax Liabilities or any refunds of Taxes withheld from payments to Seller made pursuant to this Agreement, including any interest received from a Governmental Authority thereon, with respect to the Business or Purchased Assets that are received by Buyer after Closing that are not otherwise taken into account in the final determination of Closing Working Capital shall be for the account of Seller. Within twenty (20) Business Days of any receipt by Buyer or any of its Affiliates of any such refund (or credit for overpayment), Buyer shall pay over any such refund (or the amount of any such credit), including any interest thereon actually paid by a Governmental Authority, net of all out-of-pocket expenses (including Taxes) incurred by Buyer, to Seller. Seller shall, upon the request of Buyer, repay to Buyer the amount paid over to Seller pursuant to this Section 6.11(e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Buyer is required to repay such refund (or credit) to the Governmental Authority. This Section 6.11(e) shall not be construed to require Buyer to make available its Tax Returns (or any other information relating to its Taxes that it deems confidential) to Seller or any other Person.

. From the date hereof until the Closing, Seller shall:

(a) use commercially reasonable efforts to maintain the Owned Real Property and Leased Real Property and occupancy thereof, in the same condition as exists on the effective date hereof. Seller shall operate the Owned Real Property and the Leased Real Property in the Ordinary Course of Business and continue to perform all customary and ordinary repairs and maintenance;

(b) maintain in effect all insurance policies now maintained on the Owned Real Property and the Leased Real Property, up to and including the Closing Date;

(c) promptly notify Buyer, in writing, upon obtaining knowledge of any material adverse change with respect to the Owned Real Property and the Leased Real Property;

(d) not enter into any written or oral service contract or other agreement with regard to the Owned Real Property or the Leased Real Property that will not be fully performed by Seller on or before the Closing Date, or that will not be terminable by Buyer without liability, penalty or premium upon no greater than thirty (30) days' notice, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed;

(e) promptly advise Buyer, in writing, of any written notices concerning the Owned Real Property and Leased Real Property that Seller receives from any appraisal districts, taxing authorities or any governmental agency having jurisdiction over the Owned Real Property and/or Leased Real Property;

(f) comply with all applicable Law with respect to the Owned Real Property and/or the Leased Real Property, including, without limitation, any such requirements, rules, regulations, notices, or orders issued or imposed after the effective date hereof, and shall provide Buyer with any notices received by Seller with respect thereto; and

(g) not, without first obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed (i) make any material structural alterations or additions to the Owned Real Property and/or Leased Real Property, except as in the Ordinary Course of Business and/or Leased Real Property, or as required for maintenance and repair, (ii) cancel, amend or modify, in a manner materially adverse to the Owned Real Property and/or Leased Real Property, any license or permit held by Seller with respect to the Owned Real Property and/or Leased Real Property or any part thereof which would be binding upon Buyer after the Closing, or (iii) willfully take any action or permit any action to be taken which would invalidate, impair or limit the scope of any warranty. Seller shall maintain in existence all licenses, permits and approvals that are now in existence with respect to, and are required for, the ownership, operation or improvement of the Owned Real Property and/or the Leased Real Property, and are of a continuing nature.

Section 6.13 Damage or Destruction Prior to Closing; Condemnation.

(a) Prior to the Closing, the risk of loss or damage to the Owned Real Property and/or Leased Real Property by fire, earthquake, hurricane or other casualty shall be borne by Seller. If damage, loss or destruction of the Owned Real Property and/or Leased Real Property or any part thereof, by fire, earthquake, hurricane or other casualty occurs prior to the Closing, Seller shall promptly notify Buyer of such damage, loss or destruction.

(b) Seller agrees to maintain in full force and effect, the fire and extended coverage insurance policies now in effect in connection with the Owned Real Property and the Leased Real Property (or substitute policies in equal or greater amounts).

(c) In the event the improvements upon the Owned Real Property and/or Leased Real Property, or any part thereof, or any of the items constituting the Purchased Assets should be damaged by any casualty prior to Closing, and if the cost of repairing such damage, as estimated by Seller's insurance adjuster is:

(i) less than $2,000,000 and neither of the Acquired Facilities will not be able to operate in the Ordinary Course of Business for 30 days or more, then Seller shall assign to Buyer, at Closing, all insurance proceeds payable for such damage or pay all such proceeds to Buyer when received (which obligation shall survive Closing), and Buyer shall receive a credit against the Purchase Price in the amount of (A) any deductible required by Seller's insurance policies and the sale shall be closed without Seller repairing such damage, and (B) all business interruption insurance proceeds that are actually available to Seller and are actually paid to or for account of Seller, notwithstanding the prior occurrence of the Closing and the cancellation of Seller's insurance, and which are attributable to the periods subsequent to the Closing; *provided*, that Seller shall be obligated to make such emergency repairs as are necessary to prevent further damage to the Owned Real Property and/or Leased Real Property or injury to any Person; or

(ii) if said cost is equal to or greater than $2,000,000 or either of the Acquired Facilities will not be able to operate in the Ordinary Course of Business for 30 days or more, then Buyer and Seller shall use commercially reasonable efforts to negotiate in good faith to determine a mutually agreeable resolution regarding the treatment of such casualty. If, after 30 days of such good faith negotiations, Buyer and Seller are unable to determine a mutually agreeable resolution, then Buyer may elect to terminate this Agreement by giving written notice of termination to Seller within fifteen (15) Business Days after such 30 day negotiation period, and if Buyer does not elect to terminate this Agreement, Seller shall assign to Buyer, all insurance proceeds payable for such damage or pay all such proceeds to Buyer when received (which obligation shall survive Closing), and Buyer shall receive a credit against the Purchase Price in the amount of (A) any deductible required by Seller's insurance policies, and (B) all business interruption insurance proceeds that are actually available to Seller and are actually paid to or for account of Seller, notwithstanding the prior occurrence of the Closing and the cancellation of Seller's insurance, and which are attributable to periods subsequent to the Closing; *provided*, that Seller shall be obligated to make such emergency repairs as are necessary to prevent further damage to the Owned Real Property and/or Leased Real Property or injury to any Person thereon and Seller may use insurance proceeds for this limited purpose.

(d) In the event of a taking or written notice of a threatened taking by condemnation or similar proceedings or actions of all of any one of the parcels of Owned Real Property and/or Leased Real Property, or any material portion of any one of the parcels of Owned Real Property and/or Leased Real Property, Seller shall promptly notify Buyer, in writing, and Buyer shall have the option to terminate this Agreement upon written notice to Seller prior to Closing. If Buyer does not exercise its option under the immediately preceding sentence of this Section 6.13(d) to terminate this Agreement, then the Agreement shall remain in full force and effect and Seller shall assign or pay to Buyer at Closing Seller's entire interest in and to any and all condemnation awards or proceeds from any such proceedings or actions in lieu thereof and there shall be no abatement of the Purchase Price, and Seller shall be relieved of its obligation to convey title to the portion of the Owned Real Property and/or Leased Real Property so taken. Seller agrees to consult Buyer in the contesting of any condemnation proceeding concerning the Owned Real Property and/or Leased Real Property during the pendency of this Agreement.

Section 6.14 Further Assurances. Following the Closing, each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

Section 6.15 Notification. From the date hereof until the earlier of the termination of this Agreement and the Closing Date, if after the date of this Agreement either Seller Party has knowledge of any fact or condition that would be a breach of any representation or warranty in this Agreement or cause or reasonably be expected to cause any of the conditions set forth in Article VII to not to be satisfied as of the earlier of the Closing Date or the Outside Date, Seller shall promptly disclose to Buyer such fact or condition. Each Party shall give prompt notice to the others of: (a) any notice or other communication received by such Party from any Governmental Authority in connection with the transactions contemplated by this Agreement, (b) any notice or other communication received by such Party from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, and (c) any Actions or, to such Party's Knowledge, threatened against, relating to or involving or otherwise affecting, any Party or any of their respective Affiliates which relate to the transactions contemplated by this Agreement or would or would reasonably be expected to impair or materially delay the consummation of the transactions contemplated hereby.

Section 6.16 Exclusivity. Prior to the Closing Date, each of the Seller Parties shall not, nor shall they permit any of their Affiliates, officers, directors, managers, employees, financial advisors or other agents or Representatives to, take any action to solicit, initiate, encourage, engage in or continue discussion with, provide any information to or enter into any agreement with, any Person (other than Buyer and its Affiliates and agents) concerning any offer, proposal or indication of interest with respect to the acquisition of any Purchased Assets ("Acquisition Proposal"). In the event any Seller Party becomes aware of, or receives any Acquisition Proposal, such Seller Party shall promptly (and in any event within two Business Days) notify Buyer and provide to Buyer a copy of such Acquisition Proposal or a summary of its terms if it has not been reduced to writing. On the date hereof, the Seller Parties shall terminate access for all Persons other than Buyer and its Affiliates, directors, managers, officers, employees, partners, members, shareholders, agents, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to the data room and instruct all such Persons to return or destroy any confidential information provided to them by or on behalf of the Seller Parties in respect of any Acquisition Proposal.

Section 6.17 Financing Cooperation.

(a) Buyer shall use commercially reasonable efforts to complete, obtain and consummate an agreement with its lenders whereby certain lender parties will commit to lend an amount to Buyer for the purpose of funding the transactions contemplated by this Agreement (the "Financing"). From the date hereof until the earlier of the Closing Date and the termination of this Agreement, the Seller Parties agree to use their commercially reasonable efforts to provide, and cause their respective management, agents and Representatives to use their respective commercially reasonable efforts to promptly provide, such assistance with the Financing as is reasonably requested by Buyer, including: (i) furnishing Buyer with (x) any required financial information (*provided*, that Buyer shall be responsible for preparing any pro forma financial information and any projections, risk factors or other forward-looking statements relating to the Financing) and (y) other information regarding the Business conducted at or by the Acquired Facilities or the Purchased Assets or Assumed Liabilities as is reasonably necessary to satisfy a condition to the initial funding of the Financing or such other financial information customarily provided to lenders in connection with similar financings, (ii) upon reasonable notice, procuring the participation by members of management at reasonable times in a reasonable number of meetings, conference calls and presentations with prospective lenders and investors (and in the preparation of materials in connection therewith), (iii) facilitating (x) the granting of Encumbrances (and perfection thereof) in collateral and (y) the preparation of any definitive financing documents and certificates, as may be necessary to satisfy a condition to the initial funding of the Financing, (iv) furnishing no later than four (4) Business Days prior to the Closing Date all documentation and other information required by any Governmental Authority or financing party under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act of 2001 and the requirements of 31 C.F.R. § 1010.230, to the extent reasonably requested by Buyer at least nine (9) Business Days prior to the Closing Date and (v) using commercially reasonable efforts to cooperate in satisfying the conditions precedent set forth in the definitive document relating to the Financing to the extent satisfaction of such condition requires the cooperation of the Seller Parties; *provided*, that in each case in clauses (a)(i) through (v), that (A) nothing in this Section 6.17 shall require cooperation to the extent that it would conflict with or violate the organizational documents of any Seller Party or applicable Law or any Contract to which any Seller Party is a party as identified to Buyer in writing, (B) in no event shall any Seller Party (or their respective governing bodies) be required to adopt resolutions, consents or other approvals with respect to the agreements, documents and instruments pursuant to which the Financing is obtained, in each case that are effective prior to the consummation of the Financing at the Closing, (C) no Seller Party (or any of their respective directors, officers, employees or Affiliates) shall be required to execute and deliver any financing agreements or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with the Financing, (D) nothing in this Section 6.17 shall obligate any Seller Party to take any actions that would unreasonably interrupt the normal course of business of any Seller Party, (E) nothing in this Section 6.17 shall obligate any Seller Party to take any action that could result in any such Person incurring any liability with respect to the matters relating to the Financing or cause any of their respective directors, officers, employees or Affiliates to incur any personal liability in connection with the Financing.

(b) If any portion of the Financing becomes unavailable on the terms and conditions reasonably acceptable to Buyer, Buyer shall promptly (and, in any event, within two (2) Business Days of obtaining knowledge thereof) notify Seller and shall use its commercially reasonable efforts to obtain alternative financing (an "Alternative Financing") that is sufficient to enable Buyer to consummate the transactions contemplated by this Agreement as promptly as practicable following the occurrence of such event. Buyer shall promptly deliver to Seller correct copies of all commitment letters, exhibits, annexes, schedules, term sheets, and other agreements pursuant to which any such Alternative Financing shall have been committed.

(c) Prior to the Closing, Buyer shall keep Seller reasonably informed with respect to all material developments concerning the Financing, including if for any reason Buyer believes in good faith that it is reasonably likely that it will not be able to obtain all or any portion of the Financing.

Section 6.18 Negotiation and Approval of the State of Title to Real Property.

(a) Not later than ten (10) days following the date of this Agreement, Seller shall deliver to Buyer the Title Commitments, at Seller's sole cost and expense.

(b) Surveys. Buyer has received the Existing Surveys. Seller shall deliver certificates of no change to the Existing Surveys ("Survey Certificates") to the Title Company, and provided that the Title Company shall be prepared to issue the Title Policies, with extended coverage, based on the Existing Surveys plus the Survey Certificates, Seller shall have no further obligation to update the Existing Surveys or obtain new surveys of the Owned Real Property. To the extent the Title Company is unwilling to issue the Title Policies with extended coverage based upon the Existing Surveys plus the Survey Certificates, Seller shall obtain and provide to Buyer, at Seller's expense new surveys ("New Surveys") conforming with the following requirements:

(i) dated within 30 days of the Closing Date;

(ii) prepared by a certified or registered surveyor reasonably acceptable to Buyer and the Title Company and certified to Buyer (or such Affiliates of Buyer as Buyer may designate), the Title Company and Buyer's lenders;

(iii) complying with the current 2021 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys;

(iv) locating all Improvements, Encumbrances (setting forth the recording information of any recorded instruments), setback lines, alleys, streets and road;

(v) showing any encroachments upon or by any Improvements;

(vi) showing all dedicated public street providing access to such Owned Real Property; and

(vii) the municipal address of any Improvements located on such Owned Real Property.

Unless Seller is otherwise required to procure New Surveys, Buyer may, at Buyer's expense, obtain New Surveys. For the avoidance of doubt, if Buyer determines to obtain New Surveys in order to obtain any Title Endorsements Requested by Buyer or because of a requirement of any lender to Buyer, then Buyer shall bear the cost of such New Surveys.

(c) Buyer shall deliver to Seller, in writing, such objections as Buyer may have to anything contained or set forth in the Title Commitment(s), the Existing Surveys or the New Surveys (if Seller is required to procure such New Surveys pursuant to subsection (b) above) (the "Title Objection Letter") within fifteen (15) days of receipt of the last of the Title Commitment(s), the Existing Surveys or the New Surveys (if Seller is required to procure such New Surveys pursuant to subsection (b) above) (the "Title Objection Period"). Any items to which Buyer does not object shall be deemed acceptable to Buyer. Seller may, within five (5) days of Seller's receipt of any Buyer objection, advise Buyer, in writing, which objections (if any) it agrees to cure or cause to be cured prior to Closing, and Seller shall not be obliged to cure or cause to be cured any other objections or exceptions to title except liens of a definite and ascertainable amount arising on account of, or at the sufferance of, Seller's actions. Notwithstanding the preceding, if at any time after the expiration of the Title Objection Period and before Closing, the Existing Surveys or the New Surveys (if Seller is required to procure such New Surveys pursuant to subsection (b) above) or an update to the Title Commitment(s) discloses any additional item which was disclosed after the effective date of the initial Title Commitment, or in the case of the Existing Surveys or the New Surveys (if Seller is entitled to procure such New Surveys), coming into existence after the date of the Existing Surveys or the New Surveys (if Seller is required to procure such New Surveys pursuant to subsection (b) above) (a "New Exception"), and such New Exception was not created by, through, or under Buyer, Buyer shall have a period of five (5) days from the date of Buyer's receipt of such update to review and notify Seller in writing of Buyer's objection to the New Exception, and Seller shall respond to such notification of a New Exception in same manner as specified for the initial Title Objection Letter. Seller shall, in all events, be obligated to cure on or before Closing, all items Seller agrees to cure in Seller's response to Buyer's objections. If Seller fails or refuses to cure any objection which Seller is obligated to cure hereunder, Buyer shall have the right, in addition to all other rights granted herein, to require that all or a portion of the Purchase Price be applied to discharge any such obligations at Closing.

(d) For the avoidance of doubt, the cost of Title Commitments, Title Policies and land surveys shall be borne as follows:

(i) Seller shall bear the cost of procuring the Title Commitments;

(ii) Seller shall bear the cost (and pay at Closing) the premium for the Title Policies including so-called "extended coverage";

(iii) Buyer shall bear the cost of any mortgagee's title insurance policy and the cost of any endorsements to the Title Policies other than extended coverage; and

(iv) Buyer shall bear the cost of any New Survey, unless Seller is obligated to do so pursuant to subsection (b) above.

Section 6.19 Lock-Up Provisions. Seller hereby agrees not to, during the period commencing from the Closing and ending on the six month anniversary of the Closing (the "Lock-Up Period"): (a) lend, offer, pledge, hypothecate, encumber, assign, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Buyer Stock, (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Buyer Stock, or (c) publicly disclose the intention to do any of the foregoing, whether any such transaction described in clauses (a) or (b) above is to be settled by delivery of Buyer Stock or other securities, in cash or otherwise (any of the foregoing described in clauses (a), (b), or (c), a "Prohibited Transfer"). Notwithstanding the foregoing, "Prohibited Transfer" shall not include (i) transfers of Buyer Stock to Seller's Affiliates, (ii) transfers of Buyer Stock by virtue of the laws of the jurisdiction of Seller's organization and in accordance with Seller's organizational documents upon dissolution of Seller, (iii) transfers of Buyer Stock as a gift or gifts, (iv) transfers of Buyer Stock in the event of Buyer's completion of a liquidation, merger, amalgamation, share exchange, reorganization or other similar transaction which results in the equityholders of Buyer having the right to exchange their equity interests of Buyer for cash, securities or other property or (v) the execution of any trading plan providing for the sale of Buyer Stock after the end of the Lock-Up Period which meets the requirements of Rule 10b5-1(c) under the Exchange Act; *provided*, that in the case of clauses (i), (ii) and (iii), that any transferee thereof agrees in writing to be bound by the terms of this Section 6.19. Seller further agrees to execute such agreements as may be reasonably requested by Buyer that are necessary to give effect to the foregoing provisions. If any Prohibited Transfer is made or attempted contrary to the provisions of this Agreement, such purported Prohibited Transfer shall be null and void ab initio, and Buyer shall refuse to recognize any such purported transferee of the Buyer Stock as one of its equity holders for any purpose. In order to enforce this Section 6.19, Buyer may impose stop-transfer instructions with respect to the Buyer Stock of Seller until the end of the Lock-Up Period.

Section 6.20 Inventory. Within two (2) Business Days prior to Closing, Seller shall conduct a physical inventory of the inventory included in the Purchased Assets in the presence of Representatives of Buyer.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.01 Conditions to Each Party's Obligations. The obligations of each Party to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by each of Seller and Buyer) of the following conditions as of the Closing Date:

(a) No Governmental Authority of competent jurisdiction shall have entered or issued any Governmental Order preventing consummation of the transactions contemplated by this Agreement, and no Action shall be pending before any Governmental Authority wherein an unfavorable Governmental Order would (i) prevent consummation of the transactions contemplated by this Agreement or that would reasonably be expected to have an adverse effect on Buyer or the Business conducted at the Acquired Facilities, which is material, (ii) cause the transactions contemplated by this Agreement to be rescinded following the Closing, or (iii) would reasonably be expected to have an adverse effect on Buyer or the Business conducted at the Acquired Facilities, which is material.

Section 7.02 Additional Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Buyer) of the following additional conditions as of the Closing Date:

(a) The representations and warranties of Seller set forth in Article IV (disregarding all qualifications as to material, materiality, Material Adverse Effect or any similar qualifications set forth therein) shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date (except to the extent any such representation or warranty speaks as of the date of this Agreement or any other specific date, in which case such representation or warranty shall be true and correct as of such date).

(b) Seller shall have performed or complied with in all material respects all covenants and agreements required to be performed or complied with by Seller under this Agreement on or prior to the Closing Date.

(c) Since the date of this Agreement, there shall not have occurred any Material Adverse Effect that has not been cured.

(d) Buyer shall have received from Seller each delivery required pursuant to Section 3.02.

(e) Buyer shall have completed the Financing.

(f) Buyer shall have approved the form of the Title Commitments (as the same may have been amended) as expressed in Section 6.18, and the Title Company shall be unconditionally prepared to issue the Title Policies conforming with such approved Title Commitments, subject only to satisfaction of Title Commitment Schedule B-I items that are required of Buyer.

(g) Any negotiation or notice periods under Section 6.13(c)(ii) shall have expired.

Section 7.03 Additional Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Seller) of the following additional conditions as of the Closing Date:

(a) The representations and warranties of Buyer set forth in Article V (disregarding all qualifications as to material, materiality, Material Adverse Effect or any similar qualifications set forth therein) shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date (except to the extent any such representation or warranty speaks as of the date of this Agreement or any other specific date, in which case such representation or warranty shall be true and correct as of such date).

(b) Buyer shall have performed or complied with in all material respects all covenants and agreements required to be performed or complied with by Buyer under this Agreement on or prior to the Closing Date.

(c) Seller shall have received from Buyer each delivery required pursuant to Section 3.02.

Section 7.04 Frustration of Closing Conditions. Neither Party may rely, whether as a basis for not consummating the transactions contemplated by this Agreement or terminating this Agreement or otherwise, on the failure of any condition set forth in this Agreement to be satisfied if such failure was caused by such Party's breach of this Agreement.

ARTICLE VIII
TERMINATION

Section 8.01 Termination. This Agreement may be terminated, and the transactions contemplated by this Agreement may be abandoned, by written notice delivered by the terminating Party to the other Party (other than in the case of Section 8.01(a)) at any time prior to the Closing:

(a) by the mutual written agreement of Seller and Buyer;

(b) by either Seller or Buyer, if the Closing does not occur on or prior to June 30, 2022 (the "Outside Date"); *provided*, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to a Party whose breach of or failure to perform any of its representations, warranties, covenants, or agreements contained in this Agreement has been the cause of or has resulted in the failure of the Closing to occur on or prior to the Outside Date;

(c) by either Seller or Buyer, if any Governmental Authority of competent jurisdiction issues a Governmental Order restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement; *provided*, that the right to terminate this Agreement under this Section 8.01(c) shall not be available to a Party whose failure to perform its covenants or agreements contained in this Agreement has been the cause of or has resulted in the imposition of such Governmental Order or the failure of such Governmental Order to be resisted, resolved, or lifted;

(d) by Buyer, if Seller breaches or fails to perform in any material respect any of its representations, warranties, covenants, or agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 7.01 or Section 7.02 and (ii) (A) if capable of being cured, has not been cured by Seller by the earlier of the Outside Date and the date that is fifteen (15) days after Seller's receipt of written notice from Buyer stating Buyer's intention to terminate this Agreement pursuant to this Section 8.01(d) and the basis for such termination or (B) is incapable of being cured;

(e) by Seller, if Buyer breaches or fails to perform in any material respect any of its representations, warranties, covenants, or agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 7.01 or Section 7.02(f) and (ii) (A) if capable of being cured, has not been cured by Buyer by the earlier of the Outside Date and the date that is fifteen (15) days after Buyer's receipt of written notice from Seller stating Seller's intention to terminate this Agreement pursuant to Section 8.01(e) and the basis for such termination or (B) is incapable of being cured; or

(f) by Buyer, if Seller fails to cure any objections or exceptions to title raised by Buyer that Seller has agreed to cure or is required to cure in accordance with Section 6.18(c).

Section 8.02 Effect of Termination. If this Agreement is terminated pursuant to Section 8.01, this Agreement will immediately become void and have no further force or effect, and neither Party will have any Liability to the other Party; *provided*, that (a) Section 6.08, this Section 8.02, and Article X (except for Section 10.12 (*Specific Performance*)) shall survive termination of this Agreement, and (b) if this Agreement is terminated by a Party because of the breach of this Agreement by another Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE IX
INDEMNIFICATION

Section 9.01 Survival. Subject to the limitations and other provisions of this Agreement, all rights to bring claims for indemnification pursuant to this Article IX for any accuracy or breach of the representations and warranties contained herein, or in any certificate, instrument or other document delivered pursuant to this Agreement shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; *provided*, that all rights to bring claims for indemnification pursuant to this Article IX for any accuracy or breach of Seller Fundamental Representations and Buyer Fundamental Representations shall each survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days; *provided*, *further*, that all rights to bring claims for indemnification pursuant to this Article IX for any inaccuracy or breach of the representations and warranties of the Seller Parties contained in Section 4.17 (*Environmental Matters*) shall survive the Closing and shall remain in full force and effect until the date that is 54 months from the Closing Date. All rights to bring claims for indemnification pursuant to this Article IX for any breach of covenants and agreements of the Parties contained herein that are to be performed on or prior to the Closing shall survive the Closing for a period of 9 months. All rights to bring claims for indemnification pursuant to this Article IX for any breach of covenants and agreements of the Parties contained herein which by their terms require performance following the Closing shall survive the Closing for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved in accordance with this Agreement.

Section 9.02 Indemnification By Seller. Subject to the other terms and conditions of this Article IX, Seller and the Stockholder (collectively, the "Seller Indemnifying Parties") shall jointly and severally indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "Buyer Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Seller Parties contained in this Agreement or in any certificate or instrument delivered by or on behalf of Seller Parties pursuant to this Agreement (excluding the Transition Services Agreement), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller Parties pursuant to this Agreement, the Ancillary Documents (excluding the Transition Services Agreement) or any certificate or instrument delivered by or on behalf of Seller Parties pursuant to this Agreement; or

(c) any Excluded Asset or any Excluded Liability.

Section 9.03 Indemnification By Buyer. Subject to the other terms and conditions of this Article IX, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the "Seller Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement (excluding the Transition Services Agreement), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement, the Ancillary Documents (excluding the Transition Services Agreement) or any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(c) any Assumed Liability.

Section 9.04 Certain Limitations. The indemnification provided for in Section 9.02 and Section 9.03 shall be subject to the following limitations:

(a) No Buyer Indemnitee seeking indemnification pursuant to Section 9.02(a) shall make any claim for, or be entitled to, indemnification from any Seller Indemnifying Party with respect to a matter involving less than $10,000 (the "De Minimis Amount") of Losses arising out of a single occurrence. The Seller Indemnifying Parties shall not be liable to the Buyer Indemnitees for indemnification under Section 9.02(a) until the aggregate amount of all Losses (excluding Losses not exceeding the De Minimis Amount) in respect of indemnification under Section 9.02(a) exceeds $150,000 (the "Basket"), in which event the Seller Indemnifying Parties shall be required to pay for only such Losses exceeding the Basket; *provided*, that such Basket shall not be applicable in respect of indemnification obligations under Section 9.02(a) with respect to or by reason of any inaccuracy in or breach of any of the representations or warranties of the Seller Parties contained in Section 4.17 (*Environmental Matters*). Subject to Section 9.04(c), the aggregate amount of all Losses for which the Seller Indemnifying Parties as a group shall be liable pursuant to Section 9.02(a) shall not exceed $6,958,149.83(the "Cap"), absent fraud or willful misrepresentation. The Cap shall not apply to any inaccuracy in or breach of any of the representations or warranties of the Seller Parties contained in Section 4.17, which shall instead be subject to Section 9.05(b).

(b) No Seller Indemnitee seeking indemnification pursuant to Section 9.03(a) shall make any claim for, or be entitled to indemnification from Buyer with respect to a matter involving less than the De Minimis Amount of Losses arising out of a single occurrence. Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 9.03(a) until the aggregate amount of all Losses (excluding Losses not exceeding the De Minimis Amount) in respect of indemnification under Section 9.03(a) exceeds the Basket, in which event Buyer shall be required to pay for only such Losses exceeding the Basket. Subject to Section 9.04(c), the aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 9.03(a) shall not exceed an amount equal to the Cap, absent fraud or willful misrepresentation.

(c) Notwithstanding the foregoing, the limitations set forth in Section 9.04(a)–(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of any (x) inaccuracy in or breach of any (i) Seller Fundamental Representations, or (ii) Buyer Fundamental Representations, or (y) Excluded Tax Liability. Notwithstanding the foregoing, no Party shall be liable pursuant to Article IX in excess of the Purchase Price and in no event shall Seller be entitled to receive under this Agreement any amount in excess of the Purchase Price.

(d) Nothing in this Agreement will limit the Liability of a Party to another Party for fraud or willful misrepresentation, nor will the survival periods set out in Section 9.01 apply to any claims arising therefrom.

(e) For purposes of (i) determining whether or not a representation or warranty made by the Seller Parties or Buyer in this Agreement or in any of the Ancillary Documents (excluding the Transition Services Agreement) has been breached or whether an inaccuracy exists with respect thereto or whether or any nonfulfillment, nonperformance or other breach of any covenant exists, and (ii) calculating the amount of Losses resulting therefrom to which an Indemnified Party is entitled, the terms "Material Adverse Effect," "material," "materiality" and similar qualifiers, modifiers or limitations shall be disregarded.

(f) The Party making a claim under this Article IX is referred to as the "Indemnified Party", and the Party against whom such claims are asserted under this Article IX is referred to as the "Indemnifying Party".

(g) If after Closing, an Indemnified Party obtains Knowledge of any claim as to which indemnification may be sought by such Indemnified Party pursuant to this Article IX, such Indemnified Party shall use commercially reasonable efforts to comply with applicable Law with respect to any obligations to mitigate such Losses.

Section 9.05 Limitations on Environmental Indemnification. The Seller Indemnifying Parties' indemnification obligations to Buyer Indemnitees pursuant to Section 9.02 with respect to any Loss arising out of any Environmental Claim, Environmental Law, Environmental Notice, Environmental Permit, Hazardous Material, Excluded Environmental Liability or breach of any representation or warranty in connection with the foregoing (including, for the avoidance of doubt, any breach of the representations and warranties contained in Section 4.17) ("Environmental Matters") shall be subject to the following limitations:

(a) the Seller Indemnifying Parties' obligations shall expire 54 months following the Closing Date except with respect to any claim brought by a Buyer Indemnitee in good faith with reasonable specificity (to the extent known at such time) prior to such date;

(b) the aggregate amount of all Losses for which the Seller Indemnifying Parties as a group shall be liable for Environmental Matters pursuant to Section 9.02 shall not exceed $10,000,000; and

(c) solely with respect to the following matters relating to the Acquired Facility in East Chicago, Indiana: polynuclear aromatic hydrocarbons detected in groundwater samples in excess of Indiana Department of Environmental Management ("IDEM") Remediation Closure Guide ("RCG") Residential Tap screening levels; arsenic detected in soil samples in excess of IDEM RCG Soil migration to groundwater screening levels; and metals detected in groundwater samples in excess of IDEM RCG Residential Tap screening levels:

(i) the event that directly gave rise to the Loss (1) was not discovered as a result of a Phase II or other intrusive environmental sampling, testing or investigation undertaken on or after the Closing Date by or on behalf of Buyer (but excluding environmental sampling, testing or investigation which (A) was undertaken to address an imminent threat to human health or the environment, (B) was required by applicable Law, which requirement or demand or legal proceeding was not prompted, triggered, or initiated by Buyer or (C) was undertaken in response to a requirement, demand or claim by a Governmental Authority or in response to a legal proceeding initiated by any other Person, which requirement or demand or legal proceeding was not prompted, solicited or deliberately initiated by Buyer), and (2) did not arise and was not exacerbated after the Closing Date in connection with any act or omission by any Buyer (or any successor owner or operator of the Acquired Facility in East Chicago, Indiana); and

(ii) Seller shall be responsible for costs and expenses incurred by or on behalf of Buyer only to the extent incurred in a reasonable and commercially prudent manner.

Nothing in this Section 9.05 limits the scope of Section 2.04.

Section 9.06 Indemnification Procedures.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that if the Indemnifying Party is a Seller Indemnifying Party, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (v) relates to or arises in connection with a criminal proceeding, action, indictment, allegation, or investigation, (w) is asserted directly by or on behalf of a Person that is a then current material supplier or customer of the Business, (x) seeks an injunction or other equitable relief against the Indemnified Party, (y) the Indemnifying Party is failing to prosecute or defend vigorously or (z) the outcome of which could reasonably be expected to materially and adversely affect the Indemnified Party's Tax Liability. In addition, prior to assuming the defense of any Third Party Claim, the Indemnifying Party must demonstrate the financial wherewithal to vigorously defend the Third Party Claim. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 9.06(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided*, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 9.06(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.04) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending Party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 9.06(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 9.06(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 9.07 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article IX, the Indemnifying Party shall satisfy its obligations within five Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such five Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 5%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

Section 9.08 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 9.09 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate.

Section 9.10 Exclusive Remedies. Subject to Section 2.05(b), Section 6.05 and Section 10.12, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article IX. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article IX. Notwithstanding the foregoing, nothing in this Section 9.10 shall limit (a) any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct, or (b) any rights set forth in this Agreement or the Ancillary Documents, including rights to enforce specific performance.

ARTICLE X
MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller or Stockholders:	Plateplus Inc. 21 Waterway Ave Suite 525, The Woodlands, Texas 77380 E-mail: akito.nakamura@plateplus.com; chiharu.kato@plateplus.com Attention: Akito Nakamura and Chiharu Kato
with a copy to:	Mayer Brown LLP 71 S. Wacker Drive Chicago, IL 60606 Email: pcrimmins@mayerbrown.com; mserafini@mayerbrown.com Attention: Paul M. Crimmins and Michael A. Serafini
If to Buyer:	Friedman Industries, Incorporated 1121 Judson Road, Suite 124 Longview, TX 75601 E-mail: Attention: Mike Taylor and Alex LaRue
with a copy to:	Norton Rose Fulbright US LLP Fulbright Tower 1301 McKinney, Suite 5100 Houston, TX 77010-3095 E-mail: Brian.Fenske@nortonrosefulbright.com Attention: Brian Fenske

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 6.05(g), upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Seller Disclosure Schedules. For the purposes of the Disclosure Schedules, any information, item or other disclosure set forth in any part of the Disclosure Schedules shall be deemed to have been set forth in other parts of the Disclosure Schedules where the relevance of such disclosure to such other parts of the Disclosure Schedules is reasonably apparent from the face of the disclosure in the part of the Disclosure Schedules where such disclosure appears. Inclusion of information in any part of the Disclosure Schedules shall not be construed as an admission that such information is material to the business, properties, financial condition or results of operations of Seller. The mere listing of a Contract or agreement in the Disclosure Schedules will not be sufficient to disclose an exception to a representation or warranty unless the representation or warranty only pertains to the existence of such Contract or agreement.

Section 10.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign its rights or obligations hereunder without the prior written consent of Buyer (where a Seller Party seeks to assign its rights or obligations) or Seller Parties (where Buyer seeks to assign its rights and obligations), which consent shall not be unreasonably withheld or delayed; *provided*, that Buyer may, without the prior written consent of Seller Parties, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 10.09 No Third-party Beneficiaries. Except as provided in Article IX, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS IN EACH CASE LOCATED IN THE CITY OF HOUSTON AND COUNTY OF HARRIS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11(C).

Section 10.12 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(*Signature Pages Follow*)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized where applicable.

SELLER:

Plateplus Inc.

By: /s/ Akito Nakamura
Akito Nakamura, President and CEO

STOCKHOLDER:

Metal One Corporation

By: /s/ Hiroshi Kawaishi
Name: Hiroshi Kawaishi
Title: General Manager, Global Service Center
Management Unit, Global Business Div.

[*Signature Page to Asset Purchase Agreement*]

BUYER:

Friedman Industries, Incorporated

By: /s/ Mike Taylor
Mike Taylor, President and CEO

[*Signature Page to Asset Purchase Agreement*]

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("**Agreement**"), is made this 5th day of April, 2022, by and between Plateplus Inc., a Delaware corporation, with its principal office at 21 Waterway Avenue, Suite 525, The Woodlands, Texas 77380 ("**Assignor**"), and Friedman Industries, Incorporated, a Texas corporation, with its principal office at 1121 Judson Road, Suite 124, Longview, Texas 75601 ("**Assignee**").

WITNESSETH

WHEREAS, America's Central Port District, formerly known as Tri-City Regional Port District (the "**Port District**"), has among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the District in Madison County, Illinois; and

WHEREAS, the Port District has a lease with the Department of the Army No. DACW43-1-06-65, as may be amended; and

WHEREAS, the Port District and Cargill, Incorporated, a Delaware corporation, entered into an Agreement of Lease on January 11, 2010 for the lease of certain parcels of land in Madison County, Illinois, generally known as Parcel 1-A and Parcel 4 (Steel Parcel), each located at 2325 North Street, Granite City, Illinois (as more particularly described in the Lease) (the "**Lease**"); and

WHEREAS, Cargill, Incorporated, a Delaware corporation assigned all of its rights, interests and obligations in and under the Lease to Assignor, and Assignor assumed all of Cargill, Incorporated, a Delaware corporation's rights, interests and obligations in and under the Lease; and

WHEREAS, the Port District and Assignor entered into that certain Agreement of Easement for rail extension dated effective as of November 4, 2021 (the "**Easement**");

WHEREAS, Assignor and Assignee are parties, along with others, to an Asset Purchase Agreement dated on or about the date of this Agreement, under which Assignor agrees to transfer to Assignee, and Assignee agrees to purchase from Assignor certain assets including all of Assignor's rights, interest and obligations in and under the Lease and the Easement (the "**APA**"); and

WHEREAS, Assignor wishes to assign its rights and interests in and to, and obligations under the aforesaid Lease and Easement between the Port District and Assignor to Assignee; and

WHEREAS, Assignee is willing to assume Assignor's responsibilities and obligations to the Port District under the Lease and the Easement.

NOW, THEREFORE, in consideration of the premises and ONE AND NO/100 DOLLARS ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. Assignor hereby assigns all of its rights, interest and obligations in the Lease and Easement to Assignee.

2. Assignee hereby assumes the obligations under the Lease and Easement and shall make all payments required by the Lease and shall comply with all terms and conditions of said Lease and Easement required to be performed by Assignor, and said Lease is hereby incorporated as **Exhibit A** attached hereto, and said Easement is hereby incorporated as **Exhibit B**. All the terms of said Lease and Easement shall be read and understood herein in the same manner as they are expressed in said Lease and Easement.

3. The effectiveness of this Agreement is conditioned upon the successful completion of the Closing under the APA by no later than the 30th day of April, 2022, or such later date as the parties may agree in writing, in any event not to be later than June 15, 2022 (the "**Outside Closing Date**"). If the Closing does not occur on or before the Outside Closing Date, then this Agreement is automatically void and of no further force or effect. The assignment is effective as and from the Closing Date. The terms "**Closing**" and "**Closing Date**" having the definitions given them in the APA.

4. The parties may execute this Agreement in counterparts, each of which constitutes an original, and both of which together constitute only one agreement. The signatures of both parties do not need to appear on the same counterpart, and delivery of an executed counterpart signature page electronically is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement.

[*Signatures on following page(s)*]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By: _____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By: _____
Mike Taylor,
President and CEO

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By:_____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By:_____
Mike Taylor
President and CEO

EXHIBIT A

AGREEMENT OF LEASE BETWEEN TRI-CITY REGIONAL PORT DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS AND CARGILL, INCORORATED, A DELAWARE CORPORATION

This Agreement of Lease is entered into this 11th day of January, 2010 ("Effective Date") by and between the Tri-City Regional Port District, a Municipal Corporation of the State of Illinois, created by the State of Illinois and authorized by the Tri-City Regional Port District Act of 1959, as amended, hereinafter sometimes referred to as "Port District", "District", or "Lessor" and Cargill, Incorporated, a Delaware corporation, with its principal place of business at 21 Waterway Avenue, Suite 525, The Woodlands, Texas 77380, hereinafter sometimes referred to as "Company" or "Lessee",

WITNESSETH:

WHEREAS, the Port District has, among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and to perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the Tri-City Regional Port District in Madison County, Illinois; and

WHEREAS, the Port District has leased multiple parcels of land from the Department of the Army (wherein the District is sometimes identified as the "Tri-Cities Regional Port District") pursuant to the terms of that certain Department of the Army Lease designated No. DACW43-1-06-65 executed by the Army on 15th day of September, 2006, and by the Port District on the 11th day of September, 2006, as amended by that certain Amendment to Lease dated September 19, 2008 (as amended, the "Government Lease"). Said Government Lease is currently for a term of expiring on June 30, 2055. A copy of said Government Lease is attached hereto as **Exhibit F**; and

WHEREAS, the Port District and the Company desire to enter into a Lease of a certain parcel of land covered by the Government Lease.

NOW, THEREFORE, in consideration of the premises and One Dollar ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants the parties hereto agree as follows, to-wit:

ARTICLE I - THE PREMISES

Section 1.1 – The District agrees to demise and lease, and by these presents does demise and lease to Cargill, Incorporated the following described real estate, hereinafter called the "Demised Premises", the "Leased Premises" or the "Premises" to-wit:

> Parcel 1A – A tract of land being part of U.S. Survey 594, Claim 1865 in the Southwest Quarter of Section 12, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, being a part of Parcel 1 and Parcel 4, more particularly described as follows:
>
> Commencing at the intersection of the easterly line of U.S. Survey 594, Claim 1865 with the southerly line of Lot 12 in Third Subdivision of the W.R. Benjamin tract as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minute 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1,150.78 feet to the centerline of Old Rock Road (as traveled) [Also known as Chouteau Sough and Alton-St. Louis Wagon Road]: thence South 40 degrees 06 minutes 42 seconds West, along said centerline, a distance of 72.02 feet; thence North 68 degrees 50 minutes 20 seconds West, a distance of 39.00 feet; thence around a curve to the left having a radius of 250.00 feet, through a central angle of 48 degrees 25 minutes 49 seconds, chord bearing South 86 degrees 56 minutes 46 seconds West, an arc distance of 211.32 feet; thence North 27 degrees 16 minutes 09 seconds West, a distance of 30.00 feet to the southeast corner of said Parcel 1, also being the Point of Beginning.
>
> From said Point of Beginning; thence around a curve to the right having a radius of 220.00 feet, through a central angle of 27 degrees 12 minutes 42 seconds, chord bears South 76 degrees 20 minutes 13 seconds West, an arc distance of 104.49 feet, thence South 89 degrees 56 minutes 34 seconds West, a distance of 149.60 feet; thence North 00 degrees 03 minutes 06 seconds West along the west edge of an existing building and it's southerly prolongation, a distance of 707.47 feet; thence South 89 degrees 56 minutes 54 seconds West, a distance of 261.56 feet to the west line of said Parcel 1; thence North 10 degrees 24 minutes 05 seconds East on said west line, a distance of 119.49 feet to the northwest line of said Parcel 1, also being the southerly right of way line of the Tri-City Regional Port District

Access Dock Railroad (Norfolk and Southern Railroad): thence North 89 degrees 56 minutes 34 seconds East, along said line, a distance of 490.00 feet to the northeast corner of said Parcel 1; thence South 00 degrees 03 minutes 26 seconds East on the east line of said Parcel 1, a distance of 800.65 feet to the Point of Beginning. Said Parcel herein described contains 5.3960 acres or 235,048 square feet, more or less.

All as shown and delineated on **Exhibit A** attached hereto.

Parcel 4 - A tract of land being part of U.S. Survey 594, Claim 1865 in the southwest quarter of Section 12, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594, Claim 1865 with the southerly line of Lot 12 in Third Subdivision of the W. R. Benjamin Tract, as recorded in plat book 19, page 19 in the Recorder's office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled) (also known as Chouteau Slough and Alton-St. Louis Wagon Road); thence South 40 degrees 06 minutes 42 seconds West, along said centerline, a distance of 72.02 feet; thence North 68 degrees 50 minutes 20 seconds west a distance of 39.00 feet; thence around a curve to the left having a radius of 250.00 feet, through a central angle of 48 degrees 25 minutes 49 seconds, chord bearing South 86 degrees 56 minutes 46 seconds West an arc distance of 211.32 feet; thence North 27 degrees 16 minutes 09 seconds West a distance of 30.00 feet to an iron pin at the point of beginning of the tract herein described; thence North 00 degrees 03 minutes 26 seconds West a distance of 800.65 feet to the southerly right of way line of the Tri-City Regional Port District access dock railroad (Norfolk and Southern Railroad); thence North 89 degrees 56 minutes 34 seconds East, along said right of way line a distance of 558.39 feet; thence South 00 degrees 03 minutes 26 seconds East a distance of 125.39 feet; thence North 89 degrees 56 minutes 34 seconds East a distance of 149.70 feet to the Westerly right of way line of Old Rock Road (as traveled) (also known as Chouteau Slough and Alton-St. Louis Wagon Road); thence along said right of way as follows: South 25 degrees 41 minutes 40 seconds West a distance of 56.79 feet; around a curve to the right having a radius of 2366.00 feet, through a central angle of 14 degrees 25 minutes 02 seconds, chord bearing South 32 degrees 54 minutes 11 seconds West, an arc distance of 595.35 feet; South 40 degrees 06 minutes 42 seconds West a distance of 162.37 feet; thence North 68 degrees 50 minutes 20 seconds West a distance of 28.16 feet; thence around a curve to the left having a radius of 280.00 feet, through a central angle of 48 degrees 25 minutes 49 seconds, chord bearing South 86 degrees 56 minutes 46 seconds West an arc distance of 236.67 feet to the point of beginning, containing 9.33 acres.

All as shown and delineated on **Exhibit B** attached hereto.

To have and to hold said described land for a term beginning on the Effective Date and ending on the 31st day of August, 2023, with all rights and privileges, easements and appurtenances thereto belonging, and subject to all restrictions, rights and privileges arising under and by virtue of the Government Lease hereinabove referred to, for the use of Company in the manner hereinafter provided for the purpose of constructing, installing, operating and maintaining facilities for the processing of steel into sheets and plates. Said facilities shall consist of:

(1) A 105,000 square foot processing/warehouse facility with dimensions of 150' X 700'. (Now existing on Parcel 1A)

(2) Initially three overhead cranes with potential for a fourth. (Now existing on Parcel 1A.

(3) A 2,500 square foot office building. (Now existing on Parcel 1A)

(4) Roadway - 30 feet wide and 686 feet long running across Parcel 4 from old Rock Road on the East to Parcel 1A on the West.

The Port District hereby grants to Lessee an easement for the location of a spur track identified as Parcel 3 on **Exhibit D** attached hereto on the terms and conditions set forth in that certain Easement Agreement recorded in Book 3655, Page 1555 (a copy of which is attached hereto as **Exhibit E**), hereby substituting Lessee as if Lessee was the original grantee therein.

Lessee shall have the option of extending this Lease Agreement for an additional twenty (20) year term in the manner hereinafter provided (it being understood that such option exercised on one or more occasions if the Government Lease is extended on more than one occasion). All of the terms and conditions of this Lease shall continue in full force and effect for any such extended period except that the rental to be paid during the said extended period shall be the rental due under the calculation described in Section 1.4 hereof at the time of any such extension or extensions. The Lessee Company shall give the Port District Lessor written notice of its

intention to extend its primary term for the period or periods hereinabove described at least six (6) months prior to the expiration of its primary lease (or the then applicable option term).

Section 1.2- Lessor agrees to provide for Lessee's use (in conjunction with other users) all existing trucking concourses and pipelines controlled by the Lessor adjacent to the Demised Premises and a means of reasonable ingress and egress to the area under lease to the Company. The Port District constructed Port Truck Haul Road, connecting the Port District General Cargo Dock by an extension of North Street with Old Rock Road. The location of said Truck Haul Road is shown on **Exhibit C** as attached. The Haul Road follows the following described line:

> Starting from the existing roadway serving the General Cargo Dock and the Granite City Steel Dock, the Haul Road will connect to the East Canal Levee Road and then follow the levy road northerly to a point approximately 550 feet north of Rock Road, the haul road will then follow an extension of North Street, which will be constructed as part of the haul road, connecting the levy road and Old Rock Road. The land subject to this lease as described in Section 1.1 has frontage on the North Street extension.

Said Haul Road accommodates a limit of 18,000 pounds per axle.

The use of said trucking concourses and pipelines and means of ingress and egress is to be subject, at all times during the period of this lease, to the rights of the Lessor or its assigns to construct, operate, maintain and use said facilities, and further subject to the right of the Lessor to determine speed and safety procedure, to control and approve of the method of operation, including the switching and handling of trucks or rail cars, if any, overland along any roadway or trackage adjacent to the leased premises (except for the rail spur easement described on **Exhibit D** and **Exhibit E** attached hereto, which operation shall be governed by the terms of said easement) and area service ways used in conjunction with or in relation to the leased premises; provided, however, that Lessor shall not exercise such rights in any manner that will be incompatible with Lessee's reasonable use and operation of its leased premises.

Section 1.3 - The land and the improvements that may hereafter be erected thereon and which are to be operated by Lessee are to be used for the purpose of constructing, installing, operating and maintaining a warehouse and office facility for the processing of steel into sheets and plate and the storage thereof which shall be duly licensed at all times when a license for such operation is required. Said installations and their maintenance and operation shall be in accordance with the power and authority of the District as created by an Act of the Legislature of the State of Illinois. Lessor hereby represents that this Lease and the construction of said facilities are consistent with and in accordance with the power and authority of the District under the Act.

Section 1.4 – Lessee, Company hereby agrees and covenants to pay Lessor, Port District, at said District's office, 2801 Rock Road, Granite City, Illinois, 62040, or at such other place in Madison County, Illinois, as said Port District may, from time to time, designate in Writing, a rental of One Thousand Six Hundred Seventy Six and 03/100ths Dollars ($1,676.03) per acre per annum, for Parcel 1A and Two Thousand Three Hundred Thirty-Four and 84/100ths Dollars ($2,334.84) per acre per annum for Parcel 4, made in quarterly installments. Rental for the Demised Premises is now payable and shall continue to be payable in accordance with the Schedule set forth hereafter and shall be pro-rated for any part of a quarter remaining at the time of termination of this Lease. The quarterly installments shall be made each January 1, April 1, July 1 and October 1. All rentals shall be pro-rated for any part of a quarter remaining at the time of termination of this Lease.

If payment of any rental is not made to the Port District within five days of the date when due, a penalty equal to the then existing prime interest rate (as publicly established from time to time by JP Morgan Chase, N.A. or its successors, plus an additional 6 percentage points,

calculated on an annual basis, may be assessed by the Port District against the late payment and if assessed shall be paid by the Lessee.

Rental for Parcel 1A is to be adjusted only upward in accordance with the Producers Price Index (PPI) for industrial commodities as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor index (hereafter, the "PPI"), every five (5) years on the anniversary of September 9, 1991 (i.e., September 9, 1996, September 9, 2001, September 9, 2006, September 9, 2011, September 9, 2016, September 9, 2021, etc.). Such increase, if any, shall be determined by comparing the then applicable PPI of September 9, 1991 to the most currently available PPI. The rate of any rental increase for any five year period, however, shall not exceed 18% of the then existing rental payment irrespective of an increase in the PPI.

Rental for Parcel 4 is to be adjusted only upward in accordance with the PPI, every five (5) years on the anniversary of June 1, 2000 (i.e., June 1, 2005, June 1, 2010, June 1, 2015, June 1, 2020, etc.). Such increase, if any, shall be determined by comparing the then applicable PPI of June 1, 2000 to the most currently available PPI. The rate of any rental increase for any five year period, however, shall not exceed 18% of the then existing rental payment irrespective of an increase in the PPI.

The rentals described in this Section 1.4 shall be payable during the primary term and the option terms described in Section 1.1 hereof. The rental provisions made in this Paragraph are subject to and conditioned upon the renewal or extension of said Government Lease at the level of the rentals currently required under said Lease. If said rentals on said Government Lease are increased, during the term of this Lease or any extension thereof, the rentals then payable by Lessee to Lessor under this Lease hereafter shall be increased by a like amount on a per acre basis; however, Lessor and Lessee expressly acknowledge and agree that the maximum amount of rent increases due from Lessee per acre under this Lease, which rent increases are attributable

to increases in rentals of the Government Lease (as opposed to increases based on the Producer's Price Index, more fully described above), shall not exceed $500.00 per acre in the aggregate for each parcel (Parcel 1A and Parcel 4) through the primary term of this Lease.

Section 1.5 - In addition to the rental, Lessee shall pay all charges for heating, cooling, and water and all electricity, gas, sewer and other utility service rendered to the Demised Premises, only. Lessee will pay the cost of installation of any meter required to determine the amount of charges for the utilities service furnished to the Demised Premises. Notwithstanding the immediately preceding sentence, Lessor Port District will provide for the extension of water and sewer utilities lines to the Southeast corner of the Demised Premises. Nothing herein shall be interpreted to require the District to extend electric or gas service to the Demised Premises.

Section 1.6 - The improvements and installations described herein and now existing and any improvements and installations subsequently installed on the Premises have been and/or shall be erected on the Demised Premises by the Lessee or its predecessor. Said improvements erected on the Demised Premises for or in behalf of the Lessee shall be Lessee's property, but, said improvements shall remain on the Demised Premises during the term of this Lease and shall not be removed during the term except as provided in Section 2.13 of this Lease. The use of any improvements erected on said demised premises shall be consistent with the statutory and constitutional powers of the Port District, and shall be in compliance with this lease and the laws of the State of Illinois and the United States of America, and the applicable laws of the County of Madison, or any other unit of local government whose boundaries may encompass the Demised Premises and shall be subject to compliance with the provisions of the "Government Lease", Contract No. DACW43-1-06-65 and all amendments thereto, which, by this reference are made a part hereof and the plans and specifications of any improvement hereinafter situated on said Demised Premises must be approved by the Tri-City Regional Port District and the Corps of

Engineers, St. Louis District. By the execution of this Lease, Lessor represents that the use of the Demised Premises, as permitted and described in this Lease is consistent with the statutory and constitutional powers of the Port District.

Specifically, Lessee shall have the right, at its sole cost and expense, from time to time to extend or alter the improvements and facilities on the Demised Premise and to extend an electric service line, and a natural gas main to the Demised Premises, the location of such extensions to be approved by the Port District. Any approval by the Port District required under this Lease shall not be unreasonably withheld; provided, however, that with respect to the construction of any improvements (a) Lessee provides the Port District and the Corps of Engineers, St. Louis District, with plans and specifications for any such construction or alterations and such plans and specifications are approved by the Port District and the Corps of Engineers, (b) none of the construction activity materially interferes with the business operation of other tenants of the Port District or occurs off the leasehold premises without the Port District's consent. (which consent will not be unreasonably withheld or delayed.) Lessee shall accomplish the completion of any construction free and clear of all mechanic's liens.

Section 1.7 – [Intentionally deleted]

Section 1.8 - The rights herein granted to the Lessee Company are limited to the operations of the Port District authorized to be conducted on lands demised under the Government Lease described in the recitals herein. This Lease and the construction of all improvements made hereunder are subject to the approval of the Corps of Engineers. The Corps of Engineers has approved the improvements and uses set forth in Section 1.1 and Section 1.3 above.

Section 1.9 - This Lease is made subject to easements for construction, operation and maintenance of railroad tracks, roadways, walks, pipelines, poles and wires, upon, over and

across the land affected by said lease whether said easements are now in effect or may hereafter be placed in effect by the exercise of the Lessor's rights, herewith reserved, to locate said easements for its purpose over and across said land. The Port District shall make its best effort to locate any such new easements or any relocation of presently existing easements in a manner designed to best avoid interference with Lessee's use of the Demised Premises. This Lease is also made specifically subject to the rights of the United States Government specified in the Government Lease with respect to easements, land regulations and supplemental controls specified therein. Lessee shall be credited in rentals for any deprivation of the use of the land covered by this Lease which results from the establishment of such easements hereafter in proportion to the amount of land in the Leased Premises which can no longer be used by Lessee. If the Lessee is deprived of the use of all or any part of the manufacturing and storage facility described herein as a result of the creation of the aforesaid easements, regulations and controls, the rental described herein shall abate on a proportional basis, based on that portion of Lessee's facility that Lessee is unable to utilize for the purpose for which it was built. Nothing in this lease or paragraph contained shall operate to bind the Port District to compensate for the taking of any land or facilities by the United states Government under the terms and conditions of the Government Lease and in such event nothing in this Lease shall be deemed to deprive the Lessee by any compensation received or claim made therefor from the United States Government for any taking by the United States Government.

ARTICLE II - LESSEE'S COVENANTS

Section 2.1 - Subject to the obligations imposed on Lessor under Sections 1.2 and 1.5 above, Lessee covenants and agrees that it will be responsible for and pay all costs associated with Lessee's lease of said land, including, but not limited to, all taxes and assessments (but only to the extent that such taxes and assessments are levied on the Demised Premises, and not on any

other real property, and that such taxes and assessments are due and payable based on assessments made during the term of this Lease) and costs incurred for labor, necessary to create and to operate and maintain the facilities installed on said leased land by Lessee, and payment for commodities and contractual services for maintenance and operation, payment for utility and sanitary sewer charges, and payment for insurance. The Lessee understands and agrees that except as otherwise provided in Sections 1.2 and 1.5 above, Lessor will make no physical improvements to the land described in Section 1.1 or be responsible for the cost of any such improvements or installations made thereon and that none of the costs pertaining to operation of the facility shall be or become an obligation or responsibility of the Port District.

Section 2.2 - Lessee shall pay the rental specified in Section 1.4 above as same becomes due and payable.

Section 2.3 - Lessee covenants and agrees to operate facilities and improvements subject to the terms and conditions set forth herein.

Section 2.4 - Lessee covenants and agrees that during the entire term of this Agreement, it will keep the Demised Premises in good order, condition and repair and it will maintain and repair all roads, tracks, buildings, and other facilities hereafter erected on the Leased Premises by Lessee. Nothing contained herein shall be deemed to excuse the Lessee from maintaining and repairing the rail spur described in **Exhibit D** (the "Rail Track Easement") attached hereto in accordance with this Paragraph 2.4, but subject to the limitations set forth in said Rail Track Easement. If Lessee Company fails or refuses to provide said maintenance and repair for any of its facilities or improvements described in this Paragraph, Lessor Port District may, but need not, take the necessary steps to put said premises and facilities, in good order, condition or repair and Lessee shall pay Lessor the cost thereof as rent hereunder and Lessor may take action on Lessee's default in payment after ten (10) days' written notice of the amount due in the same

manner as in the event of Lessee's default in payments as hereinafter provided. Prior to Lessor's exercise of the rights granted in the immediately preceding sentence, Lessee shall have the right to cure said default as described in Paragraph 4.1(b) of this Lease.

Section 2.5 - Lessee shall permit Lessor and/or an engineer designated by Lessor to enter upon the Demised Premises at all reasonable hours for the purpose of inspecting same, and Lessor shall not, except in cases of emergency, exercise this privilege in such a way as to unreasonably interfere with Lessee's business. Such inspections shall be conducted during normal business hours and in the company of Lessee's representatives.

Section 2.6 - Lessee shall not, without the prior written consent of Lessor, use or occupy the Demised Premises for any purpose whatsoever other than that specified in Sections 1.1 and 1.3 above. Lessee shall not use the Demised Premises for any unlawful purpose and shall at its own expense, comply with all ordinances, laws, rules, and regulations of the Tri-City Regional Port District, the County of Madison, the State of Illinois, the United States of America and all lawful authorities, agencies and departments of the aforementioned governmental entities having jurisdiction in the Premises. Lessee will also be responsible for installing or erecting all environmental pollution control devices that are or may be hereafter required by a local, state or federal regulatory agency with respect to Lessee's facilities and for the proper operation and maintenance of said environmental pollution control devices.

Lessee shall be responsible for the clean-up of any spillage of materials delivered to or shipped from its facilities by any means of conveyance and shall immediately undertake to clean up such spillage whether such spillage occurs on the subject Premises or land or roadways adjacent to or leading to or from the subject Premises. Notwithstanding the preceding sentence, however, it is understood and agreed that Lessee's responsibility is limited to any spillage that

occurs during the term of this Lease, unless such spillage is caused by Lessor, its agents, representatives or employees or any other party acting within Lessor's control.

Lessee further agrees not to use or permit to be brought upon the Demised Premises or to permit to be done thereon any act or thing which will invalidate or which, if brought on, would be in conflict with any insurance policy covering the Demised Premises or bring or keep anything thereon which will not comply with all rules, orders, regulations, or requirements of the Board of Fire Underwriters or any similar organization and Lessee shall at all times make a good faith effort to comply with all such rules, orders, regulations or requirements. And Lessee shall not do or permit anything on its Leased Premises which constitutes a public nuisance. Lessor shall provide Lessee with copies of its insurance policies at least bi-annually.

Lessee agrees to indemnify and hold the Port District harmless from any and all penalties, damage or charges actually imposed or losses or expenses actually incurred by the Port District solely as a result of the violation of any Federal, State or Municipal law or regulation or ordinance by the Lessee, its customers, officers, agents, employees, guests or invitees which violation(s) occurs at or on the Demised Premises and arises directly out of or as a result of, the operations of Lessee at or on the Demised Premises.

Section 2.7 - The Lessee shall not assign, transfer, sublease or sell this Lease or any right thereunder without the prior written approval of the Lessor, which approval shall not be unreasonably withheld or processing thereof delayed nor shall Lessee assign, transfer, sublease or sell this Lease without the prior approval of the District Engineer, United States Army Engineer District, St. Louis, Missouri. However, Lessee without obtaining the prior consent of Lessor, may enter into contracts of the kind usually and customarily entered into in the conduct of the Lessee's business permitted under the terms and provisions of this lease. Notwithstanding any assignment or sale, Lessee shall at all times remain liable for performance of all covenants

and conditions to be performed under this Lease, including, but not limited to payment of all monetary amounts herein specified.

Section 2.8 - Lessee shall give Lessor immediate written notice of all accidents of which Lessee has actual knowledge and which occur on the Premises.

Section 2.9 - Lessee agrees to indemnify and hold Lessor, the United States Government and the Secretary of the Army harmless from any and all liability, judgment, costs, damages and expenses, including reasonable attorneys' fees (collectively "Damages"), that actually accrue against, are charged to, or are recovered from Lessor by reason of, or on account of damages to: the property of Lessor; the property of Lessee; or the property of any third party or parties; or the property of, injury to, or death of any person, arising from Lessee's use, alteration, occupancy or operation of the facilities or improvements on the Demised Premises and any easements herewith granted, including acts of Lessee's agents, contractors and subcontractors. Lessee shall give Lessor prompt and timely notice of any actual written claim made or suit instituted by service of summons and complaint on Lessee, which in any way, adversely affects Lessor or its insurer with respect to the Demised Premises, and Lessor or its insurer shall have the right to compromise and defend the same to the extent of their own interests. Nothing contained herein will require Lessee to give notice of claims or litigation against Lessee that are unrelated to this Lease. Lessor shall give Lessee prompt and timely notice of any claim or any suit for personal injury or property damage instituted which adversely affects Lessee.

Any final non-appealable judgment rendered against Lessor by a court of competent jurisdiction for any cause for which Lessee is liable under this Section 2.9, shall be conclusive against Lessee as to liability and dollar amount. Except as hereinafter provided, Lessee shall, at its own expense, keep in force or cause to be kept in force, insurance of the following types and in not less than the following amounts, issued by a company or companies of sound and adequate

financial responsibility, licensed to do business in the State of Illinois, and reasonably approved by Lessor, to-wit:

(a) Comprehensive public liability insurance in the amount of $5,000,000 per person and in the amount of $5,000,000 per accident.

(b) Comprehensive property damage insurance in the amount of $5,000,000 per accident.

Said amounts of coverage shall be reviewed every three (3) years, upon the anniversary of this lease, during the effectiveness of this lease and increased if necessary by amounts mutually and reasonably agreed upon by the Lessor and Lessee.

All such policies of insurance shall insure Lessee and Lessor against all liabilities for accidents arising out of or in connection with Lessee's use and occupancy of, and operations on land, and facilities and improvements erected thereon. Lessee shall furnish to Lessor certificates evidencing such insurance, naming Lessor as an additional insured thereunder.

Lessee shall also carry Worker's Compensation and Employer's Liability Insurance to cover accidental injury to any of Lessee's employees as provided by the Workmen's Compensation Law of Illinois. Evidence of procuring and maintenance of such insurance shall be furnished by Lessee to Lessor. Notwithstanding anything contained herein to the contrary, Cargill, Incorporated may satisfy the requirements for insurance set forth in this Section 2.9 through its program of self-insurance.

Section 2.10 - Lessee agrees that in case of the substantial damage or destruction of the facilities constructed by Lessee and situated on the Demised Premises, the Lessee shall have 180 days (from the date on which the casualty occurs), in which to begin to reconstruct said facilities or restore the Premises to their original condition; thereafter, Lessee shall proceed with all due diligence to reconstruct the Premises and facility within 360 days of said damage or destruction. Failure to commence action to restore and/or rebuild within the specified time and to continue

said action with due diligence shall entitle Lessor to terminate this Lease without relieving Lessee of its obligation to pay all rentals and charges described herein for the full term of this Lease and Lessor may also restore the premises at Lessor's cost. Notwithstanding the preceding provisions of this Section 2.10, if Lessee is delayed in the commencement and/or the completion of the action to restore by severe weather conditions or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any causes beyond Lessee's control, then the time of commencement or completion, as the case may be, shall be extended for the period of time of any delay resulting from any or all of the causes aforesaid.

Section 2.11 - Lessee covenants and agrees:

A. That this Lease is subject to, subordinate to, and limited by the terms of the Department of the Army Lease No. No. DACW43-1-06-65 executed by the Army on 15th day of September, 2006, and by the Port District on the 11th day of September, 2006, as amended by that certain Amendment to Lease dated September 19, 2008. Said Government Lease is currently for a term of expiring on June 30, 2055.

B. Not to do nor permit anything to be done which constitutes a breach of the Government Lease or cause the Government Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in the Department of the Army under said Government Lease; to indemnify and hold the Port District harmless, and does hereby indemnify and hold the Port District harmless, from and against all claims of any kind or nature whatsoever that the Port District actually suffers or incurs as a direct result of any breach or default on the part of Lessee by reason of which the Government Leases may be terminated or forfeited, except to the extent that the cause of said claims is due to the sole fault or neglect of the Port District or its agents, representatives or employees and/or some third party other than the Lessee;

C. That the Lessee has read and is familiar with the terms of the Government Lease.

Section 2.12 - Lessee covenants and agrees it will pay its pro rata share for general port area security service. The cost of said service is to be pro rated among the tenants of the District.

Section 2.13 - At the expiration of this Lease or any valid extension thereof, the Lessee shall deliver the possession of the subject Premises to the Port District in good order and

condition, ordinary wear and tear excepted, and shall, within a reasonable time period after the expiration or termination of this Lease, remove any and all improvements made thereon by Lessee, including the spur track on the easement attached as **Exhibit E**, unless said obligation to remove is excused by direction of the Port District at that time. Upon the Lessee's failure to so remove and restore said Premises, the Port District may restore the Premises and facilities or remove same and Lessee shall be liable for payment of the documented cost thereof to the Port District.

Section 2.14 - Lessee covenants that it will not make any capital additions, improvements or modifications to the erected structural aspects of the facilities that Lessee erects on the Leased Premises without the prior written consent of the District, which shall not be unreasonably withheld, nor will the Lessee undertake any action which will result in the creation of a lien on the facility or the Premises. The Port District shall consider and respond to Lessee's request for approval under this Section 2.14 within 60 days of the actual receipt of such request. Failure of the Lessor Port District to act within that time period shall be considered to be operative as a consent to said addition, improvements or modifications.

Section 2.15 - Lessee covenants that it will, at the termination of this Lease, by lapse of time or otherwise, yield up immediate possession to the District (subject to Lessee's right to enter the Demised Premises for a reasonable period of time after the expiration or termination of this Lease in order to permit Lessee an opportunity to comply with the terms of Section 2.13 above; provided, however, that in no event shall a time period beyond 90 days be considered reasonable). Upon failing to do so, Lessee will pay as liquidated damages for the time such possession is withheld, the sum equivalent to Two Hundred Percent (200%) of the rent payments applicable under this Lease as of the date on which this Lease expires or terminates, computed

on a monthly basis. Such payment shall not prevent the District from exercising all rights it may have to prevent Lessee from holding possession of the facility.

ARTICLE III - LESSOR'S COVENANTS

Section 3.1 - Lessor represents, warrants and covenants that it has good and sufficient interest in and to the Leased Premises herein described and has lawful right to make this Lease for the term aforesaid, and that it has taken all actions necessary to assure the lawful execution of this Lease and covenants that if, Lessee shall pay the rental and perform all the covenants and provisions of this Lease to be performed by said Lessee, Lessee shall have the right, during the term of this Lease or any extension thereof, to freely, peaceably and quietly occupy and enjoy the full and exclusive possession of the premises and the tenements, hereditament and appurtenances thereunto belonging and, the rights and privileges herein granted, without molestation or hindrance, and Lessor or its Representatives will defend Lessee's rights as herein granted. Lessor's title and right to hold said land is subject to, and based upon, the above-described Government Lease. There are no other agreements with the Department of the Army affecting the Demised Premises other than the aforesaid Government Lease and same is in full force and effect and Lessor has no knowledge of any default in its obligations thereunder.

Section 3.2 – [Intentionally Deleted.]

Section 3.3 - Lessor Port District will maintain and keep in repair, satisfactory to accomplish Lessee's reasonable use thereof, all roads, and access ways located on Port District property or property controlled by the Port District and used by Lessee for access to the Demised Premises. Failure of Lessor Port to act to clear said access roads of any physical obstruction which limits Lessee's use of said facilities within ten days of the first instance of said obstruction shall constitute authority for Lessee to remove said obstacle at Lessor's expense.

Section 3.4 - Lessor District covenants and agrees that it will comply with the terms and conditions of the Government Lease during the term of this Lease or any extension thereof and will promptly advise Lessee of any notice of default, breach or forfeiture given to the Port by the Department of the Army. The Port will not violate, breach, cancel, amend or reduce the term of the Government Lease affecting Lessee Company's Leased Premises herein specified during the term of this Lease or any extension thereof.

Section 3.5 - Lessor will promptly notify Lessee of receipt of any notice from the Secretary of the Army that the Army's right under Paragraph 18 of the Government Lease may be exercised to terminate the Government Lease by reason of non-use of all or any substantial portion of the 217.3 acres covered in the Government Lease for a period of five consecutive years. Lessor will act with due diligence to prevent such cause for termination of the Government Lease.

Section 3.6 - Lessor represents and warrants that it has a good and merchantable leasehold interest in and to the Demised Premises described on **Exhibit A** and **Exhibit B**, subject to the terms of the Government Lease; that the Demised Premises has access to public roads; that Parcel 4 is contiguous to Parcel 1A as described on **Exhibit B** without any gaps or gores; that there are no matters, and no third party has any rights, which would in any way interfere with the Lessee's improvement or use of the Demised Premises and that the Demised Premises is zoned for the uses described in Section 1.1 and Section 1.3 above.

Section 3.7- The Port District represents and warrants, or covenants, as the case may be, that (a) except as otherwise specifically disclosed in that certain environmental report issued August 12, 1991, by John Mathes & Associates, Inc., for Project No. 17278; on November 25, 1997 by Philip Services Corp., for Project No. 113844; and that certain environmental report of February, 1998 by Philip Services Corp., and the letter dated May 15, 1998 from the Corps of

Engineers, the Port District has no knowledge of past or current presence, disposal, or storage of any hazardous or toxic substances or materials at, on, in or under Parcel 1A and Parcel 4.

The Port District cleaned-up and remediated to the extent required by law the environmental contamination existing on Parcel 4 only and pre-existing as of June 1, 2000, and identified in that certain environmental report issued on November 25, 1997 by Philip Services Corp., for Project No. 27278, that certain environmental report of February, 1998 by Goodwin & Broms, Inc., and the letter dated May 15, 1998 from the Corps of Engineers (the "Contamination"), (collectively the "Reports").

The Port District also represents and warrants that there are no wetlands on Parcel 4.

Section 3.8 - Lessor covenants and agrees that it has delivered to Lessee true, accurate and complete copies of the Government Lease which relates to the leasehold premises described in Section 1.1 hereof.

Section 3.9 - Lessor hereby covenants and agrees that, throughout the term of this Lease and any extension thereof, Lessor shall continuously maintain comprehensive general liability insurance and property damage insurance applicable to its territory and properties. Such insurance coverages shall be maintained in amounts, and shall provide for deductible amounts, deemed from time to time, normal and customary for governmental bodies comparable to the Port District.

ARTICLE IV - MUTUAL COVENANTS

Section 4.1 - If one or more of the following events (hereinafter sometimes called "defaults") shall happen and be continuing, same shall be and constitute a basis for Lessor, at its option, to treat Lessee as being in default under this Lease:

(a) If Lessee defaults in the payment of any of the rentals provided to be paid hereunder and such default shall continue for ten (10) days after written notice of such non-payment by Lessor to Lessee.

(b) If Lessee defaults in the observance or performance of any other covenant, condition, agreement or provision hereof which is not remedied within thirty (30) days after written notice of such default from Lessor to Lessee; provided, however, no default on the part of the Lessee in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have in good faith been commenced promptly by Lessee to rectify the same and shall be pursued to completion with diligence and continuity under the terms and conditions of this lease.

(c) If Lessee becomes bankrupt or admits its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for Lessee, or for the major part of its property.

(d) If a trustee or receiver is appointed for Lessee or from the major part of its property and is not discharged within ninety (90) days after such appointment.

(e) If bankruptcy, reorganization, arrangements, insolvency, or liquidation proceedings, or any other proceedings for relief under any of the bankruptcy laws or similar laws for the relief of debtors, are instituted by or against Lessee, and are not dismissed within ninety (90) days after such institution.

In any such case, Lessor may at its option exercise any one or more of the following remedies:

(1) Lessor may terminate this lease and Lessee's right to possession thereunder by giving to Lessee written notice of Lessor's intention so to do, in which event the term of this lease or any renewal thereof shall end, and all right, title and interest of Lessee hereunder shall expire on the date designated in such notice, which shall not be less than ten (10) days after the date of the notice by Lessor of its intention so to terminate, but Lessee shall not be released thereby from obligation to make further payments of rentals due hereunder for the full period to which said Lessee committed itself under the terms of this lease.

(2) Lessor may enforce the provisions of this lease and may enforce and protect the right of Lessor hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy, but Lessee shall not thereby be released from obligation to make further payments of rentals due.

Section 4.2 - If Lessor exercises either of the remedies provided for in Subparagraph (1) or (2) of Section 4.1 hereof, Lessor may then or at any time thereafter re-enter and take complete and peaceful possession of the Demised Premises, with or without process of law, and may remove all persons therefrom, and Lessee covenants in any such event peacefully and quietly to yield up and surrender the Demised Premises to Lessor and to continue payment of the rentals provided hereunder.

Section 4.3 - If Lessor terminates the right to possession as provided in Subparagraph (1) of Section 4.1 hereof, Lessor may re-enter the Demised Premises and take possession of all thereof (including any and all equipment and apparatus thereon), may remove any portion of the equipment, machinery and apparatus thereon which Lessor elects to so do, and may sublet or relet the Demised Premises or any part thereof from time to time for all of any part of the unexpired part of the then term thereof, or for a longer period, and Lessor may collect the rents from such reletting or subletting, and apply the same, first, to the payment of the expense of re-entry and re-letting, and secondly, to the rentals herein provided to be paid by Lessee, and in the event the proceeds of such reletting or subletting are at any time hereafter not sufficient to pay in full the foregoing, Lessee shall remain and be liable therefor, and Lessee promises and agrees to pay the amount of such deficiency from time to time, and Lessor may at any time and from time to time sue and recover judgment for any such deficiency or deficiencies. Upon the occurrence of any default by Lessee under this Lease, Lessor shall use due diligence in attempting to obtain a reletting of the facilities and to mitigate its damages.

Section 4.4 - In the event of the termination of this Lease by Lessor as provided for by Subparagraph (1) of Section 4.1 hereof, Lessor shall be entitled to recover from Lessee all the rentals accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Lessee for which Lessee is liable or in respect of which Lessee

under any of the provisions hereof has agreed to indemnify Lessor, which may be then owing and unpaid, and all costs and expenses including court costs and attorneys' reasonable fees incurred by Lessor in the enforcement of its rights and remedies hereunder, and in addition, Lessor shall be entitled to recover the actual damages, including reasonable attorneys fees and court costs, which Lessor actually sustains by reason of the breach of any of the covenants of this Lease. Lessee shall be entitled to credit for any rentals received by Lessor from a reletting of the Premises.

Section 4.5 - This Lease covers in full each and every obligation of every kind and nature whatsoever between Lessee and Lessor concerning the Demised Premises.

Section 4.6 - If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by the laws of the State of Illinois.

Section 4.7 - The removal of the facilities or improvements from the Premises described in Section 1.1 shall not be operative to cause an abatement in the rentals herein provided for but said rentals shall continue to be due and payable for the term of this Lease or any extension thereof.

If the Lessee is deprived of the use of the manufacturing and storage facility described herein as a result of substantial damage to or destruction of the facilities, as a result of fire, windstorm or other natural hazards, the rental described herein shall abate. Said abatement, if same is justified, shall remain in effect for a period of not to exceed one (1) year from the date of the said damage or destruction. Said abatement will, however, in any event, cease to be applicable upon Lessee's failure to comply with the reconstruction and restoration provisions of Section 2.10 within the time limits or periods therein established.

Section 4.8 - Nothing herein contained shall operate to make or be construed to constitute Lessor and Lessee partners.

Section 4.9 - Lessor and Lessee each agree to act promptly and in a reasonable manner in respect to any and all matters arising under this Lease.

Section 4.10 - With respect to any pledge, mortgage, deed of trust, or other security interest on Lessee's leasehold interest and/or property, that may hereafter be granted or established by Lessee with the prior approval of the Port District, the Port District agrees for the benefit of any mortgagee or holder of such mortgage, pledge, deed of trust, or other security interest to give written notice to such holder by U.S. certified mail of any alleged default under this Lease, provided that holder has theretofore registered its name and address with the Port District simultaneously with the giving of notice to Lessee, of any alleged default under this Lease.

Section 4.11 - Any notice required under the terms of this lease shall be deemed to have been given when sent by registered or certified mail or overnight courier, postage prepaid, to Lessee at 21 Waterway Avenue, Suite 525, The Woodlands, Texas 77380, and to Lessor at 2801 Rock Road, Granite City, Illinois, 62040, or at such other place as Lessee or Lessor may from time to time designate in writing. Such notice shall be considered to have been delivered three (3) business days after the date of depositing same, if service is undertaken by depositing of said notice or notices in the United States Mail, which date shall be evidenced by the records of the Post Office Department. A copy of said Notice will also be sent to Todd Erickson, Cargill Law Department, 15407 McGinty Road West, Wayzata, Minnesota 55391, but said action shall not be deemed to be required to accomplish effective notice to the Lessee hereunder.

WITNESS the hands and corporate seals of the parties hereto on the date first hereinabove stated.

TRI-CITY REGIONAL PORT DISTRICT

BY: _____
CHAIRMAN

ATTEST:

_____
SECRETARY

CARGILL, INCORPORATED

BY: _____
NAME: _____
TITLE: _____

ATTEST:

_____
SECRETARY

WITNESS the hands and corporate seals of the parties hereto on the date first hereinabove stated.

TRI-CITY REGIONAL PORT DISTRICT

BY:_____
CHAIRMAN

ATTEST:

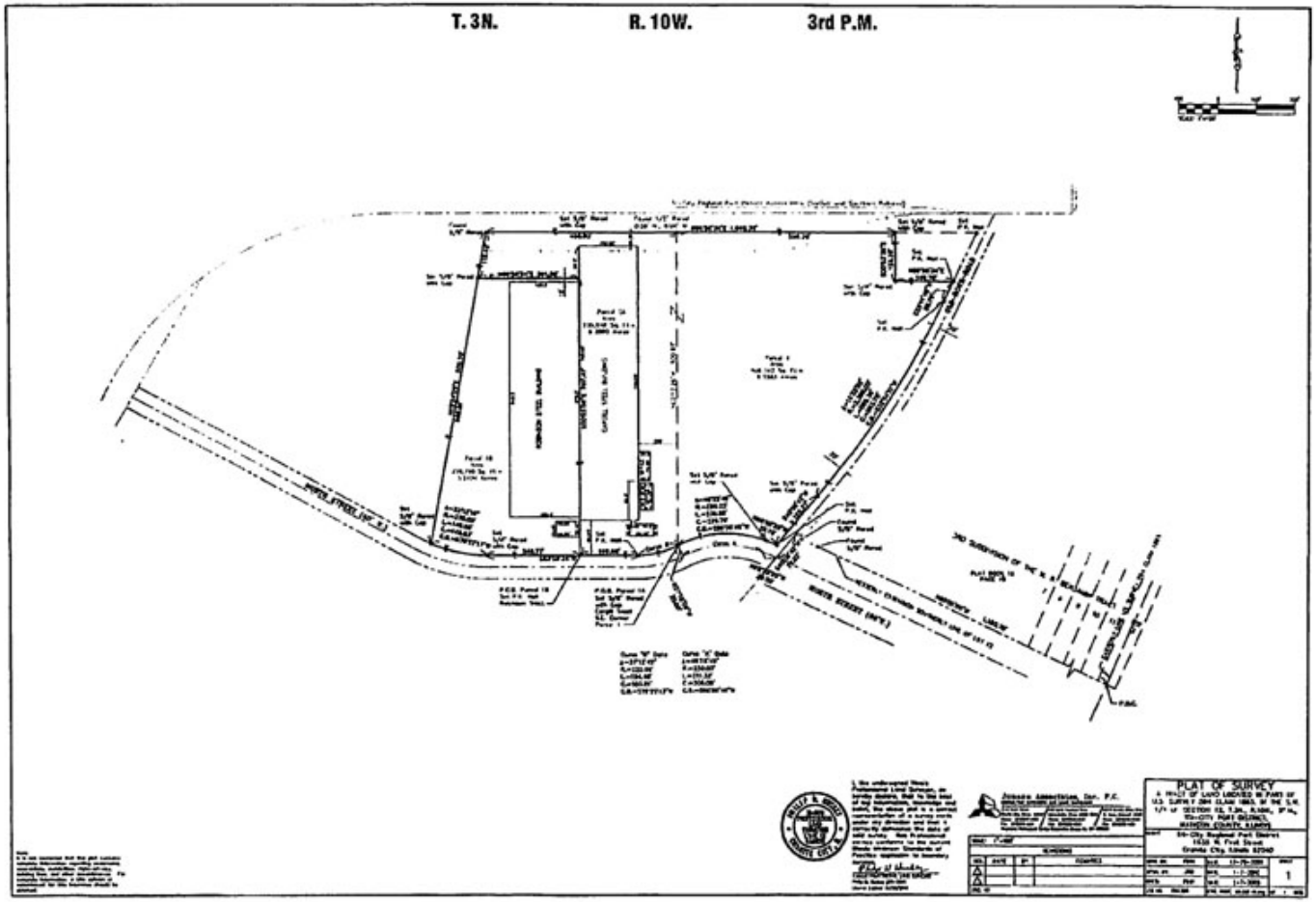
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SECRETARY

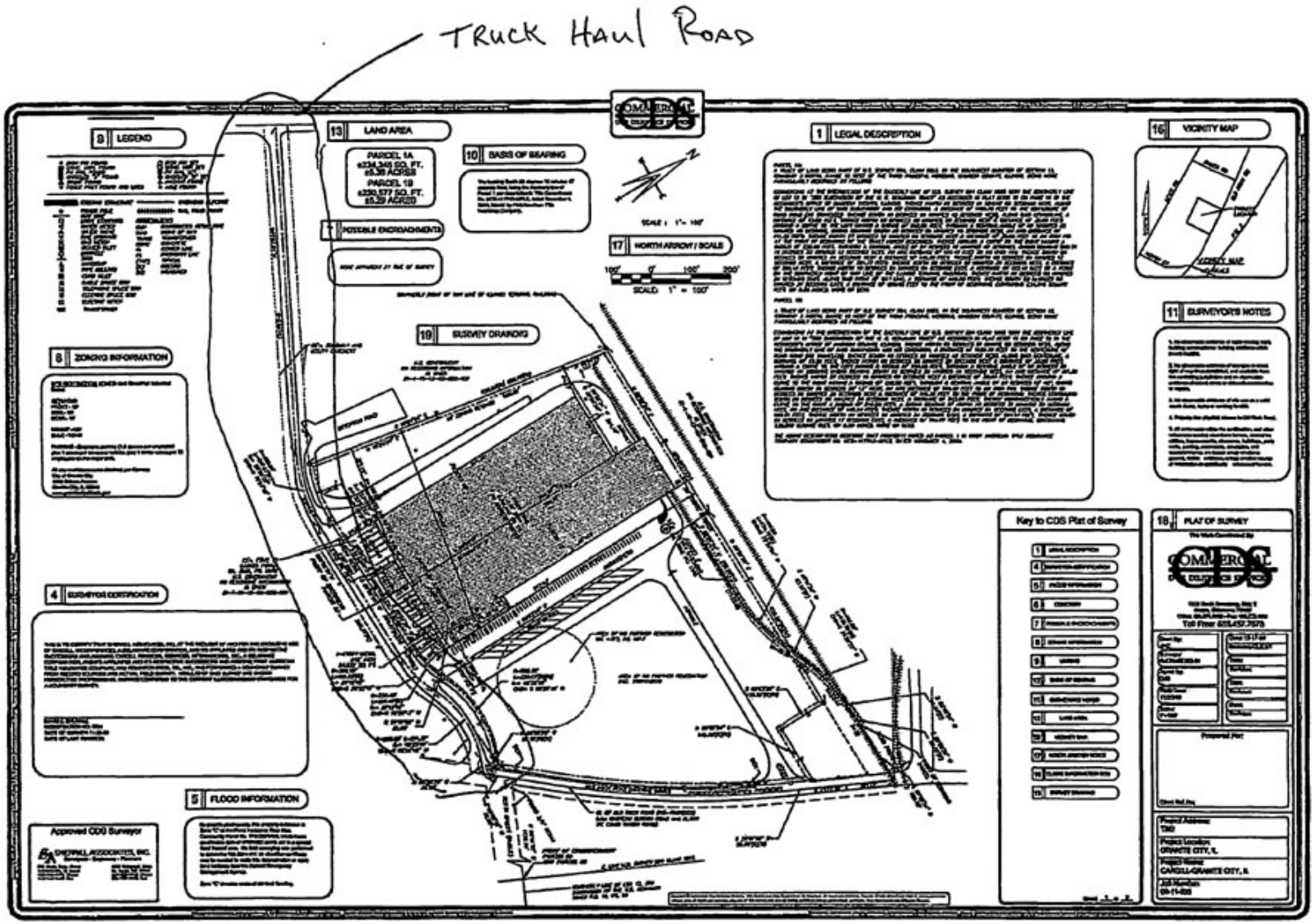
CARGILL, INCORPORATED

BY: _____
NAME: Michael J. Taylor
TITLE: Vice President

ATTEST:

1SST _____
SECRETARY


T. 3N.
R. 10W.
3rd P.M.
PLAT OF SURVEY


TRUCK HAUL ROAD
9 LEGEND
13 LAND AREA
PARCEL 1A
±234,345 SQ. FT.
±5.38 ACRES
PARCEL 1B
±230,977 SQ. FT.
±5.30 ACRES
10 BASIS OF BEARING
7 POSSIBLE ENCROACHMENTS
17 NORTH ARROW / SCALE
SCALE: 1" = 100'
1 LEGAL DESCRIPTION
16 VICINITY MAP
11 SURVEYOR'S NOTES
19 SURVEY DRAWING
8 ZONING INFORMATION
4 SURVEYOR CERTIFICATION
5 FLOOD INFORMATION
Approved CDS Surveyor
Key to CDS Plat of Survey
18 PLAT OF SURVEY
Toll Free: 855.457.7575
Prepared For:
Project Address:
TBD
Project Location:
GRANITE CITY, IL
Project Name:
CARGILL-GRANITE CITY, IL
Job Number:
09-11-488

January 8, 2009
Job No. 091309

PARCEL 1A
Description of Property for Cargill

A tract of land being part of U.S. Survey 594, Claim 1865 in the Southwest Quarter of Section 12, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, being a part of Parcel 1 and Parcel 4, more particularly described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594, Claim 1865 with the southerly line of Lot 12 in Third Subdivision of the W.R. Benjamin tract as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minute 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1,150.78 feet to the centerline of Old Rock Road (as traveled) [Also known as Chouteau Sough and Alton-St. Louis Wagon Road]: thence South 40 degrees 06 minutes 42 seconds West, along said centerline, a distance of 72.02 feet; thence North 68 degrees 50 minutes 20 seconds West, a distance of 39.00 feet; thence around a curve to the left having a radius of 250.00 feet, through a central angle of 48 degrees 25 minutes 49 seconds, chord bearing South 86 degrees 56 minutes 46 seconds West, an arc distance of 211.32 feet; thence North 27 degrees 16 minutes 09 seconds West, a distance of 30.00 feet to the southeast corner of said Parcel 1, also being the Point of Beginning.

From said Point of Beginning; thence around a curve to the right having a radius of 220.00 feet, through a central angle of 27 degrees 12 minutes 42 seconds, chord bears South 76 degrees 20 minutes 13 seconds West, an arc distance of 104.49 feet, thence South 89 degrees 56 minutes 34 seconds West, a distance of 149.60 feet; thence North 00 degrees 03 minutes 06 seconds West along the west edge of an existing building and it's southerly prolongation, a distance of 707.47 feet; thence South 89 degrees 56 minutes 54 seconds West, a distance of 261.56 feet to the west line of said Parcel 1; thence North 10 degrees 24 minutes 05 seconds East on said west line, a distance of 119.49 feet to the northwest line of said Parcel 1, also being the southerly right of way line of the Tri-City Regional Port District Access Dock Railroad (Norfolk and Southern Railroad): thence North 89 degrees 56 minutes 34 seconds East, along said line, a distance of 490.00 feet to the northeast corner of said Parcel 1; thence South 00 degrees 03 minutes 26 seconds East on the east line of said Parcel 1, a distance of 800.65 feet to the Point of Beginning.

Said Parcel herein described contains 5.3960 acres or 235,048 square feet, more or less.

EXHIBIT B

PARCEL 4 LEGAL DESCRIPTION

PARCEL 4:

A TRACT OF LAND BEING PART OF U.S. SURVEY 594, CLAIM 1865 IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 10 WEST OF THE THIRD PRINCIPAL MERIDIAN, MADISON COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF U.S. SURVEY 594, CLAIM 1865 WITH THE SOUTHERLY LINE OF LOT 12 IN THIRD SUBDIVISION OF THE W. R. BENJAMIN TRACT, AS RECORDED IN PLAT BOOK 19, PAGE 19 IN THE RECORDER'S OFFICE OF MADISON COUNTY, ILLINOIS; THENCE NORTH 65 DEGREES 01 MINUTES 00 SECONDS WEST, ALONG THE SOUTHERLY LINE OF SAID SUBDIVISION AND ITS WESTERLY EXTENSION, A DISTANCE OF 1150.78 FEET TO THE CENTERLINE OF OLD ROCK ROAD (AS TRAVELED) (ALSO KNOWN AS CHOUTEAU SLOUGH AND ALTON-ST. LOUIS WAGON ROAD); THENCE SOUTH 40 DEGREES 06 MINUTES 42 SECONDS WEST, ALONG SAID CENTERLINE, A DISTANCE OF 72.02 FEET; THENCE NORTH 68 DEGREES 50 MINUTES 20 SECONDS WEST A DISTANCE OF 39.00 FEET; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 48 DEGREES 25 MINUTES 49 SECONDS, CHORD BEARING SOUTH 86 DEGREES 56 MINUTES 46 SECONDS WEST AN ARC DISTANCE OF 211.32 FEET; THENCE NORTH 27 DEGREES 16 MINUTES 09 SECONDS WEST A DISTANCE OF 30.00 FEET TO AN IRON PIN AT THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE NORTH 00 DEGREES 03 MINUTES 26 SECONDS WEST A DISTANCE OF 800.65 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF THE TRI-CITY REGIONAL PORT DISTRICT ACCESS DOCK RAILROAD (NORFOLK AND SOUTHERN RAILROAD); THENCE NORTH 89 DEGREES 56 MINUTES 34 SECONDS EAST, ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 558.39 FEET; THENCE SOUTH 00 DEGREES 03 MINUTES 26 SECONDS EAST A DISTANCE OF 125.39 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 34 SECONDS EAST A DISTANCE OF 149.70 FEET TO THE WESTERLY RIGHT OF WAY LINE OF OLD ROCK ROAD (AS TRAVELED) (ALSO KNOWN AS CHOUTEAU SLOUGH AND ALTON-ST. LOUIS WAGON ROAD); THENCE ALONG SAID RIGHT OF WAY AS FOLLOWS: SOUTH 25 DEGREES 41 MINUTES 40 SECONDS WEST A DISTANCE OF 56.79 FEET; AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 2366.00 FEET, THROUGH A CENTRAL ANGLE OF 14 DEGREES 25 MINUTES 02 SECONDS, CHORD BEARING SOUTH 32 DEGREES 54 MINUTES 11 SECONDS WEST, AN ARC DISTANCE OF 595.35 FEET; SOUTH 40 DEGREES 06 MINUTES 42 SECONDS WEST A DISTANCE OF 162.37 FEET; THENCE NORTH 68 DEGREES 50 MINUTES 20 SECONDS WEST A DISTANCE OF 28.16 FEET; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 280.00 FEET, THROUGH A CENTRAL ANGLE OF 48 DEGREES 25 MINUTES 49 SECONDS, CHORD BEARING SOUTH 86 DEGREES 56 MINUTES 46 SECONDS WEST AN ARC DISTANCE OF 236.67 FEET TO THE POINT OF BEGINNING, CONTAINING 9.33 ACRES.

EXHIBIT C

TRUCK HAUL ROAD

EXHIBIT D

PARCEL 3/SPUR TRACK EASEMENT AREA LEGAL DESCRIPTION

EASEMENT FOR RAIL TRACK SPUR RIGHT-OF-WAY

TRI-CITY REGIONAL PORT DISTRICT (Grantor), a political subdivision, body politic and municipal corporation, created by an Act of the Illinois Legislature, effective April 1, 1959, for and in consideration of One Dollar ($1.00) and other good and valuable consideration in hand paid, grants to Robinson Steel Company, Inc., (Grantee) an Indiana Corporation, an easement for the construction, establishment, use, maintenance and operation of a rail track spur over and across the following described real estate:

A 15 ft. wide railway easement being 7.5 ft. each side of a line described as follows:

Commencing at the intersection of the easterly line of U. S. Survey 594 Claim 1865 with the southerly line of Lot 12 in "Third Subdivision of the W. R. Benjamin Tract", as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01' 00" West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled, also known as Chouteau Slough Road and Alton St. Louis Wagon Road); thence along said centerline as follows:

North 40 degrees 06' 42" East a distance of 115.19 feet; around a curve to the left having a radius of 2386 feet, chord bearing North 32 degrees 54' 12" East through a central angle of 14 degrees 25' 03", an arc distance of 600.40 feet; North 25 degrees 41' 40" East a distance of 261.17 feet

to the centerline of the Tri-City Regional Port District Dock Access Railroad (Norfolk & Southern); thence South 89 degrees 56' 34" West, a distance of 159.75 ft. along the centerline of said dock access railroad to the point of beginning of the easement centerline herein described; said point of beginning being Station 7+32 on the centerline of the

rail spur and switch point of the rail spur to be constructed for Robinson Steel Company; thence South 89 degrees 56' 34" West along said railroad centerline a distance of 30 ft. to a point; thence South 82 degrees 47' 24" West a distance of 66.44 ft. to a point designated as Station 8+28.44 of said rail spur centerline; thence around a curve to the left having a radius of 440 ft., chord bearing South 74 degrees 59' 29" West, a distance of 119.78 ft. to a point designated as Station 9+48.22 of said rail spur centerline; thence South 67 degrees 11' 34" West a distance of 62.16 ft. to a point designated as Station 10+10.38 on said rail spur centerline; thence around a curve to the right with a radius of 440 ft., chord bearing South 78 degrees 34' 04" West, an arc distance of 174.71 ft. to a point designated as Station 11+85.08 on said rail spur centerline; thence South 89 degrees 56' 34" West a distance of 216.29 ft. to a point on the Easterly property line of the Robinson Steel Company leasehold.

The easement between Station 7+32 and Station 8+28.44 shall be a non-exclusive easement; between Station 8+28.44 and the Robinson Steel Company Leasehold Premises the easement shall be for the exclusive use of Robinson Steel.

as more particularly delineated and set out on the drawing attached hereto marked Exhibit A and herewith made a part hereof, to have and to hold for the purpose of use as a right-of-way to construct, operate, maintain, repair and replace a rail spur track and all appurtenances and equipment necessary for the operation, installation and maintenance of said rail track spur, subject to all easements and rights-of-way presently existing on or claimed over said land by any other parties.

Said easement for use as a rail track spur is hereby granted to Grantee subject to the following express conditions and reservations:

Grantor hereby reserves the right to use said easement and right-of-way and the rail spur improvements to be situate thereon between Station 7+32 and Station 8+28.44, provided, however, that such use by Grantor shall be at Grantor's sole risk and shall not unduly adversely affect the rights granted to Grantee under this easement agreement.

Grantor hereby reserves the right to relocate said rail spur easement and to alter or amend or reconstruct any installations made thereon at the expense of Grantor if Grantor hereafter finds that said relocation, alteration, amendment or reconstruction is necessary to allow Grantor to carry out and accomplish its public purpose and gives Grantee Sixty (60) days prior written notice of Grantor's intent to make any such relocation, alteration, amendment or reconstruction, together with a detailed description of the contemplated relocation, alteration, amendment, or reconstruction. Said relocation or alteration shall be accomplished in as expeditious a manner as is reasonably possible and in a manner that does not, in any way or to any extent, diminish the usefulness of said rail spur to Grantee. If Grantor exercises said right, then upon completion of any relocation, alteration, amendment or reconstruction, the easement, right-of-way and rail spur shall be in substantially the same condition, configuration and design as originally constructed and installed by Grantee.

Grantee hereby agrees to and declares by the acceptance of this rail track spur easement it will hold Grantor harmless from any and all claims for damages that Grantor actually suffers or incurs and that result from loss of life or injury to person or property that may hereafter arise as a result of said Grantee's construction, operation, maintenance, repair and use of said utility easement, except that which is caused by the sole negligence of the Grantor, its agents, representatives, employees or any other parties to whom Grantor grants any rights.

Grantee hereby agrees and declares that it will hereafter maintain the installations made on said right-of-way and conduct operations

over said right-of-way in a diligent and good faith manner so as to protect the public health, safety and welfare.

Said easement is granted to Grantee for use only in conjunction with structures and facilities to be situated on land leased to Grantee under the terms and provisions of a certain Agreement of Lease between Tri-City Regional Port District, a municipal corporation of the State of Illinois, and Robinson Steel Company, Inc., an Indiana Corporation, dated the 9th day of September, 1991, and same shall not be assigned, transferred or conveyed by Grantee without the express written permission of Grantor, which permission shall not be unreasonably withheld or delayed.

Upon the termination of Grantee's above described lease term by expiration of time or for any cause specified in said Agreement of Lease, or in the event Grantor fails to install rail facilities and use said easement for the installation, construction, operation and maintenance of a rail track spur facility within 18 months of the date of this instrument (subject, however, to reasonable extension as a result of force majeure), said easement for rail track spur purposes shall become null and void and of no further force and effect and all of Grantee's rights and obligations relative to same shall be forfeited by election of Grantor; provided, however, that such forfeiture shall not relieve Grantee of any obligation that it may have (under the terms of the Agreement of Lease described in the immediately preceding paragraph) to remove any improvements that Grantee has installed

or constructed in or on the subject easement parcel. Said election may be evidenced by the filing of an instrument of Declaration of Discontinuance, Cancellation and Revocation of Easement for Rail Track Spur Purposes filed by Grantor in the Recorder's Office of Madison County, Illinois. Notice of said declaration shall be served upon by Grantee at its place of business at 4303 Kennedy Avenue, East Chicago, Illinois, 46312, but failure to obtain such service on Grantee shall not void or make inoperative of ineffective the subject declaration of vacation.

This Easement shall become operative and effective only upon the execution by Grantee of the "Acceptance" of said Easement subject to the terms and conditions herein st forth and the filing of said Acceptance with the Tri-City Regional Port District.

DATED this 9th day of September, 1991.

TRI-CITY REGIONAL PORT DISTRICT

BY: Dale Arnette
CHAIRMAN

ATTEST:

Kent E. Holsinger
SECRETARY

STATE OF ILLINOIS :
: SS
COUNTY OF MADISON :

I, the undersigned Notary Public, in and for the said County and State aforesaid, do hereby certify that Dale Arnette, personally known to me to be the Chairman of the Tri-City Regional Port District Board, and Kent Holsinger, personally known to me to be the Secretary of said Tri-City Regional Port District Board,

each appeared before me this day in person and acknowledged that each appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act, and as the free and voluntary act of said Tri-City Regional Port district, for the uses and purposes therein set forth; and said Secretary did also then and there acknowledge that he, as custodian of said corporate seal of said public body, did affix the said corporate seal of same to said instrument as his own free and voluntary act, and as the free and voluntary act of the said Tri-City Regional Port District, for the uses and purposes therein st forth.

GIVEN under my hand and notarial seal this 21st day of October, 1991.

" OFFICIAL SEAL "
VELDA M. TAYLOR
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/29/95

Velda M. Taylor
NOTARY PUBLIC

A C C E P T A N C E

ROBINSON STEEL COMPANY, INC., does hereby acknowledge and accept the foregoing Easement subject to the terms and conditions established therein.

DATED this 30th day of October, 1991.

ROBINSON STEEL COMPANY, INC.

BY: Edward Minor

STATE OF Illinois :
: SS
COUNTY OF Cook :

I, the undersigned Notary Public, in and for the said County and State aforesaid, do hereby certify that Edward Minor, personally known to me to be the President of Robinson Steel Company, and _____, personally known to me to be the Secretary of said Robinson Steel Company, each appeared before me this day in person and acknowledged that each appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act, and as the free and voluntary act of said Robinson Steel Company, for the uses and purposes therein set forth; and said

EXHIBIT E

SPUR TRACK EASEMENT AGREEMENT

[See Attached]

EASEMENT FOR RAIL TRACK SPUR RIGHT-OF-WAY

TRI-CITY REGIONAL PORT DISTRICT (Grantor), a political subdivision, body politic and municipal corporation, created by an Act of the Illinois Legislature, effective April 1, 1959, for and in consideration of One Dollar ($1.00) and other good and valuable consideration in hand paid, grants to Robinson Steel Company, Inc., (Grantee) an Indiana Corporation, an easement for the construction, establishment, use, maintenance and operation of a rail track spur over and across the following described real estate:

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North 40 degrees 06' 42" East a distance of 115.19 feet; around a curve to the left having a radius of 2386 feet, chord bearing North 32 degrees 54' 12" East through a central angle of 14 degrees 25' 03", an arc distance of 600.40 feet; North 25 degrees 41' 40" East a distance of 261.17 feet

to the centerline of the Tri-City Regional Port District Dock Access Railroad (Norfolk & Southern); thence South 89 degrees 56' 34" West, a distance of 159.75 ft. along the centerline of said dock access railroad to the point of beginning of the easement centerline herein described; said point of beginning being Station 7+32 on the centerline of the

rail spur and switch point of the rail spur to be constructed for Robinson Steel Company; thence South 89 degrees 56' 34" West along said railroad centerline a distance of 30 ft. to a point; thence South 82 degrees 47' 24" West a distance of 66.44 ft. to a point designated as Station 8+28.44 of said rail spur centerline; thence around a curve to the left having a radius of 440 ft., chord bearing South 74 degrees 59' 29" West, a distance of 119.78 ft. to a point designated as Station 9+48.22 of said rail spur centerline; thence South 67 degrees 11' 34" West a distance of 62.16 ft. to a point designated as Station 10+10.38 on said rail spur centerline; thence around a curve to the right with a radius of 440 ft., chord bearing South 78 degrees 34' 04" West, an arc distance of 174.71 ft. to a point designated as Station 11+85.08 on said rail spur centerline; thence South 89 degrees 56' 34" West a distance of 216.29 ft. to a point on the Easterly property line of the Robinson Steel Company leasehold.

The easement between Station 7+32 and Station 8+28.44 shall be a non-exclusive easement; between Station 8+28.44 and the Robinson Steel Company Leasehold Premises the easement shall be for the exclusive use of Robinson Steel.

as more particularly delineated and set out on the drawing attached hereto marked Exhibit A and herewith made a part hereof, to have and to hold for the purpose of use as a right-of-way to construct, operate, maintain, repair and replace a rail spur track and all appurtenances and equipment necessary for the operation, installation and maintenance of said rail track spur, subject to all easements and rights-of-way presently existing on or claimed over said land by any other parties.

Said easement for use as a rail track spur is hereby granted to Grantee subject to the following express conditions and reservations:

Grantor hereby reserves the right to use said easement and right-of-way and the rail spur improvements to be situate thereon between Station 7+32 and Station 8+28.44,. provided, however, that such use by Grantor shall be at Grantor's sole risk and shall not unduly adversely affect the rights granted to Grantee under this easement agreement.

Grantor hereby reserves the right to relocate said rail spur easement and to alter or amend or reconstruct any installations made thereon at the expense of Grantor if Grantor hereafter finds that said relocation, alteration, amendment or reconstruction is necessary to allow Grantor to carry out and accomplish its public purpose and gives Grantee Sixty (60) days prior written notice of Grantor's intent to make any such relocation, alteration, amendment or reconstruction, together with a detailed description of the contemplated relocation, alteration, amendment, or reconstruction. Said relocation or alteration shall be accomplished in as expeditious a manner as is reasonably possible and in a manner that does not, in any way or to any extent, diminish the usefulness of said rail spur to Grantee. If Grantor exercises said right, then upon completion of any relocation, alteration, amendment or reconstruction, the easement, right-of-way and rail spur shall be in substantially the same condition, configuration and design as originally constructed and installed by Grantee.

Grantee hereby agrees to and declares by the acceptance of this rail track spur easement it will hold Grantor harmless from any and all claims for damages that Grantor actually suffers or incurs and that result from loss of life or injury to person or property that may hereafter arise as a result of said Grantee's construction, operation, maintenance, repair and use of said utility easement, except that which is caused by the sole negligence of the Grantor, its agents, representatives, employees or any other parties to whom Grantor grants any rights.

Grantee hereby agrees and declares that it will hereafter maintain the installations made on said right-of-way and conduct operations

over said right-of-way in a diligent and good faith manner so as to protect the public health, safety and welfare.

Said easement is granted to Grantee for use only in conjunction with structures and facilities to be situated on land leased to Grantee under the terms and provisions of a certain Agreement of Lease between Tri-City Regional Port District, a municipal corporation of the State of Illinois, and Robinson Steel Company, Inc., an Indiana Corporation, dated the 9th day of September, 1991, and same shall not be assigned, transferred or conveyed by Grantee without the express written permission of Grantor, which permission shall not be unreasonably withheld or delayed.

Upon the termination of Grantee's above described lease term by expiration of time or for any cause specified in said Agreement of Lease, or in the event Grantor fails to install rail facilities and use said easement for the installation, construction, operation and maintenance of a rail track spur facility within 18 months of the date of this instrument (subject, however, to reasonable extension as a result of force majeure), said easement for rail track spur purposes shall become null and void and of no further force and effect and all of Grantee's rights and obligations relative to same shall be forfeited by election of Grantor; provided, however, that such forfeiture shall not relieve Grantee of any obligation that it may have (under the terms of the Agreement of Lease described in the immediately preceding paragraph) to remove any improvements that Grantee has installed

or constructed in or on the subject easement parcel. Said election may be evidenced by the filing of an instrument of Declaration of Discontinuance, Cancellation and Revocation of Easement for Rail Track Spur Purposes filed by Grantor in the Recorder's Office of Madison County, Illinois. Notice of said declaration shall be served upon by Grantee at its place of business at 4303 Kennedy Avenue, East Chicago, Illinois, 46312, but failure to obtain such service on Grantee shall not void or make inoperative of ineffective the subject declaration of vacation.

This Easement shall become operative and effective only upon the execution by Grantee of the "Acceptance" of said Easement subject to the terms and conditions herein st forth and the filing of said Acceptance with the Tri-City Regional Port District.

DATED this 9th day of September, 1991.

TRI-CITY REGIONAL PORT DISTRICT

BY: Dale Arnette
CHAIRMAN

ATTEST:

Kent Holsinger
SECRETARY

STATE OF ILLINOIS :
: SS
COUNTY OF MADISON :

I, the undersigned Notary Public, in and for the said County and State aforesaid, do hereby certify that Dale Arnette, personally known to me to be the Chairman of the Tri-City Regional Port District Board, and Kent Holsinger, personally known to me to be the Secretary of said Tri-City Regional Port District Board,

each appeared before me this day in person and acknowledged that each appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act, and as the free and voluntary act of said Tri-City Regional Port district, for the uses and purposes therein set forth; and said Secretary did also then and there acknowledge that he, as custodian of said corporate seal of said public body, did affix the said corporate seal of same to said instrument as his own free and voluntary act, and as the free and voluntary act of the said Tri-City Regional Port District, for the uses and purposes therein st forth.

GIVEN under my hand and notarial seal this 21st day of October, 1991.

" OFFICIAL SEAL "
VELDA M. TAYLOR
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/29/95

Velda M. Taylor
NOTARY PUBLIC

A C C E P T A N C E

ROBINSON STEEL COMPANY, INC., does hereby acknowledge and accept the foregoing Easement subject to the terms and conditions established therein.

DATED this 30th day of October, 1991.

ROBINSON STEEL COMPANY, INC.

BY: Edward Minor

STATE OF Illinois :
: SS
COUNTY OF Cook :

I, the undersigned Notary Public, in and for the said County and State aforesaid, do hereby certify that Edward Minor, personally known to me to be the President of Robinson Steel Company, and _____, personally known to me to be the Secretary of said Robinson Steel Company, each appeared before me this day in person and acknowledged that each appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act, and as the free and voluntary act of said Robinson Steel Company, for the uses and purposes therein set forth; and said

EXHIBIT F

GOVERNMENT LEASE AGREEMENT
(less certain exhibits)

[See Attached]

DEPARTMENT OF THE ARMY LEASE

CHAIN OF ROCKS CANAL

Madison County, Illinois

PART OF TRACT GC-11

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and **TRI-CITY REGIONAL PORT DISTRICT**, hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibits "A-1" and "A-2" as part of Tract GC-11, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial-industrial purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of fifty (50) years, beginning on the date of execution by the Secretary, and ending fifty (50) years from the date of execution by the Secretary, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of Fifty-nine Thousand Five Hundred and No-100 Dollars ($59,500.00), payable semi-annually in the amount of Twenty-nine Thousand, Seven Hundred Fifty and No-100 Dollars ($29,750.00), payable in advance on September 11 and March 11, 2006, 2007, 2008, 2009, and 2010, at which time a review and appraisal of the annual rental rate will occur five (5) years after the date of execution of this lease, and at the close of each and every five (5) year period thereafter, and the consideration will be adjusted accordingly. Payments should be made payable to the order of the "FAO, USACE, St. Louis District," and delivered to Chief, Real Estate Division, U.S. Army Corps of Engineers, 1222 Spruce Street, St. Louis, Missouri 63103-2833.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Tri-City Regional Port District, 1635 W. First Street, Granite City, Illinois 62040, and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, 1222 Spruce Street, St. Louis, Missouri 63103-2833, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, St. Louis District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto. The Lessee and the Government acknowledge that information on the condition of the premises is set forth in an Environmental Baseline Survey as described in Condition 24 of this Lease.

8. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

9. COST OF UTILITIES

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction. The Government and the Lessee acknowledge that at the time of the execution of this Lease there are no utilities on the premises.

10. PROTECTION OF PROPERTY

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INSURANCE

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of $1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or

persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

13. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on RENTAL ADJUSTMENT. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the

United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessees operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

16. SUBJECT TO EASEMENTS

a. This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

b. Access. Notwithstanding provision 16a above, which retains its full force and effect, the Government and Metro East Sanitary District (MESD) must maintain access to all parts of the levee system located on the premises at all times for operations, maintenance and emergencies. This includes, but is not limited to, provision of sufficient clearance or by construction of riverside and landside ramps at no expense to the Government or MESD.

17. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

18. TERMINATION

This lease may be terminated by the Lessee at any time by giving the District Engineer at least thirty (30) days notice in writing provided that no refund by the United States of any rental previously paid shall be made, and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

19. RENTAL ADJUSTMENT

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; **PROVIDED** however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease.

20. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

c. Construction of Facilities. Notwithstanding provisions 20a and 20b above, which retain their full force and effect, construction of any and all facilities, improvements or structures on the premises is predicated upon prior approval in writing from said officer. Plans and specifications for any development activity must be submitted to said officer to facilitate review. Specific engineering concerns, including, but not limited to, through seepage, under seepage and slope stability must be addressed.

21. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises except as authorized in writing by the District Engineer.

22. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $100,000 is not a claim under

the Act until certified as required by subparagraph c. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $100,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by –

(i) a senior official in charge of the Lessee's location involved; or

(ii) an officer of the lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over $100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the

Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

23. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

24. ENVIRONMENTAL BASELINE STUDY

a. An Environmental Baseline Study (EBS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit "B." Upon expiration, revocation or relinquishment of this lease another EBS shall be prepared parallel in scope and content with Exhibit "B" which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**. The government and the Lessee acknowledge that the EBS, Exhibit "B" to this Lease, contains a description of two Explosive Ordnance Disposal Demolition Ranges, a portion of which are on the leased premises; and (b) one old landfill on and one old landfill adjacent to the leased premises which may contain certain hazardous or toxic materials, and the site of an old U.S. Army constructed and operated wharf. At the time of the execution of this Lease, a Site Investigation has been conducted by the U.S. Army to determine the extent of any contamination. The parties hereto acknowledge that the Lessee bears no

responsibility for any necessary remedial action for either the Explosive Ordnance Disposal Ranges or the landfills or the U.S. Army Constructed Wharf as described in the EBS.

b. Military Munitions Response Program. The Lessee warrants that it has been placed on notice that a portion of the premises has been included in the Military Munitions Response Program (MMRP). The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work performed under the MMRP, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof. The Government and the Lessee acknowledge that the Lessee bears no responsibility for any necessary remedial action for either the Explosive Ordnance Disposal Ranges or the landfills as described in the EBS.

25. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

b. Cultural Significant Property. The Lessee warrants that it has been placed on notice that areas of cultural significance are located within the premises. Notwithstanding provision 22a above, which retains its full force and effect, the Lessee agrees to comply with all federal and state laws and regulations with respect to cultural resources, and to provide accommodation for the preservation of those resources. The Government and the Lessee acknowledge that portions of the premises have been previously disturbed, as described in the EBS.

26. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

27. TAXES

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

28. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

29. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

30. SEVERAL LESSEES

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

31. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

32. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U. S. C. § 403), and Section 404 of the Clean Water Act (33 U. S. C. § 1344).

33. SPECIAL CONDITIONS

a. **Environmental and Regulatory Compliance.** Notwithstanding the provisions of Conditions 23 and 32, which retain their full force and effect, the grant of this lease is predicated upon Lessee's full compliance with the provisions of the National Environmental Policy Act (42 U. S. C. §§4321 *et seq.*), the Endangered Species Act, (16 U. S. C. §§1531 *et seq.*), Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U. S. C. § 403), and Section

404 of the Clean Water Act (33 U. S. C. § 1344), which will require review of all development by the appropriate parties, including, but not limited to the U. S. Environmental Protection Agency, the U. S. Fish and Wildlife Service, the U. S. Coast Guard, the Illinois Department of Natural Resources, the River Industry Action Council (RIAC), and the general public prior to any the initiation of any construction activity.

b. **Navigation.** The Lessee warrants that it has been placed on notice that suspended sediment deposition will be a significant maintenance concern if a slack water harbor is developed on the premises, and that dredging may be required. The Lessee agrees that such dredging shall not be the responsibility of the Government. Subject to the continuation of legal authority and the availability of funds, the Government will retain responsibility for the maintenance of the Nine foot navigation channel.

c. **Termination.** Notwithstanding the provision of Conditions 1 and 18, which retain their full force and effect, failure of the Lessee to make substantial progress toward:

1) completion of an environmental assessment satisfying the provisions of NEPA;
2) application for and receipt of permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act; and
3) provision of specific engineering and construction designs, plans and specifications for development of the premises

within five (5) years of the date of execution of this lease shall be considered a substantial breach of the terms of this lease, giving rise to cause for termination under Condition 1. The decision as to whether or not substantial progress has been made by the Lessee is vested in said Officer, and is to be made at said Officer's sole discretion. Additionally, the failure of the Lessee to fully complete:

1) all environmental compliance documentation satisfying the provisions of NEPA;
2) the permit process under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, concluding with the issuance of all required permits; and
3) detailed engineering and construction designs, plans and specifications, and full or partial of approval of such designs, plans and specifications

within six (6) years of the date of execution of this lease shall be considered notice of termination of this lease by the Lessee. In that event, the lease will automatically terminate, with no action necessary on the part of the Government, on the date of execution of this lease plus six (6) years.

d. **Documentation of Compliance with Special Conditions. In order to document compliance with the requirements set forth in paragraph "c" above, the Lessee shall submit to the Government one consolidated package of information, within the required time frame, with evidence of such compliance with each and every item set forth in paragraph "c". The Government shall within thirty (30) days notify the Lessee, in writing, that the compliance by the Lessee has been met, or alternatively, set forth in detail what actions must be taken in order to meet compliance.** The Lessee must be in receipt of such notification

of full compliance prior to the initiation of any construction on the premises.

e. Adjustment of Rental Rate to Reflect Fair Market Value. A review and appraisal of the annual rental rate will occur five (5) years after the date of execution of this lease, and at the close of each and every five (5) year period thereafter, and the consideration recited in Condition 2 will be adjusted accordingly.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 15th day of September, 2006.

Anne L. Kosel
Chief, Real Estate Division
U.S. Army Corps of Engineers
St. Louis District

THIS LEASE is also executed by the Lessee this 11th day of September, 2006.

Robert Wydra
Executive Director
Tri-City Regional Port District

ACKNOWLEDGMENT

STATE OF ILLINOIS)
; ss
COUNTY OF MADISON)

On this 11th day of September, 20 06, before me the undersigned Notary Public, personally appeared Robert Wydra, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Roberta J. Williams
Notary Public

My Commission Expires:

OFFICIAL SEAL
ROBERTA J WILLIAMS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/17/07

ACKNOWLEDGMENT

STATE OF MISOURI)
: ss
CITY OF ST. LOUIS)

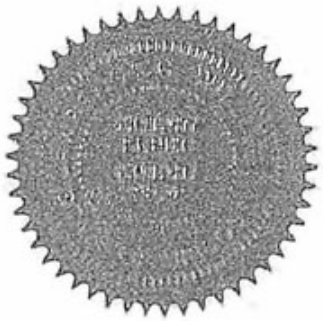
On this 15th day of SEP, 2004, before me the undersigned Notary Public, personally appeared Anne L. Kosel, Chief, Real Estate Division, U.S. Army Engineer District, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lawrence C. Wilkerson
Notary Public

My Commission Expires:

3-11-09



THIS INSTRUMENT PREPARED BY:

Cynthia L. Gan, Realty Specialist
U.S. Army Corps of Engineers
Real Estate Division
314-331-8184

REVIEWED FOR LEGAL SUFFICIENCY BY:

Elizabeth Ann Pitrolo, Assistant District Counsel
U.S. Army Corps of Engineers
Office of Counsel
314-331-8192

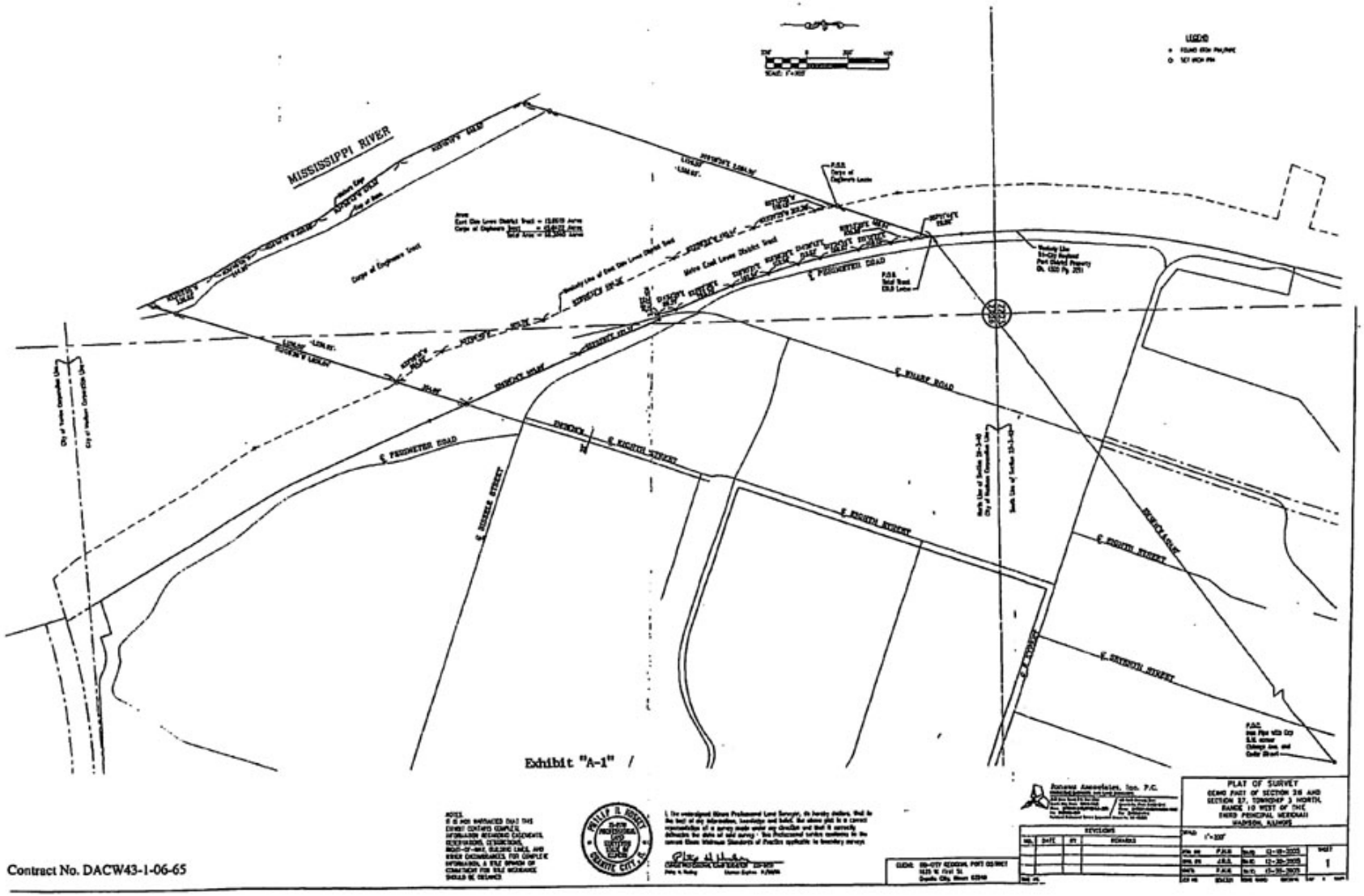


Exhibit "A-1" /

Contract No. DACW43-1-06-65

EXHIBIT "A-2"

Description For Rivers Edge
(New Harbor Site-Corps of Engineering Tract)

That part of Section 26 and Section 27, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, described as follows:

Commencing at an iron pipe with cap found at the southwest corner of Chicago Avenue and Cedar Street; thence on an assumed bearing of South 51 degrees 46 minutes 41 seconds West, 6,424.10 feet to a point on the existing westerly line of the tract as conveyed to Tri-City Regional Port District, according to the deed thereof recorded in Book 4500, Page 3211; thence South 18 degrees 08 minutes 26 seconds West, 486.94 feet to the westerly line of the East Side Levee District Tract also being the Point of Beginning.

From said Point of Beginning; thence southeasterly on the westerly line of said Metro East Levee District Tract the following six (6) courses and distances; 1) South 12 degrees 13 minutes 05 seconds East, 110.45 feet; 2) thence South 15 degrees 31 minutes 35 seconds East, 307.78 feet; 3) thence South 20 degrees 58 minutes 22 seconds East, 410.44 feet; 4) thence South 25 degrees 00 minutes 37 seconds East, 694.36 feet; 5) thence South 17 degrees 04 minutes 45 seconds East, 502.79 feet; 6) thence South 33 degrees 59 minutes 16 seconds East, 264.52 feet; thence South 18 degrees 08 minutes 26 seconds West, 1,251.95 feet to the existing water's edge as surveyed on December 16, 2005; thence northwesterly along said water's edge the following five (5) courses and distances; 1) thence North 23 degrees 02 minutes 05 seconds West, 336.52 feet; 2) thence North 30 degrees 46 minutes 09 seconds West, 244.90 feet; 3) North 26 degrees 07 minutes 16 seconds West, 320.96 feet; 4) thence North 34 degrees 55 minutes 43 seconds West, 479.32; 5) thence North 25 degrees 15 minutes 19 seconds West, 648.80 feet; thence North 18 degrees 08 minutes 26 seconds East, 1,598.03 feet to the Point of Beginning.

Said parcel contains 45.6422 acres or 1,998,174 square feet more or less.

Contract No. DACW43-1-06-65
Supplemental Agreement No. 1

AMENDMENT TO LEASE

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the Secretary of the Army, by authority of Title 10, United States Code, Section 2667, leased to Tri-City Regional Port District, by Contract No. DACW43-1-06-65, a parcel of land in the County of Madison, State of Illinois, Chain of Rocks Canal, for commercial-industrial purposes for a term of fifty (50) years, beginning September 15, 2006, and ending September 14, 2056, said parcel of land being more particularly described in said lease contract; and

WHEREAS, the Secretary of the Army, by authority of Title 33, United States Code, Section 408 and Title 10, United States Code, Section 2667, leased to Bi-State Development Agency, by Contract No. DACW23-065-CIVENG-62-29, a parcel of land in the County of Madison, State of Illinois, Chain of Rocks Canal, for commercial-industrial purposes for a term of forty (40) years, said parcel of land being more particularly described in said lease contract, said lease being amended by Supplemental Agreement No. 1 dated February 24, 1964, said lease being further amended by Supplemental Agreement No. 2 dated September 20, 1978, with said amendments altering certain terms and conditions of said contract, altering the true party in interest to Tri-City Regional Port District, and extending the lease term to end upon April 30, 2027; and

WHEREAS, the Secretary of the Army, by authority of Title 33, United States Code, Section 408 and Title 10, United States Code, Section 2667, leased to Tri-City Regional Port District, by Contract No. DACW23-065-CIVENG-62-44, a parcel of land in the County of Madison, State of Illinois, Chain of Rocks Canal, for commercial-industrial purposes for a term of fifty (50) years, said parcel of land being more particularly described in said lease contract, said lease being amended by Supplemental Agreement No. 1 dated February 24, 1964, said lease being further amended by Supplemental Agreement No. 2 dated March 4, 1966, said lease being further amended by Supplemental Agreement No. 3 dated May 30, 1973, said lease being further amended by Supplemental Agreement No. 4 dated July 22, 2005, with said amendments altering certain terms and conditions of said contract, and extending the lease term to end upon June 30, 2055; and

WHEREAS, the Secretary of the Army, by authority of Title 33, United States Code, Section 408 and Title 10, United States Code, Section 2667, leased to Bi-State Development Agency, by Contract No. DACW23-065-ENG-4110, a parcel of land in the County of Madison, State of Illinois, Chain of Rocks Canal, for commercial-industrial purposes for a term of fifty (50) years, said parcel of land being more particularly described in said lease contract, said lease being amended by Supplemental Agreement No. 1 dated April 26, 1954, said lease being further amended by Supplemental Agreement No. 2 dated June 19, 1959, said lease being further amended by Supplemental Agreement No. 3 dated February 1, 1963, said lease being further amended by Supplemental Agreement No. 4 dated April 15, 1975, said lease being further amended by Supplemental Agreement No. 5 dated September 20, 1978, said lease being further

amended by Supplemental Agreement No. 6 dated December 3, 1984,with said amendments altering certain terms and conditions of said contract, altering the true party in interest to Tri-City Regional Port District, and extending the lease term to end upon April 30, 2027; and

WHEREAS, consolidation of all four (4) above leases into one (1) lease, said lease being Lease No. DACW43-1-06-65, as hereinafter set forth, is mutually agreeable, and has therefore been determined to be in the best interests of parties hereto;

NOW THEREFORE, effective on the date of execution of this Supplemental Agreement No. 1 by the Secretary, said Lease No. DACW43-1-06-65 is hereby amended as follows:

1. The descriptions of the real estate included in and covered by Lease Contract No. DACW43-1-06-65, as identified therein as Exhibits A-1 and A-2 as part of Tract GC-11, are hereby deleted in their entirety, the following legal descriptions substituted therefor, and depicted as Exhibits A-1 and A-2 attached hereto:

TRACT 1
(*see also* **EXHIBIT A-1**)

That part of U.S. Survey 594, Claim 1865, and part of U.S. Survey 581, Claim 1258 and part of Fractional Section 14, Township 3 North, Range 10 West of the Third Principal Meridian, being all of Tracts No. A-6, A-7, A-41, A-42, A-52, A-53, A-54, A-55, A-56, A-60, A-64-1, and part of Tract Nos. A-8, A-9 & A-10 (tracks referred to herein and hereafter, by letter and number, are properties of the U.S. Government), described as follows:

Commencing at the most northeasterly corner of U.S. Survey 581, Claim 1258; thence on an assumed bearing of South 23 degrees 31 minutes West on the line between U.S. Survey 581 and U.S. Survey 578, and it's southerly extension, a distance of 6,053.1 feet to the most easterly corner of Tract A-64-1, being the Point of Beginning.

From said Point of Beginning; thence South 23 degrees 42 minutes West, 589.38 feet; thence South 22 degrees 27 minutes 30 seconds West for 1,089.1 feet; thence South 41 degrees 23 minutes West for 47.60 feet; thence South 33 degrees 16 minutes West for 204.10 feet; thence South 24 degrees 09 minutes West for 326.40 feet; thence South 26 degrees 52 minutes West for 263.1 feet; thence South 31 degrees 17 minutes 30 seconds West for 248.32 feet; thence South 38 degrees 47 minutes 44 seconds West for 359.31 feet; thence South 44 degrees 51 minutes 30 seconds West for 233.60 feet; thence South 47 degrees 44 minutes 30 seconds West for 443.40 feet; thence South 53 degrees 24 minutes 30 seconds West for 196.10 feet; thence South 57 degrees 43 minutes 30 seconds West for 171.70 feet; thence South 62 degrees 02 minutes 30 seconds West for 144.45 feet; thence South 77 degrees 39 minutes 30 seconds West for 174.36 feet; thence South 39 degrees 06 minutes 30 seconds West for 2,035.30 feet along the easterly boundary of Tract No. A-41; thence South 29 degrees 42 minutes West, 850.4 feet, along the easterly boundary of Tract No. A-41, to a point on the easterly boundary of Tract No. A-7; thence South 05 degrees 54 minutes West, 319.58 feet, to the southeast corner of Tract No. A-7; thence North 67 degrees 13 minutes 30 seconds West, on the south line of said tract 91.6 feet, to the northeast corner of Tract No. A-6; thence South 09 degrees 24 minutes West, along the

easterly boundary of Tract No. A-6, and it's southerly extension, 1,031.70 feet; thence South 28 degrees 28 minutes 00 seconds East, 158.80 feet to the northwest corner of Tract No. A-42; thence North 89 degrees 09 minutes 00 seconds East on the north line of Tract No. A-42, a distance of 444.90 feet to the northeast corner of Tract No. A-42; thence South 01 degrees 20 minutes 30 seconds West on the east line of Tract No. A-42, a distance of 68.00 feet; thence South 89 degrees 29 minutes 38 seconds West on the south line of Tract No. A-42; a distance of 111.69 feet; thence southwesterly, 275.06 feet on a curve to the left having a radius of 528.64 feet, the chord of said curve bears South 74 degrees 35 minutes 16 seconds West, 271.97 feet; thence South 59 degrees 40 minutes 54 seconds West, 1,633.46 feet; thence North 30 degrees 23 minutes 00 seconds West, 60.00 feet; thence South 59 degrees 37 minutes 00 seconds East, 931.42 feet; thence North 30 degrees 23 minutes 00 seconds East, 362.50 feet; thence North 59 degrees 37 minutes 00 seconds East, 773.76 feet; thence North 29 degrees 42 minutes 00 seconds East, on the Toe of Canal Cut, 4,907.35 feet; thence North 00 degrees 45 minutes West, along said line for 792.63 feet; thence North 29 degrees 42 minutes East, continuing along said line for 255.92 feet; thence South 60 degrees 18 minutes East for 377.5 feet to the intersection of the center lines of the East Levee of the Chain of Rocks Canal and Rock Road; thence continuing South 60 degrees 18 minutes East for 85.0 feet; thence North 29 degrees 42 minutes 00 seconds East, parallel with and 85.0 feet from, measured at right angles to the East Levee of the Chain of Rocks Canal for 4022.58 feet to the north line of Tract A-10; thence South 67 degrees 02 minutes 00 seconds East along the north line of Tract A-10 and Tract A-64-1, a distance of 1,423.74 feet to the Point of Beginning, excluding there-from acreage comprising public road rights-of-way and drainage ditch right-of-way averaging fifty (50) feet in width.

This description prepared from information supplied by Tri-City Regional Port District and other information in the offices of Juneau Associates, Inc., P.C. and not from actual survey.

Said parcel contains 276.13 acres or 12,028,092 square feet, more or less.

TRACT 2
(*see also* **EXHIBIT A-2**)

That part of Section 26 and Section 27, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, described as follows:

Commencing at an iron pipe with cap found at the southwest corner of Chicago Avenue and Cedar Street; thence on an assumed bearing of South 51 degrees 46 minutes 41 seconds West, 6,424.10 feet to a point on the existing westerly line of the tract as conveyed to Tri-City Regional Port District, according to the deed thereof recorded in Book 4500, Page 3211; thence South 18 degrees 08 minutes 26 seconds West, 486.94 feet to the westerly line of the East Side Levee District Tract also being the Point of Beginning.

From said Point of Beginning; thence southeasterly on the westerly line of said Metro East Levee District Tract the following six (6) courses and distances; 1) South 12 degrees 13 minutes 05 seconds East, 110.45 feet; 2) thence South 15 degrees 31 minutes 35 seconds East, 307.78 feet; 3) thence South 20 degrees 58 minutes 22 seconds East, 410.44 feet; 4) thence South 25 degrees 00 minutes 37 seconds East, 694.36 feet; 5) thence South 17 degrees 04 minutes 45 seconds East,

502.79 feet; 6) thence South 33 degrees 59 minutes 16 seconds East, 264.52 feet; thence South 18 degrees 08 minutes 26 seconds West, 1,251.95 feet to the existing water's edge as surveyed on December 16, 2005; thence northwesterly along said water's edge the following five (5) courses and distances; 1) thence North 23 degrees 02 minutes 05 seconds West, 336.52 feet; 2) thence North 30 degrees 46 minutes 09 seconds West, 244.90 feet; 3) North 26 degrees 07 minutes 16 seconds West, 320.96 feet, 4) thence North 34 degrees 55 minutes 43 seconds West, 479.32; 5) thence North 25 degrees 15 minutes 19 seconds West, 648.80 feet; thence North 18 degrees 08 minutes 26 seconds East, 1,598.03 feet to the Point of Beginning.

Said parcel contains 45.6422 acres or 1,998,174 square feet more or less.

2. The Term recited in Condition 1 of said Lease Contract No. DACW43-1-06-65 shall be for a term of fifty (50) years, beginning on September 15, 2006, and ending fifty years from September 15, 2006, but revocable by the Secretary of the Army during a national emergency declared by the President of the United States.

3. Condition 2 a. of said Lease Contract No. DACW43-1-06-65 shall be deleted in its entirety and replaced by the following:

2. CONSIDERATION

a. The Lessee shall pay rental in advance to the United States the amount of Ninety-nine Thousand Six Hundred Eighty-five Dollars and No Cents ($99,685.00), payable semi-annually in the amount of Forty-nine Thousand, Eight Hundred Forty-two Dollars and Fifty Cents ($49,842.50) on January 1 and July 1 of each year, provided, however, that prior to July 1, 2009, a review and appraisal of the annual rental rate will occur, and at the close of each and every five (5) year period thereafter, and this consideration will be adjusted accordingly. Payments should be made payable to the order of the "FAO, USACE, St. Louis District," and delivered to the Chief, Real Estate Division, U. S. Army Corps of Engineers, 1222 Spruce Street, St. Louis, Missouri, 63103-2833.

All of the remaining terms of Condition 2 of Lease Contract No. DACW43-1-06-65 shall remain in full force and effect.

4. Condition 12 of said Lease Contract No. DACW43-1-06-65 shall be deleted in its entirety and replaced by the following:

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the river, harbor or pool in any manner whatsoever; to construct, maintain, repair, dredge, enlarge or reconstruct the east canal levee of the Chain of Rocks Canal; construct or maintain facilities for underseepage control, interior drainage, necessary impoundment of water;

and/or to make any other use of the land as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

5. Special conditions recited in Condition 33 of said Lease Contract No. DACW43-1-06-65 shall only pertain to that portion of the lease area identified herein as Tract 2 and depicted on Exhibit A-2 attached hereto.

6. Condition 34 of said Lease Contract No. DACW43-1-06-65 is hereby added, and shall read as follows:

34. CONSOLIDATED SPECIAL CONDITIONS

a. Improvements on Leased Premises. The Lessee shall have the right, subject to the prior written approval of the District Engineer, to erect and construct, or cause to be erected and constructed, structures, roads, railroads, utilities and terminal facilities upon the leased premises, which structures, roads, railroads, utilities and terminal facilities shall be and remain the property of the Lessee except as otherwise provide herein, and may be removed therefrom by the Lessee, except as otherwise provided herein, provided however, that no structures, roads, railroads, utilities and terminal facilities shall be erected, constructed or altered upon the leased premises unless the proposed location and/or alteration thereof shall have been approved in writing by the District Engineer. All improvements erected or constructed by the Lessee under this lease shall be maintained by and at the expense of the lessee.

Further, the United States shall not be responsible for the construction, operation and maintenance of such drainage and railroad facilities as may be necessary on account of the construction and operation of the facilities contemplated hereunder.

b. Limitation on Use of Water Areas. In the event it becomes necessary, in the discretion of the District Engineer, to impose regulatory limitations on the use of water areas by the public, its shall be the responsibility of the said District Engineer to determine the extent and context of such rules and regulations, and it shall be the responsibility of the lessee, at its expense, to erect and maintain legible signs in sufficient number to inform the public throughout the leased area and the adjacent harbor.

c. Navigation. There shall be no unreasonable interference with navigation by the exercise of the privileges hereby granted. This lease shall in no way be construed to require the United States to maintain, by dredging or otherwise, adequate navigable depths within the limits of the adjoining harbor area or any portions thereof, unless otherwise required by law. Further, this lease shall in no way be construed to require the United States to remove wrecks, derelicts, sunken vessels or barges, or any other obstructions from the adjoining harbor area or any portions thereof, unless otherwise required by law.

d. Reserved

e. Levees and Appurtenances. The District Engineer hereby grants permission to the Lessee to occupy and use the Government-owned levee located on the leased premise for the purposes contemplated by this lease and under the limitations set forth herein. Operation and maintenance of pressure relief wells, the drainage ditch, and the levee slopes within the lease area shall not be the responsibility of the Lessee until such time as it is necessary for the Lessee to modify these facilities in connection with improvement of the lease area. The operation and maintenance of the pressure relief wells, drainage ditch (open or enclosed) and the levees slopes shall become the responsibility of the Lessee upon such modification.

f. Rights of Entry, Ingress and Egress. The United States, subject to the authority of law therefor, will grant rights-of-way for railroads, utilities and other facilities over, across and upon other Government-owned lands acquired for the Chain of Rocks Canal, in connection with the use and occupation of the leased premises for the purposes herein stipulated, under such terms and conditions as may be required by the District Engineer, upon proper application in writing having been made therefor by the respective owners. The Lessee shall have the right of ingress and egress over other property under the jurisdiction of the District Engineer acquired for the Chain of Rocks Canal along such route as may be designated by said officer.

That portion of the access roadway (constructed by the United States for access to Locks No. 27, Chain of Rocks Canal) upon the lease premises extending from 20th Street, as now designated in the city of Granite City, Illinois, shall be maintained to the satisfaction of the District Engineer by and at the expense of the Lessee, and the United States, its officers, agents, employees, licensees and invitees shall be accorded unrestricted ingress and egress along said roadway at all times.

g. Display of Lights and Signals. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the said District Engineer shall be installed and maintained by and at the expense of the Lessee.

h. Fees and Tariffs. Schedules of fees to be charged by the lessee shall be subject to the prior written approval of the District Engineer. The Lessee shall keep available at all times schedules of such fees and tariffs for inspection by the public, and shall keep a complete and accurate account of receipts and disbursements which shall be subject to inspection at any time by the District Engineer or duly authorized representative. After such fees are approved by the District Engineer, they may, in his discretion be subject to review at such times and in such a manner as deemed appropriate by the District Engineer. Before such review, however, the Lessee shall be given reasonable notice, not less than Thirty (30) days, to the effect that such review is under consideration by the District Engineer, and the Lessee may submit such data in connection therewith as it may desire.

7. All of the remaining terms and conditions of said Lease Contract No. DACW43-1-06-65 shall remain in full force and effect.

8. Effective on the date of execution of this Supplemental Agreement No. 1 by the Secretary, Contract Nos. DACW23-065-CIVENG-62-29, DACW23-065-CIVENG-62-44 and DACW23-065-ENG-4110 are hereby revoked by the Secretary.

IN WITNESS THEREOF, I have hereunto set my hand by authority of the Secretary of the Army this 19th day of September, 2008.

ANNE L. KOSEL
Chief, Real Estate Division
U.S. Army Corps of Engineers
St. Louis District

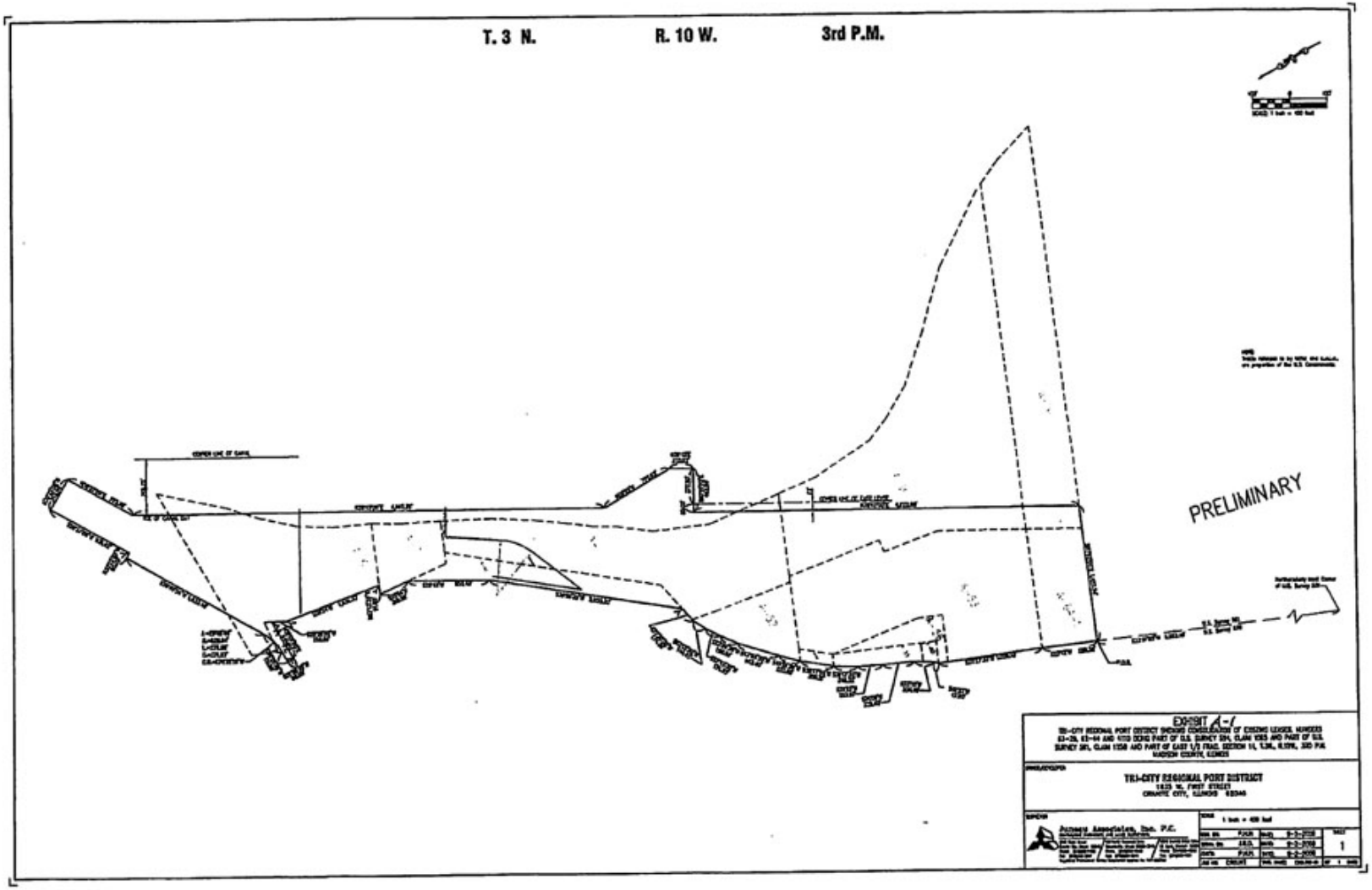
THIS SUPPLEMENTAL AGREEMENT is also executed by the lessee this 8th day of September, 2008.

ROBERT WYDRA
Executive Director
Tri-City Regional Port District

Cynthia Gan, Realty Specialist
U.S. Army Corps of Engineers
1222 Spruce Street
St. Louis, Missouri 63103-2833
314-331-8157

REVIEWED FOR LEGAL SUFFICIENCY BY:

for **Elizabeth Pitrolo**, Attorney
314-331-8192


T. 3 N.
R. 10 W.
3rd P.M.
PRELIMINARY
EXHIBIT A-1
TRI-CITY REGIONAL PORT DISTRICT
1825 W. FIRST STREET
GRANITE CITY, ILLINOIS 62040
Archaeo Associates, Ltd. P.C.
1 Inch = 400 feet
1

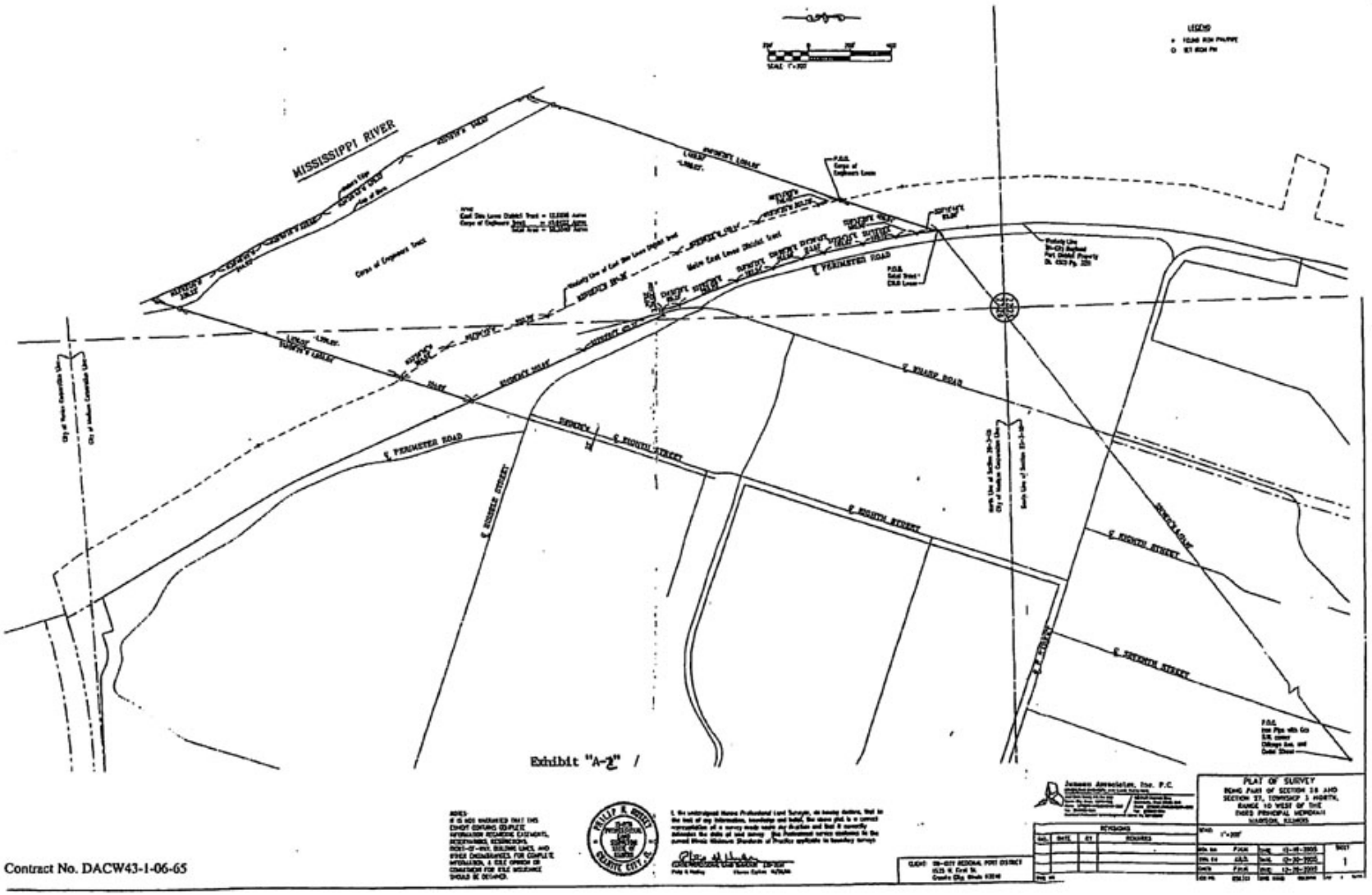


Exhibit "A-2"

Contract No. DACW43-1-06-65

EXHIBIT B

AGREEMENT OF EASEMENT

This AGREEMENT OF EASEMENT (this "Easement"), dated as of November 4, 2021, is between America's Central Port District, formerly known as Tri-City Regional Port District, a Municipal Corporation of the State of Illinois ("Lessor") and Plateplus, Inc., a Delaware corporation ("Lessee").

WITNESSETH THAT:

WHEREAS, in October 2017, Lessor was notified by Cargill, Inc. that Lessee had entered into an asset purchase agreement with Cargill, Inc. which included substantially all of the assets related to the U.S. metals business of Cargill, including Cargill's leasehold interest in the Lessor's property; and

WHEREAS, by various assignments, Lessee has succeeded to the rights and obligations of the Original Lessee under the Lease Agreement; and

WHEREAS, Lessee desires to expand its rail business at property located at 2325 North Street, Granite City, IL; and

WHEREAS, the planned rail extension is located outside of the leasehold limits thereby requiring an easement(s); and

WHEREAS, the Lessor and the Lessee desire to execute an easement to address the additional Railway Easement property that is needed.

NOW THEREFORE, the Lessor and the Lessee agree as follows.

1. Recitals. The preceding Recitals are true and accurate, and are incorporated in this Easement.

2. Additional Property. All references in the Lease, regardless of how denominated or referenced, shall mean and include the Easement property. All rights, interests, and obligations of the parties expressed in the Lease relative to the Railway Easement Property shall constitute rights, interests, and obligations of the parties in the Property, as though the Easement Property had been included in the definition of the Lease Property from the inception of the Lease. Without limiting the preceding, the parties acknowledge and agree that the present and historic use of the Easement Property for access between the Demised Premises and the Lessor's right of way is permissible and ratified.

3. Term. The term of this easement shall be twenty (20) years from the date of execution. The parties may negotiate an extension of the easement at that time.

4. Consideration. Consideration for the initial term of this Easement shall be $1.00.

5. Counterparts and Recording. This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument. The Lessor authorizes the Lessee to cause a fully assembled counterpart original of this Easement to be recorded in the land records of Madison County, Illinois.

IN WITNESS WHEREOF, the parties have executed this Easement as of this date first set forth above.

[Signature Pages Follow]

Executed this 12th day of October, 2021

AMERICA'S CENTRAL PORT DISTRICT f/k/a Tri-City Regional Port District, a Municipal Corporation of the State of Illinois

By: Tyrone Echols
Name: Tyrone Echols
Title: Chairman

ATTEST:
By: Ed Hagnauer
Name: Ed Hagnauer
Title: Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

I, Roberta J. Williams, IN AND FOR SAID County, in the State aforesaid, do hereby certify that Tyrone Echols, personally known to me to be the Chairman of the Board and Ed Hagnauer, personally known to me to be the Secretary of said Port District Board, and personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman and Secretary, they signed and delivered the said instrument as Chairman and Secretary of said Board, and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of said District as their free and voluntary act, and as the free and voluntary act and deed of said Board, for the uses and purposed therein set forth.

GIVEN under my hand and notarial seal this 12th day of October, 2021.

OFFICIAL SEAL
ROBERTA J WILLIAMS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/01/23

SEAL

Roberta J. Williams
NOTARY PUBLIC

Executed this 4th day of NOVEMBER, 2021

PLATEPLUS, INC., a Delaware corporation

By: K. Ikeuchi

Name: KOTA IKEUCHI

Title: COO

STATE OF TEXAS)
) SS.
COUNTY OF MONTGOMERY)

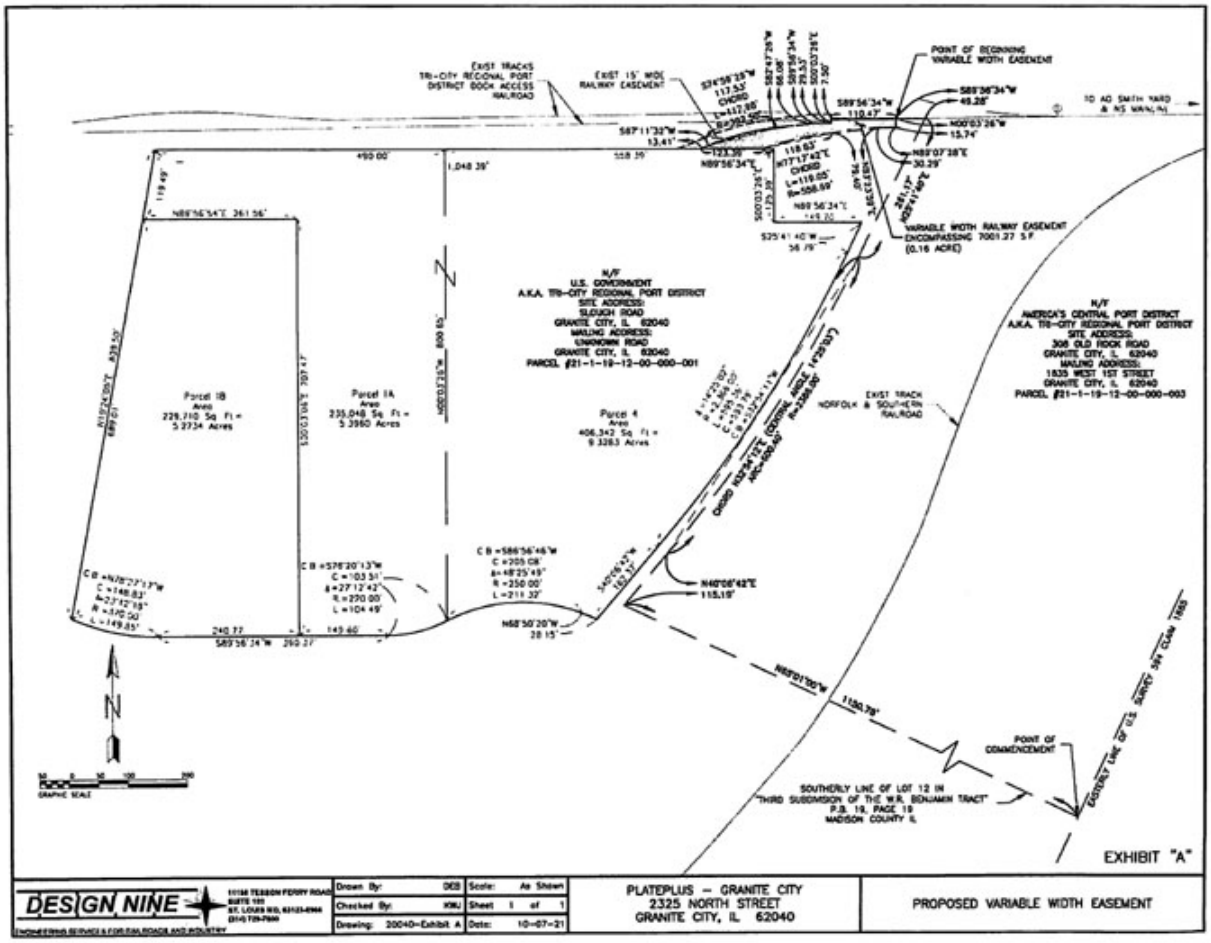
I, BERRY JOE JOHNSON, IN AND FOR SAID County, in the State aforesaid, do hereby certify that KOTA IKEUCHI, personally known to me to be the CEO and _____, personally known to me to be the _____ of Plateplus, Inc., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of NOVEMBER, 2021

BERRY JOE JOHNSON
Notary Public, State of Texas
Comm. Expires 12-10-2024
Notary ID 125140453

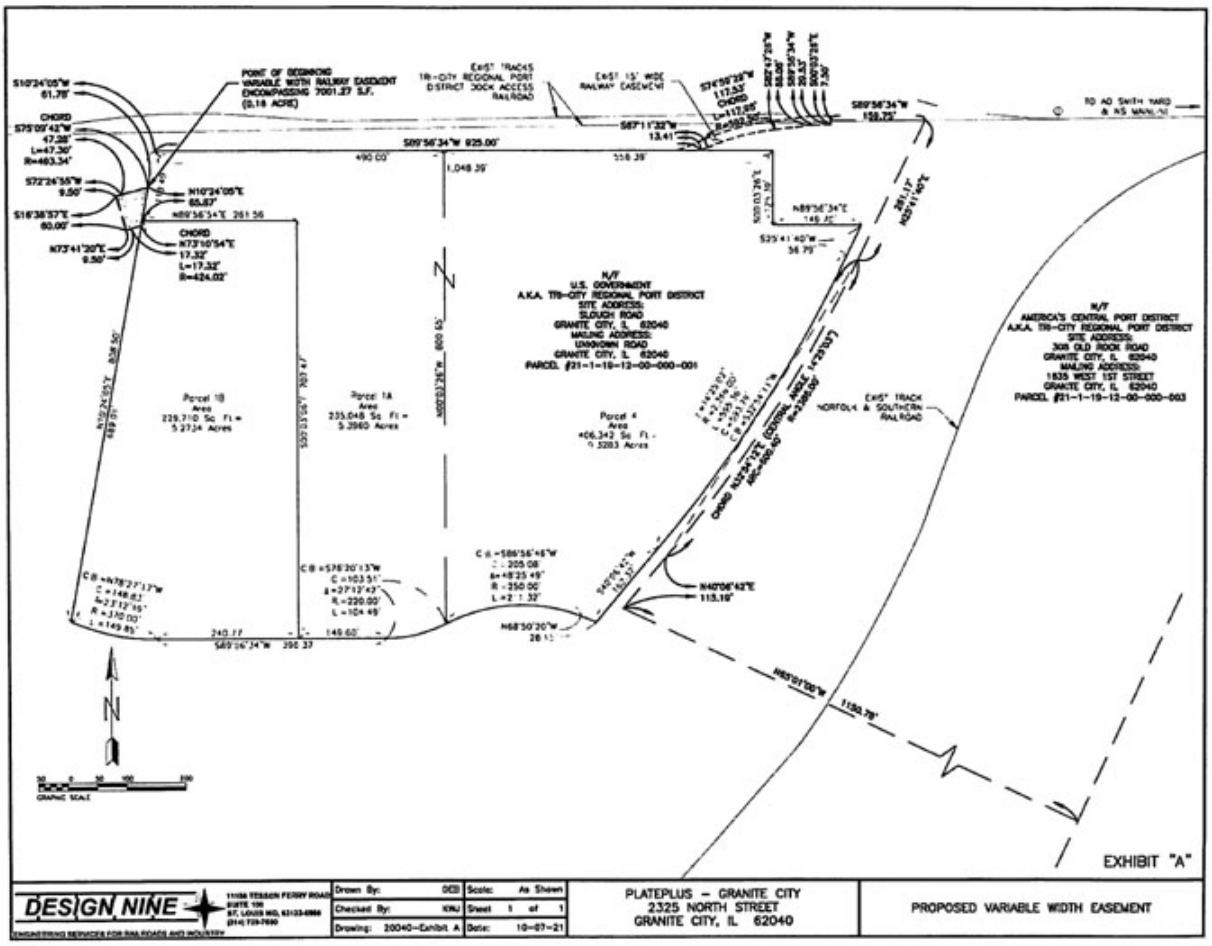
SEAL

Berry Joe Johnson
NOTARY PUBLIC


EXIST TRACKS
TRI-CITY REGIONAL PORT DISTRICT DOCK ACCESS RAILROAD
EXIST 15' WIDE RAILWAY EASEMENT
POINT OF BEGINNING VARIABLE WIDTH EASEMENT
TO AG SMITH YARD & NS MAINLINE
VARIABLE WIDTH RAILWAY EASEMENT ENCOMPASSING 7001.27 S.F. (0.16 ACRE)
N/F
U.S. GOVERNMENT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
SLOUGH ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
UNKNOWN ROAD
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-001
N/F
AMERICA'S CENTRAL PORT DISTRICT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
305 OLD ROCK ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
1535 WEST 1ST STREET
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-003
Parcel 1B
Area
229,710 Sq. Ft. =
5.2734 Acres
Parcel 1A
Area
235,048 Sq. Ft. =
5.3960 Acres
Parcel 4
Area
406,342 Sq. Ft. =
9.3283 Acres
EXIST TRACK
NORFOLK & SOUTHERN RAILROAD
SOUTHERLY LINE OF LOT 12 IN
"THIRD SUBDIVISION OF THE W.R. BENJAMIN TRACT"
P.B. 19, PAGE 19
MADISON COUNTY IL
POINT OF COMMENCEMENT
EASTERLY LINE OF U.S. SURVEY 369 CLAIM 1855
EXHIBIT "A"
DESIGN NINE
11136 TESSON FERRY ROAD
SUITE 101
ST. LOUIS MO, 63123-8944
(314) 729-7500
ENGINEERING SERVICES FOR RAILROAD AND INDUSTRY
Drawn By: DCB
Checked By: KWJ
Drawing: 20040-Exhibit A
Scale: As Shown
Sheet 1 of 1
Date: 10-07-21
PLATEPLUS - GRANITE CITY
2325 NORTH STREET
GRANITE CITY, IL 62040
PROPOSED VARIABLE WIDTH EASEMENT

A variable width railway easement for the construction, establishment, use, maintenance and operation described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594 Claim 1865 with the southerly line of Lot 12 in "Third Subdivision of the W. R. Benjamin Tract", as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled, also known as Chouteau Slough Road and Alton St. Louis Wagon Road); thence along said centerline the following, North 40 degrees 06 minutes 42 seconds East a distance of 115.19 feet; thence along a curve to the left having a radius of 2386 feet, a chord bearing of North 32 degrees 54 minutes 12 seconds East, a central angle of 14 degrees 25 minutes 03 seconds, an arc distance of 600.40 feet; thence North 25 degrees 41 minutes 40 seconds East a distance of 261.17 feet to the centerline of the Tri-City Regional Port District Dock Access Railroad; thence leaving said centerline of Old Rock Road, South 89 degrees 56 minutes 34 seconds West a distance of 49.28 feet along said centerline of Dock Access railroad to the point of beginning of the herein described variable width easement; thence South 89 degrees 56 minutes 34 seconds West for a distance of 110.47 feet ; thence South 00 degrees 03 minutes 26 seconds East for a distance of 7.50 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 29.53 feet; thence South 82 degrees 47 minutes 26 seconds West for a distance of 66.08 feet; thence along a curve to the left having a radius of 392.50 feet, an arc distance of 117.98 feet and a chord bearing of South 74 degrees 59 minutes 29 seconds West for a distance of 117.53 feet; thence South 67 degrees 11 minutes 32 seconds West for a distance of 13.41 feet; thence North 89 degrees 56 minutes 34 seconds East for a distance of 123.39 feet; thence along a curve to the right having a radius of 558.69 feet, an arc distance of 119.05 feet and a chord bearing of North 77 degrees 17 minutes 42 seconds East for a distance of 118.83 feet; thence North 83 degrees 23 minutes 59 seconds East for a distance of 79.40 feet; thence North 89 degrees 07 minutes 28 seconds East for a distance of 30.29 feet; thence North 00 degrees 03 minutes 26 seconds West for a distance of 15.74 feet to the point of beginning of the variable width easement.


POINT OF BEGINNING
VARIABLE WIDTH RAILWAY EASEMENT
ENCOMPASSING 7001.27 S.F.
(0.16 ACRE)
Exist. TRACKS
TRI-CITY REGIONAL PORT
DISTRICT DOCK ACCESS
RAILROAD
Exist. 15' WIDE
RAILWAY EASEMENT
TO AG SMITH YARD
& NS MAIN LINE
N89°56'34"E 925.00'
1,048.39'
Parcel 1B
Area
229,710 Sq. Ft. ±
5.2734 Acres
Parcel 1A
Area
235,048 Sq. Ft. ±
5.2960 Acres
Parcel 4
Area
406,342 Sq. Ft. ±
9.3283 Acres
N/F
U.S. GOVERNMENT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
SLOUGH ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
UNKNOWN ROAD
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-001
N/F
AMERICA'S CENTRAL PORT DISTRICT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
308 OLD ROCK ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
1635 WEST 1ST STREET
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-003
EXIST. TRACK
NORFOLK & SOUTHERN
RAILROAD
N40°06'42"E
115.19'
1150.78'
GRAPHIC SCALE
EXHIBIT "A"
DESIGN NINE
ENGINEERING SERVICES FOR RAILROADS AND INDUSTRY
Drawn By: DCB
Checked By: KNJ
Drawing: 20040-Exhibit A
Scale: As Shown
Sheet 1 of 1
Date: 10-07-21
PLATEPLUS - GRANITE CITY
2325 NORTH STREET
GRANITE CITY, IL 62040
PROPOSED VARIABLE WIDTH EASEMENT

A variable width railway easement for the construction, establishment, use, maintenance and operation described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594 Claim 1865 with the southerly line of Lot 12 in "Third Subdivision of the W. R. Benjamin Tract", as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled, also known as Chouteau Slough Road and Alton St. Louis Wagon Road); thence along said centerline the following, North 40 degrees 06 minutes 42 seconds East a distance of 115.19 feet; thence along a curve to the left having a radius of 2386 feet, a chord bearing of North 32 degrees 54 minutes 12 seconds East, a central angle of 14 degrees 25 minutes 03 seconds, an arc distance of 600.40 feet; thence North 25 degrees 41 minutes 40 seconds East a distance of 261.17 feet to the centerline of the Tri-City Regional Port District Dock Access Railroad; thence leaving said centerline of Old Rock Road, South 89 degrees 56 minutes 34 seconds West a distance of 159.75 feet along said centerline of Dock Access railroad; thence South 00 degrees 03 minutes 26 seconds East for a distance of 7.50 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 29.53 feet; thence South 82 degrees 47 minutes 26 seconds West for a distance of 66.08 feet; thence along a curve to the left having a radius of 392.50 feet, an arc distance of 117.98 feet and a chord bearing of South 74 degrees 59 minutes 29 seconds West for a distance of 117.53 feet; thence South 67 degrees 11 minutes 32 seconds West for a distance of 13.41 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 925.00 feet; thence South 10 degrees 24 minutes 05 seconds West for a distance of 61.78 feet to the point of beginning of the herein described easement; thence along a curve to the left having a radius of 493.34 feet, an arc distance of 47.30 feet and a chord bearing of South 75 degrees 09 minutes 42 seconds West for a distance of 47.28 feet; thence South 72 degrees 24 minutes 55 seconds West for a distance of 9.50 feet; thence South 16 degrees 38 minutes 57 seconds East for a distance of 60.00 feet; thence North 73 degrees 41 minutes 20 seconds East for a distance of 9.50 feet; thence along a curve to the left having a radius of 424.02 feet, an arc distance of 17.32 feet and a chord bearing of North 73 degrees 10 minutes 54 seconds East for a distance of 17.32 feet; thence North 10 degrees 24 minutes 05 seconds East for a distance of 65.87 feet to the point of beginning of the variable width easement.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("**Agreement**"), is made this 5th day of April, 2022, by and between Plateplus Inc., a Delaware corporation, with its principal office at 21 Waterway Avenue, Suite 525, The Woodlands, Texas 77380 ("**Assignor**"), and Friedman Industries, Incorporated, a Texas corporation, with its principal office at 1121 Judson Road, Suite 124, Longview, Texas 75601 ("**Assignee**").

WITNESSETH

WHEREAS, America's Central Port District, formerly known as Tri-City Regional Port District (the "**Port District**"), has among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the District in Madison County, Illinois; and

WHEREAS, the Port District has a lease with the Department of the Army No. DACW43-1-06-65, as may be amended; and

WHEREAS, the Port District and Robinson Steel Co Inc., entered into an Amended and Restated Agreement of Lease on January 11, 2010 for the lease of that certain parcel of land in Madison County, Illinois, generally known as Parcel 1-B (Laser Parcel) and located at 2325 North Street, Granite City, Illinois (as more particularly described in the Lease) (the "**Lease**"); and

WHEREAS, Robinson Steel Co Inc. assigned all of its rights, interests and obligations in and under the Lease to Robinson Laser, LLC, a Delaware limited liability company, and Robinson Laser, LLC, a Delaware limited liability company assumed all of Robinson Steel Co Inc.'s rights, interests and obligations in and under the Lease; and

WHEREAS, Robinson Laser, LLC, a Delaware limited liability company assigned all of its rights, interests and obligations in and under the Lease to Cargill, Incorporated, a Delaware corporation, and Cargill, Incorporated, a Delaware corporation assumed all of Robinson Laser, LLC, a Delaware limited liability company's rights, interests and obligations in and under the Lease; and

WHEREAS, Cargill, Incorporated, a Delaware corporation assigned all of its rights, interests and obligations in and under the Lease to Assignor, and Assignor assumed all of Cargill, Incorporated, a Delaware corporation's rights, interests and obligations in and under the Lease; and

WHEREAS, the Port District and Assignor entered into that certain Agreement of Easement for rail extension dated effective as of November 4, 2021 (the "**Easement**");

WHEREAS, Assignor and Assignee are parties, along with others, to an Asset Purchase Agreement dated on or about the date of this Agreement, under which Assignor agrees to transfer to Assignee, and Assignee agrees to purchase from Assignor certain assets including all of Assignor's rights, interest and obligations in and under the Lease and the Easement (the "**APA**"); and

WHEREAS, Assignor wishes to assign its rights and interests in and to, and obligations under the aforesaid Lease and Easement between the Port District and Assignor to Assignee; and

WHEREAS, Assignee is willing to assume Assignor's responsibilities and obligations to the Port District under the Lease and the Easement.

NOW, THEREFORE, in consideration of the premises and ONE AND NO/100 DOLLARS ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. Assignor hereby assigns all of its rights, interest and obligations in the Lease and Easement to Assignee.

2. Assignee hereby assumes the obligations under the Lease and Easement and shall make all payments required by the Lease and shall comply with all terms and conditions of said Lease and Easement required to be performed by Assignor, and said Lease is hereby incorporated as **Exhibit A** attached hereto, and said Easement is hereby incorporated as **Exhibit B**. All the terms of said Lease and Easement shall be read and understood herein in the same manner as they are expressed in said Lease and Easement.

3. The effectiveness of this Agreement is conditioned upon the successful completion of the Closing under the APA by no later than the 30th day of April, 2022, or such later date as the parties may agree in writing, in any event not to be later than June 15, 2022 (the "**Outside Closing Date**"). If the Closing does not occur on or before the Outside Closing Date, then this Agreement is automatically void and of no further force or effect. The assignment is effective as and from the Closing Date. The terms "**Closing**" and "**Closing Date**" having the definitions given them in the APA.

4. The parties may execute this Agreement in counterparts, each of which constitutes an original, and both of which together constitute only one agreement. The signatures of both parties do not need to appear on the same counterpart, and delivery of an executed counterpart signature page electronically is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement.

[Signatures on following page(s)]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By:_____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By:_____
Mike Taylor
President and CEO

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By: _____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By: _____
Mike Taylor,
President and CEO

EXHIBIT A

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease ("Agreement"), made this __ day of October, 2013, by and among Robinson Laser, LLC, a Delaware limited liability company with its principal place of business at 4303 Kennedy Avenue, East Chicago, Indiana 46312, hereinafter sometimes referred to as "Assignor" or "Lessee," and Cargill, Incorporated, a Delaware corporation, with its principal office at 9350 Excelsior Boulevard, Hopkins, Minnesota 55343, hereinafter sometimes referred to as "Assignee."

WITNESSETH

WHEREAS, the Tri-City Regional Port District, hereinafter sometimes referred to as the "Port District", has among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the District in Madison County, Illinois; and

WHEREAS, the Port District has a lease with the Department of the Army No. DACW43-1-06-65, as amended; and

WHEREAS, the Port District and Robinson Steel Co Inc entered into an Amended and Restated Agreement of Lease on January 11, 2010 (the "Lease"); and

WHEREAS, Robinson Steel Co Inc has assigned all of its rights, interests and obligations in and under the Lease to Assignor, and Assignor has assumed all of Robinson Steel Co Inc's rights, interests and obligations in and under the Lease; and

WHEREAS, Assignor and Assignee are parties, along with others, to an Asset Purchase and Sale Agreement dated on or about the date of this Agreement under which Assignor agrees to transfer to Assignee, and Assignee agrees to purchase from Assignor, certain assets, including all of Assignor's rights, interest and obligations in and under the Lease (the "APA"); and

WHEREAS, Assignor wishes to assign its rights and interests in and to, and obligations under, the aforesaid Lease between the Tri-City Regional Port District and Assignor to Assignee; and

WHEREAS, Assignee is willing to assume Assignor's responsibilities and obligations to the Port District under the Lease.

NOW, THEREFORE, in consideration of the premises and One Dollar ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. Assignor hereby assigns all of its rights, interest and obligations in the Lease to the Assignee.

2. Assignee hereby assumes the obligations under the Lease and shall make all payments required thereby and shall comply with all terms and conditions of said Lease required to be performed by Assignor, and said Lease is hereby incorporated herein as Exhibit A attached hereto. All the terms of said Lease shall be read and understood herein in the same manner as they are expressed in said Lease.

3. The effectiveness of this Agreement is conditioned upon the successful completion of the Closing under the APA by no later than October 30, 2013 or such later date as the parties may agree in writing (the "Drop Dead Date"). If the Closing does not occur on or before the Drop Dead Date then this Agreement is automatically void and of no further force or effect. The assignment is effective as and from the Closing Date. "Closing" and "Closing Date" having the definitions given them in the APA.

4. The parties may execute this Agreement in counterparts, each of which constitutes an original, and both of which together constitute only one agreement. The signatures of both parties do not need to appear on the same counterpart, and delivery of an executed counterpart signature page electronically is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other, or delivery of one executed counterpart to the Port District.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date above mentioned.

ASSIGNOR:

ROBINSON LASER, LLC, a Delaware limited liability company

By:_____
Name: _____
Title: _____

ASSIGNEE:

CARGILL, INCORPORATED, a Delaware corporation

By: _____
Name: Mike Taylor
Title: Vice President

EXHIBIT A

Lease

[SEE ATTACHED]

AMENDED AND RESTATED AGREEMENT OF LEASE BETWEEN TRI-CITY REGIONAL PORT DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS AND ROBINSON STEEL CO., INC., AN INDIANA CORPORATION

This Amended and Restated Agreement of Lease is entered into this 11th day of January, 2010 ("Effective Date") by and between the Tri-City Regional Port District, a Municipal Corporation of the State of Illinois, created by the State of Illinois and authorized by the Tri-City Regional Port District Act of 1959, as amended, hereinafter sometimes referred to as "Port District", "District", or "Lessor" and Robinson Steel Co., Inc., an Indiana corporation, with its principal place of business at 4303 Kennedy Avenue, East Chicago, Indiana 46312, hereinafter sometimes referred to as "Company" or "Lessee",

WITNESSETH:

WHEREAS, the Port District has, among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and to perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the Tri-City Regional Port District in Madison County, Illinois; and

WHEREAS, the Port District has leased multiple parcels of land from the Department of the Army (wherein the District is sometimes identified as the "Tri-Cities Regional Port District") pursuant to the terms of that certain Department of the Army Lease designated No. DACW43-1-06-65 executed by the Army on 15th day of September, 2006, and by the Port District on the 11th day of September, 2006, as amended by that certain Amendment to Lease dated September 19, 2008 (as amended, the "Government Lease"). Said Government Lease is currently for a term of expiring on June 30, 2055. A copy of said Government Lease is attached hereto as Exhibit C; and

WHEREAS, the Port District and the Company originally entered into that certain Agreement of Lease dated as of September 9, 1991 by and between the Port District, as lessor,

EXHIBIT A

and the Company, as lessee, as amended by First Amendment dated October 21, 1991 by and between the Port District and the Company and Second Amendment dated June 1, 2000 by and between the Port District and the Company (collectively, the "Original Sublease") to sublease the Company certain land leased by the Port District under the Government Lease.

WHEREAS, the Port District and the Company desire to amend and restate the entire Original Sublease to modify the description of the land thereunder on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and One Dollar ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants the parties hereto agree as follows, to-wit:

ARTICLE I - THE PREMISES

Section 1.1 – The District agrees to demise and lease, and by these presents does demise and lease to Robinson Steel Co, Inc. the following described real estate, hereinafter called "Demised Premises", the "Leased Premises" or the "Premises" to-wit:

> Parcel 1B – A tract of land being part of U.S. Survey 594, Claim 1865 in the southwest quarter of Section 12, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:
>
> Commencing at the intersection of the easterly line of U.S. Survey 594 Claim 1865 with the southerly line of lot 12 in "3rd Subdivision of the W. R. Benjamin Tract" as recorded in Plat Book 19 on page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minute 00 seconds West, along the southerly line of said subdivision and its extension, a distance of 1150.78 feet to the centerline of road (as traveled); thence South 40 degrees 06 minutes 42 seconds West, along said centerline, a distance of 72.02 feet; thence North 68 degrees 50 minutes 20 seconds West a distance of 39.00 feet; around a curve to the left having a radius of 250.00 feet, through a central angle of 48 degrees 25 minutes 49 seconds chord bearing South 86 degrees 56 minutes 46 seconds West, an arc distance of 211.32 feet; thence North 27 degrees 16 minutes 09 seconds West a distance of 30.00 feet; thence around a curve to the right having a radius of 220.00

feet, through a central angle of 27 degrees 12' 42", chord bearing South 76 degrees 20' 13" West, an arc distance of 104.49 feet to an iron pin; thence South 89 degrees 56 minutes 34 seconds West a distance of 146.38 feet to the point of beginning; thence continuing South 89 degrees 56 minutes 34 seconds West, a distance of 243.99 feet; thence northwesterly along a curve to the right a radius of 370.00 feet, a chord bearing of North 78 degrees 31 minutes 30 seconds West, an arc distance of 148.94 feet; thence North 10 degrees 24 minutes 04 seconds East, a distance of 686.61 feet; thence North 89 degrees 56 minutes 34 seconds East, a distance of 264.14 feet; thence South 00 degrees 04 minutes 17 seconds East, a distance of 704.77 feet to the point of beginning, containing 230,577 square feet, or 5.29 acres, more or less.

All as shown and delineated on Exhibit A attached hereto.

To have and to hold said described land for a term beginning on the Effective Date and ending on the 31st day of August, 2023, with all rights and privileges, easements and appurtenances thereto belonging, and subject to all restrictions, rights and privileges arising under and by virtue of the Government Lease hereinabove referred to, for the use of Company in the manner hereinafter provided for the purpose of constructing, installing, operating and maintaining facilities for the processing of steel, including laser cutting related thereto. Said facilities shall consist of a 108,000 square foot processing/warehouse facility with truck apron with approximate dimensions of 180' X 600'. (Now existing on Parcel 1)

Lessee shall have the option of extending this Lease Agreement for an additional twenty (20) year term in the manner hereinafter provided (it being understood that such option exercised on one or more occasions if the Government Lease is extended on more than one occasion.) This option is subject to the extension of the existing term of the Government Lease which terminates on the 31st day of August, 2023. If said Government Lease is not extended for an additional 20 years, then the option herewith granted to the Lessee shall be limited to a term equal to or less than (whichever Lessee elects) the number of years represented by each extension of said Government Lease. The Port District will make a diligent and good faith effort to extend said

Government Lease and will initiate negotiations for an extension thereof before August 31, 2020, said date being three years prior to the termination of the original term of said Government Lease on August 31, 2023. The Port District will keep Lessee advised of the status of said negotiations and shall deliver to Lessee a true and accurate copy of the applicable extension agreement promptly upon its execution. All of the terms and conditions of this Lease shall continue in full force and effect for any such extended period except that the rental to be paid during the said extended period shall be the rental due under the calculation described in Section 1.4 hereof at the time of any such extension or extensions. The Lessee Company shall give the Port District Lessor written notice of its intention to extend its primary term for the period or periods hereinabove described at least six (6) months prior to the expiration of its primary lease (or the then applicable option term).

Section 1.2- Lessor agrees to provide for Lessee's use (in conjunction with other users) all existing trucking concourses and pipelines controlled by the Lessor adjacent to the Demised Premises and a means of reasonable ingress and egress to the area under lease to the Company. The Port District constructed Port Truck Haul Road, connecting the Port District General Cargo Dock by an extension of North Street with Old Rock Road. The location of said Truck Haul Road is shown on **Exhibit B** as attached. The Haul Road follows the following described line:

> Starting from the existing roadway serving the General Cargo Dock and the Granite City Steel Dock, the Haul Road will connect to the East Canal Levee Road and then follow the levy road northerly to a point approximately 550 feet north of Rock Road, the haul road will then follow an extension of North Street, which will be constructed as part of the haul road, connecting the levy road and Old Rock Road. The land subject to this lease as described in Section 1.1 has frontage on the North Street extension.

Said Haul Road accommodates a limit of 18,000 pounds per axle.

The use of said trucking concourses and pipelines and means of ingress and egress is to be subject, at all times during the period of this lease, to the rights of the Lessor or its assigns to

construct, operate, maintain and use said facilities, and further subject to the right of the Lessor to determine speed and safety procedure, to control and approve of the method of operation, including the switching and handling of trucks or rail cars, if any, overland along any roadway or trackage adjacent to the leased premises and area service ways used in conjunction with or in relation to the leased premises; provided, however, that Lessor shall not exercise such rights in any manner that will be incompatible with Lessee's reasonable use and operation of its leased premises.

Section 1.3 - The land and the improvements that may hereafter be erected thereon and which are to be operated by Lessee are to be used for the purpose of constructing, installing, operating and maintaining a warehouse and office facility for the processing of steel, including laser cutting and storage thereof, which shall be duly licensed at all times when a license for such operation is required. Said installations and their maintenance and operation shall be in accordance with the power and authority of the District as created by an Act of the Legislature of the State of Illinois. Lessor hereby represents that this Lease and the construction of said facilities are consistent with and in accordance with the power and authority of the District under the Act.

Section 1.4 – Lessee, Company hereby agrees and covenants to pay Lessor, Port District, at said District's office, 2801 Rock Road, Granite City, Illinois, 62040, or at such other place in Madison County, Illinois, as said Port District may, from time to time, designate in writing, a rental of One Thousand Six Hundred Seventy Six and 03/100ths Dollars ($1,676.03) per acre per annum for the Demised Premises, made in quarterly installments. Rental for the Demised Premises is now payable and shall continue to be payable in accordance with the Schedule set forth hereafter and shall be pro-rated for any part of a quarter remaining at the time of termination of this Lease. The quarterly installments shall be made each January 1, April 1, July

1 and October 1. All rentals shall be pro-rated for any part of a quarter remaining at the time of termination of this Lease.

If payment of any rental is not made to the Port District within five days of the date when due, a penalty equal to the then existing prime interest rate (as publicly established from time to time by JP Morgan Chase, N.A. or its successors, plus an additional 6 percentage points, calculated on an annual basis, may be assessed by the Port District against the late payment and if assessed shall be paid by the Lessee.

Rental is to be adjusted only upward in accordance with the Producers Price Index (PPI) for industrial commodities as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor index (hereafter, the "PPI"), every five (5) years on the anniversary of September 9, 1991 (i.e., September 9, 1996, September 9, 2001, September 9, 2006, September 9, 2011, September 9, 2016, September 9, 2021, etc.). Such increase, if any, shall be determined by comparing the then applicable PPI of September 9, 1991 to the most currently available PPI. The rate of any rental increase for any five year period, however, shall not exceed 18% of the then existing rental payment irrespective of an increase in the PPI.

The rentals described in this Section 1.4 shall be payable during the primary term and the option terms described in Section 1.1 hereof. The rental provisions made in this Paragraph are subject to and conditioned upon the renewal or extension of said Government Lease at the level of the rentals currently required under said Lease. If said rentals on said Government Lease are increased, during the term of this Lease or any extension thereof, the rentals then payable by Lessee to Lessor under this Lease hereafter shall be increased by a like amount on a per acre basis; however, Lessor and Lessee expressly acknowledge and agree that the maximum amount of rent increases due from Lessee per acre under this Lease, which rent increases are attributable to increases in rentals of the Government Lease (as opposed to increases based on the Producer's

Price Index, more fully described above), shall not exceed $500.00 per acre through the primary term of this Lease.

Section 1.5 - In addition to the rental, Lessee shall pay all charges for heating, cooling, and water and all electricity, gas, sewer and other utility service rendered to the Demised Premises, only. Lessee will pay the cost of installation of any meter required to determine the amount of charges for the utilities service furnished to the Demised Premises. Notwithstanding the immediately preceding sentence, Lessor Port District will provide for the extension of water and sewer utilities lines to the Southeast corner of the Demised Premises. Nothing herein shall be interpreted to require the District to extend electric or gas service to the Demised Premises.

Section 1.6 - The improvements and installations described herein and now existing and any improvements and installations subsequently installed on the Premises have been and/or shall be erected on the Demised Premises by the Lessee. Said improvements erected on the Demised Premises for or in behalf of the Lessee shall be Lessee's property, but, said improvements shall remain on the Demised Premises during the term of this Lease and shall not be removed during the term except as provided in Section 2.13 of this Lease. The use of any improvements erected on said demised premises shall be consistent with the statutory and constitutional powers of the Port District, and shall be in compliance with this lease and the laws of the State of Illinois and the United States of America, and the applicable laws of the County of Madison, or any other unit of local government whose boundaries may encompass the Demised Premises and shall be subject to compliance with the provisions of the "Government Lease", Contract No. DACW43-1-06-65 and all amendments thereto, which, by this reference are made a part hereof and the plans and specifications of any improvement hereinafter situated on said Demised Premises must be approved by the Tri-City Regional Port District and the Corps of Engineers, St. Louis District. By the execution of this Lease, Lessor represents that the use of

the Demised Premises, as permitted and described in this Lease is consistent with the statutory and constitutional powers of the Port District.

Specifically, Lessee shall have the right, at its sole cost and expense, from time to time to extend or alter the improvements and facilities on the Demised Premise and to extend an electric service line, and a natural gas main to the Demised Premises, the location of such extensions to be approved by the Port District. Any approval by the Port District required under this Lease shall not be unreasonably withheld; provided, however, that with respect to the construction of any improvements (a) Lessee provides the Port District and the Corps of Engineers, St. Louis District, with plans and specifications for any such construction or alterations and such plans and specifications are approved by the Port District and the Corps of Engineers, (b) none of the construction activity materially interferes with the business operation of other tenants of the Port District or occurs off the leasehold premises without the Port District's consent (which consent will not be unreasonably withheld or delayed.) Lessee shall accomplish the completion of any construction free and clear of all mechanic's liens.

Section 1.7 – [Intentionally deleted]

Section 1.8 - The rights herein granted to the Lessee Company are limited to the operations of the Port District authorized to be conducted on lands demised under the Government Lease described in the recitals herein. This Lease and the construction of all improvements made hereunder are subject to the approval of the Corps of Engineers. The Corps of Engineers has approved the improvements and uses set forth in Section 1.1 and Section 1.3 above.

Section 1.9 - This Lease is made subject to easements for construction, operation and maintenance of railroad tracks, roadways, walks, pipelines, poles and wires, upon, over and across the land affected by said lease whether said easements are now in effect or may hereafter

be placed in effect by the exercise of the Lessor's rights, herewith reserved, to locate said easements for its purpose over and across said land. The Port District shall make its best effort to locate any such new easements or any relocation of presently existing easements in a manner designed to best avoid interference with Lessee's use of the Demised Premises. This Lease is also made specifically subject to the rights of the United States Government specified in the Government Lease with respect to easements, land regulations and supplemental controls specified therein. Lessee shall be credited in rentals for any deprivation of the use of the land covered by this Lease which results from the establishment of such easements hereafter in proportion to the amount of land in the Leased Premises which can no longer be used by Lessee. If the Lessee is deprived of the use of all or any part of the manufacturing and storage facility described herein as a result of the creation of the aforesaid easements, regulations and controls, the rental described herein shall abate on a proportional basis, based on that portion of Lessee's facility that Lessee is unable to utilize for the purpose for which it was built. Nothing in this lease or paragraph contained shall operate to bind the Port District to compensate for the taking of any land or facilities by the United states Government under the terms and conditions of the Government Lease and in such event nothing in this Lease shall be deemed to deprive the Lessee by any compensation received or claim made therefor from the United States Government for any taking by the United States Government.

ARTICLE II - LESSEE'S COVENANTS

Section 2.1 - Subject to the obligations imposed on Lessor under Sections 1.2 and 1.5 above, Lessee covenants and agrees that it will be responsible for and pay all costs associated with Lessee's lease of said land, including, but not limited to, all taxes and assessments (but only to the extent that such taxes and assessments are levied on the Demised Premises, and not on any other real property, and that such taxes and assessments are due and payable based on

assessments made during the term of this Lease) and costs incurred for labor, necessary to create and to operate and maintain the facilities installed on said leased land by Lessee, and payment for commodities and contractual services for maintenance and operation, payment for utility and sanitary sewer charges, and payment for insurance. The Lessee understands and agrees that except as otherwise provided in Sections 1.2 and 1.5 above, Lessor will make no physical improvements to the land described in Section 1.1 or be responsible for the cost of any such improvements or installations made thereon and that none of the costs pertaining to operation of the facility shall be or become an obligation or responsibility of the Port District.

Section 2.2 - Lessee shall pay the rental specified in Section 1.4 above as same becomes due and payable.

Section 2.3 - Lessee covenants and agrees to operate facilities and improvements subject to the terms and conditions set forth herein.

Section 2.4 - Lessee covenants and agrees that during the entire term of this Agreement, it will keep the Demised Premises in good order, condition and repair and it will maintain and repair all roads, tracks, buildings, and other facilities hereafter erected on the Leased Premises by Lessee. If Lessee Company fails or refuses to provide said maintenance and repair for any of its facilities or improvements described in this Paragraph, Lessor Port District may, but need not, take the necessary steps to put said premises and facilities, in good order, condition or repair and Lessee shall pay Lessor the cost thereof as rent hereunder and Lessor may take action on Lessee's default in payment after ten (10) days' written notice of the amount due in the same manner as in the event of Lessee's default in payments as hereinafter provided. Prior to Lessor's exercise of the rights granted in this immediately preceding sentence, Lessee shall have the right to cure said default as described in Paragraph 4.1(b) of this Lease.

Section 2.5 - Lessee shall permit Lessor and/or an engineer designated by Lessor to enter upon the Demised Premises at all reasonable hours for the purpose of inspecting same, and Lessor shall not, except in cases of emergency, exercise this privilege in such a way as to unreasonably interfere with Lessee's business. Such inspections shall be conducted during normal business hours and in the company of Lessee's representatives.

Section 2.6 - Lessee shall not, without the prior written consent of Lessor, use or occupy the Demised Premises for any purpose whatsoever other than that specified in Sections 1.1 and 1.3 above. Lessee shall not use the Demised Premises for any unlawful purpose and shall at its own expense, comply with all ordinances, laws, rules, and regulations of the Tri-City Regional Port District, the County of Madison, the State of Illinois, the United States of America and all lawful authorities, agencies and departments of the aforementioned governmental entities having jurisdiction in the Premises. Lessee will also be responsible for installing or erecting all environmental pollution control devices that are or may be hereafter required by a local, state or federal regulatory agency with respect to Lessee's facilities and for the proper operation and maintenance of said environmental pollution control devices.

Lessee shall be responsible for the clean-up of any spillage of materials delivered to or shipped from its facilities by any means of conveyance and shall immediately undertake to clean up such spillage whether such spillage occurs on the subject Premises or land or roadways adjacent to or leading to or from the subject Premises. Notwithstanding the preceding sentence, however, it is understood and agreed that Lessee's responsibility is limited to any spillage that occurs during the term of this Lease, unless such spillage is caused by Lessor, its agents, representatives or employees or any other party acting within Lessor's control.

Lessee further agrees not to use or permit to be brought upon the Demised Premises or to permit to be done thereon any act or thing which will invalidate or which, if brought on, would

be in conflict with any insurance policy covering the Demised Premises or bring or keep anything thereon which will not comply with all rules, orders, regulations, or requirements of the Board of Fire Underwriters or any similar organization and Lessee shall at all times make a good faith effort to comply with all such rules, orders, regulations or requirements. And Lessee shall not do or permit anything on its Leased Premises which constitutes a public nuisance. Lessor shall provide Lessee with copies of its insurance policies at least bi-annually.

Lessee agrees to indemnify and hold the Port District harmless from any and all penalties, damage or charges actually imposed or losses or expenses actually incurred by the Port District solely as a result of the violation of any Federal, State or Municipal law or regulation or ordinance by the Lessee, its customers, officers, agents, employees, guests or invitees which violation(s) occurs at or on the Demised Premises and arises directly out of or as a result of, the operations of Lessee at or on the Demised Premises.

Section 2.7 - The Lessee shall not assign, transfer, sublease or sell this Lease or any right thereunder without the prior written approval of the Lessor, which approval shall not be unreasonably withheld or processing thereof delayed nor shall Lessee assign, transfer, sublease or sell this Lease without the prior approval of the District Engineer, United States Army Engineer District, St. Louis, Missouri. However, Lessee without obtaining the prior consent of Lessor, may enter into contracts of the kind usually and customarily entered into in the conduct of the Lessee's business permitted under the terms and provisions of this lease. Notwithstanding any assignment or sale, Lessee shall at all times remain liable for performance of all covenants and conditions to be performed under this Lease, including, but not limited to payment of all monetary amounts herein specified. Notwithstanding anything contained herein to the contrary, Lessee may assign or otherwise transfer this Lease to Cargill, Incorporated without the prior approval of the Lessor or the District Engineer, United States Army Engineer District, St. Louis,

Missouri, provided that Lessee provides prior written notice to each of the Lessor and the District Engineer, United States Army Engineer District, St. Louis, Missouri, of such transfer or assignment to Cargill.

Section 2.8 - Lessee shall give Lessor immediate written notice of all accidents of which Lessee has actual knowledge and which occur on the Premises.

Section 2.9 - Lessee agrees to indemnify and hold Lessor, the United States Government and the Secretary of the Army harmless from any and all liability, judgment, costs, damages and expenses, including reasonable attorneys' fees (collectively "Damages"), that actually accrue against, are charged to, or are recovered from Lessor by reason of, or on account of damages to: the property of Lessor; the property of Lessee; or the property of any third party or parties; or the property of, injury to, or death of any person, arising from Lessee's use, alteration, occupancy or operation of the facilities or improvements on the Demised Premises and any easements herewith granted, including acts of Lessee's agents, contractors and subcontractors. Lessee shall give Lessor prompt and timely notice of any actual written claim made or suit instituted by service of summons and complaint on Lessee, which in any way, adversely affects Lessor or its insurer with respect to the Demised Premises, and Lessor or its insurer shall have the right to compromise and defend the same to the extent of their own interests. Nothing contained herein will require Lessee to give notice of claims or litigation against Lessee that are unrelated to this Lease. Lessor shall give Lessee prompt and timely notice of any claim or any suit for personal injury or property damage instituted which adversely affects Lessee.

Any final non-appealable judgment rendered against Lessor by a court of competent jurisdiction for any cause for which Lessee is liable under this Section 2.9, shall be conclusive against Lessee as to liability and dollar amount. Except as hereinafter provided, Lessee shall, at its own expense, keep in force or cause to be kept in force, insurance of the following types and

in not less than the following amounts, issued by a company or companies of sound and adequate financial responsibility, licensed to do business in the State of Illinois, and reasonably approved by Lessor, to-wit:

(a) Comprehensive public liability insurance in the amount of $5,000,000 per person and in the amount of $5,000,000 per accident.

(b) Comprehensive property damage insurance in the amount of $5,000,000 per accident.

Said amounts of coverage shall be reviewed every three (3) years, upon the anniversary of this lease, during the effectiveness of this lease and increased if necessary by amounts mutually and reasonably agreed upon by the Lessor and Lessee.

All such policies of insurance shall insure Lessee and Lessor against all liabilities for accidents arising out of or in connection with Lessee's use and occupancy of, and operations on land, and facilities and improvements erected thereon. Lessee shall furnish to Lessor certificates evidencing such insurance, naming Lessor as an additional insured thereunder.

Lessee shall also carry Worker's Compensation and Employer's Liability Insurance to cover accidental injury to any of Lessee's employees as provided by the Workmen's Compensation Law of Illinois. Evidence of procuring and maintenance of such insurance shall be furnished by Lessee to Lessor.

Section 2.10 - Lessee agrees that in case of the substantial damage or destruction of the facilities constructed by Lessee and situated on the Demised Premises, the Lessee shall have 180 days (from the date on which the casualty occurs), in which to begin to reconstruct said facilities or restore the Premises to their original condition; thereafter, Lessee shall proceed with all due diligence to reconstruct the Premises and facility within 360 days of said damage or destruction. Failure to commence action to restore and/or rebuild within the specified time and to continue said action with due diligence shall entitle Lessor to terminate this Lease without relieving

Lessee of its obligation to pay all rentals and charges described herein for the full term of this Lease and Lessor may also restore the premises at Lessor's cost. Notwithstanding the preceding provisions of this Section 2.10, if Lessee is delayed in the commencement and/or the completion of the action to restore by severe weather conditions or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any causes beyond Lessee's control, then the time of commencement or completion, as the case may be, shall be extended for the period of time of any delay resulting from any or all of the causes aforesaid.

Section 2.11 - Lessee covenants and agrees:

A. That this Lease is subject to, subordinate to, and limited by the terms of the Department of the Army Lease No. No. DACW43-1-06-65 executed by the Army on 15th day of September, 2006, and by the Port District on the 11th day of September, 2006, as amended by that certain Amendment to Lease dated September 19, 2008. Said Government Lease is currently for a term of expiring on June 30, 2055.

B. Not to do nor permit anything to be done which constitutes a breach of the Government Lease or cause the Government Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in the Department of the Army under said Government Lease; to indemnify and hold the Port District harmless, and does hereby indemnify and hold the Port District harmless, from and against all claims of any kind or nature whatsoever that the Port District actually suffers or incurs as a direct result of any breach or default on the part of Lessee by reason of which the Government Leases may be terminated or forfeited, except to the extent that the cause of said claims is due to the sole fault or neglect of the Port District or its agents, representatives or employees and/or some third party other than the Lessee;

C. That the Lessee has read and is familiar with the terms of the Government Lease.

Section 2.12 - Lessee covenants and agrees it will pay its pro rata share for general port area security service. The cost of said service is to be pro rated among the tenants of the District.

Section 2.13 - At the expiration of this Lease or any valid extension thereof, the Lessee shall deliver the possession of the subject Premises to the Port District in good order and condition, ordinary wear and tear excepted, and shall, within a reasonable time period after the

expiration or termination of this Lease, remove any and all improvements made thereon by Lessee, unless said obligation to remove is excused by direction of the Port District at that time. Upon the Lessee's failure to so remove and restore said Premises, the Port District may restore the Premises and facilities or remove same and Lessee shall be liable for payment of the documented cost thereof to the Port District.

Section 2.14 - Lessee covenants that it will not make any capital additions, improvements or modifications to the erected structural aspects of the facilities that Lessee erects on the Leased Premises without the prior written consent of the District, which shall not be unreasonably withheld, nor will the Lessee undertake any action which will result in the creation of a lien on the facility or the Premises. The Port District shall consider and respond to Lessee's request for approval under this Section 2.14 within 60 days of the actual receipt of such request. Failure of the Lessor Port District to act within that time period shall be considered to be operative as a consent to said addition, improvements or modifications.

Section 2.15 - Lessee covenants that it will, at the termination of this Lease, by lapse of time or otherwise, yield up immediate possession to the District (subject to Lessee's right to enter the Demised Premises for a reasonable period of time after the expiration or termination of this Lease in order to permit Lessee an opportunity to comply with the terms of Section 2.13 above; provided, however, that in no event shall a time period beyond 90 days be considered reasonable). Upon failing to do so, Lessee will pay as liquidated damages for the time such possession is withheld, the sum equivalent to Two Hundred Percent (200%) of the rent payments applicable under this Lease as of the date on which this Lease expires or terminates, computed on a monthly basis. Such payment shall not prevent the District from exercising all rights it may have to prevent Lessee from holding possession of the facility.

ARTICLE III - LESSOR'S COVENANTS

Section 3.1 - Lessor represents, warrants and covenants that it has good and sufficient interest in and to the Leasehold Premises herein described and has lawful right to make this Lease for the term aforesaid, and that it has taken all actions necessary to assure the lawful execution of this Lease and covenants that if, Lessee shall pay the rental and perform all the covenants and provisions of this Lease to be performed by said Lessee, Lessee shall have the right, during the term of this Lease or any extension thereof, to freely, peaceably and quietly occupy and enjoy the full and exclusive possession of the premises and the tenements, hereditament and appurtenances thereunto belonging and, the rights and privileges herein granted, without molestation or hindrance, and Lessor or its Representatives will defend Lessee's rights as herein granted. Lessor's title and right to hold said land is subject to, and based upon, the above-described Government Lease. There are no other agreements with the Department of the Army affecting the Demised Premises other than the aforesaid Government Lease and same is in full force and effect and Lessor has no knowledge of any default in its obligations thereunder..

Section 3.2 – [Intentionally Deleted.]

Section 3.3 - Lessor Port District will maintain and keep in repair, satisfactory to accomplish Lessee's reasonable use thereof, all roads, and access ways located on Port District property or property controlled by the Port District and used by Lessee for access to the Demised Premises. Failure of Lessor Port to act to clear said access roads of any physical obstruction which limits Lessee's use of said facilities within ten days of the first instance of said obstruction shall constitute authority for Lessee to remove said obstacle at Lessor's expense.

Section 3.4 - Lessor District covenants and agrees that it will comply with the terms and conditions of the Government Lease during the term of this Lease or any extension thereof and

will promptly advise Lessee of any notice of default, breach or forfeiture given to the Port by the Department of the Army. The Port will not violate, breach, cancel, amend or reduce the term of the Government Lease affecting Lessee Company's Leased Premises herein specified during the term of this Lease or any extension thereof.

Section 3.5 - Lessor will promptly notify Lessee of receipt of any notice from the Secretary of the Army that the Army's right under Paragraph 18 of the Government Lease may be exercised to terminate the Government Lease by reason of non-use of all or any substantial portion of the 217.3 acres covered in the Government Lease for a period of five consecutive years. Lessor will act with due diligence to prevent such cause for termination of the Government Lease.

Section 3.6 - Lessor represents and warrants that it has a good and merchantable leasehold interest in and to the Demised Premises described on Exhibit A, subject to the terms of the Government Lease; that the Demised Premises has access to public roads; that there are no matters, and no third party has any rights, which would in any way interfere with the Lessee's improvement or use of the Demised Premises and that the Demised Premises is zoned for the uses described in Section 1.1 and Section 1.3 above.

Section 3.7- The Port District represents and warrants, or covenants, as the case may be, that (a) except as otherwise specifically disclosed in that certain environmental report issued August 12, 1991, by John Mathes & Associates, Inc., for Project No. 17278; on November 25, 1997 by Philip Services Corp., for Project No. 113844; and that certain environmental report of February, 1998 by Philip Services Corp., and the letter dated May 15, 1998 from the Corps of Engineers, the Port District has no knowledge of past or current presence, disposal, or storage of any hazardous or toxic substances or materials at, on, in or under the Demised Premises.

Section 3.8 - Lessor covenants and agrees that it has delivered to Lessee true, accurate and complete copies of the Government Lease which relates to the leasehold premises described in Section 1.1 hereof.

Section 3.9 - Lessor hereby covenants and agrees that, throughout the term of this Lease and any extension thereof, Lessor shall continuously maintain comprehensive general liability insurance and property damage insurance applicable to its territory and properties. Such insurance coverages shall be maintained in amounts, and shall provide for deductible amounts, deemed from time to time, normal and customary for governmental bodies comparable to the Port District.

ARTICLE IV - MUTUAL COVENANTS

Section 4.1 - If one or more of the following events (hereinafter sometimes called "defaults") shall happen and be continuing, same shall be and constitute a basis for Lessor, at its option, to treat Lessee as being in default under this Lease:

(a) If Lessee defaults in the payment of any of the rentals provided to be paid hereunder and such default shall continue for ten (10) days after written notice of such non-payment by Lessor to Lessee.

(b) If Lessee defaults in the observance or performance of any other covenant, condition, agreement or provision hereof which is not remedied within thirty (30) days after written notice of such default from Lessor to Lessee; provided, however, no default on the part of the Lessee in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have in good faith been commenced promptly by Lessee to rectify the same and shall be pursued to completion with diligence and continuity under the terms and conditions of this lease.

(c) If Lessee becomes bankrupt or admits its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for Lessee, or for the major part of its property.

(d) If a trustee or receiver is appointed for Lessee or from the major part of its property and is not discharged within ninety (90) days after such appointment.

(e) If bankruptcy, reorganization, arrangements, insolvency, or liquidation proceedings, or any other proceedings for relief under any of the bankruptcy laws or similar laws for the relief of debtors, are instituted by or against Lessee, and are not dismissed within ninety (90) days after such institution.

In any such case, Lessor may at its option exercise any one or more of the following remedies:

(1) Lessor may terminate this lease and Lessee's right to possession thereunder by giving to Lessee written notice of Lessor's intention so to do, in which event the term of this lease or any renewal thereof shall end, and all right, title and interest of Lessee hereunder shall expire on the date designated in such notice, which shall not be less than ten (10) days after the date of the notice by Lessor of its intention so to terminate, but Lessee shall not be released thereby from obligation to make further payments of rentals due hereunder for the full period to which said Lessee committed itself under the terms of this lease.

(2) Lessor may enforce the provisions of this lease and may enforce and protect the right of Lessor hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy, but Lessee shall not thereby be released from obligation to make further payments of rentals due.

Section 4.2 - If Lessor exercises either of the remedies provided for in Subparagraph (1) or (2) of Section 4.1 hereof, Lessor may then or at any time thereafter re-enter and take complete and peaceful possession of the Demised Premises, with or without process of law, and may remove all persons therefrom, and Lessee covenants in any such event peacefully and quietly to yield up and surrender the Demised Premises to Lessor and to continue payment of the rentals provided hereunder.

Section 4.3 - If Lessor terminates the right to possession as provided in Subparagraph (1) of Section 4.1 hereof, Lessor may re-enter the Demised Premises and take possession of all

thereof (including any and all equipment and apparatus thereon), may remove any portion of the equipment, machinery and apparatus thereon which Lessor elects to so do, and may sublet or relet the Demised Premises or any part thereof from time to time for all of any part of the unexpired part of the then term thereof, or for a longer period, and Lessor may collect the rents from such reletting or subletting, and apply the same, first, to the payment of the expense of re-entry and re-letting, and secondly, to the rentals herein provided to be paid by Lessee, and in the event the proceeds of such reletting or subletting are at any time hereafter not sufficient to pay in full the foregoing, Lessee shall remain and be liable therefor, and Lessee promises and agrees to pay the amount of such deficiency from time to time, and Lessor may at any time and from time to time sue and recover judgment for any such deficiency or deficiencies. Upon the occurrence of any default by Lessee under this Lease, Lessor shall use due diligence in attempting to obtain a reletting of the facilities and to mitigate its damages.

Section 4.4 - In the event of the termination of this Lease by Lessor as provided for by Subparagraph (1) of Section 4.1 hereof, Lessor shall be entitled to recover from Lessee all the rentals accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Lessee for which Lessee is liable or in respect of which Lessee under any of the provisions hereof has agreed to indemnify Lessor, which may be then owing and unpaid, and all costs and expenses including court costs and attorneys' reasonable fees incurred by Lessor in the enforcement of its rights and remedies hereunder, and in addition, Lessor shall be entitled to recover the actual damages, including reasonable attorneys fees and court costs, which Lessor actually sustains by reason of the breach of any of the covenants of this Lease. Lessee shall be entitled to credit for any rentals received by Lessor from a reletting of the Premises.

Section 4.5 - This Lease covers in full each and every obligation of every kind and nature whatsoever between Lessee and Lessor concerning the Demised Premises.

Section 4.6 - If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by the laws of the State of Illinois.

Section 4.7 - The removal of the facilities or improvements from the Premises described in Section 1.1 shall not be operative to cause an abatement in the rentals herein provided for but said rentals shall continue to be due and payable for the term of this Lease or any extension thereof.

If the Lessee is deprived of the use of the manufacturing and storage facility described herein as a result of substantial damage to or destruction of the facilities, as a result of fire, windstorm or other natural hazards, the rental described herein shall abate. Said abatement, if same is justified, shall remain in effect for a period of not to exceed one (1) year from the date of the said damage or destruction. Said abatement will, however, in any event, cease to be applicable upon Lessee's failure to comply with the reconstruction and restoration provisions of Section 2.10 within the time limits or periods therein established.

Section 4.8 - Nothing herein contained shall operate to make or be construed to constitute Lessor and Lessee partners.

Section 4.9 - Lessor and Lessee each agree to act promptly and in a reasonable manner in respect to any and all matters arising under this Lease.

Section 4.10 - With respect to any pledge, mortgage, deed of trust, or other security interest on Lessee's leasehold interest and/or property, that may hereafter be granted or established by Lessee with the prior approval of the Port District, the Port District agrees for the

benefit of any mortgagee or holder of such mortgage, pledge, deed of trust, or other security interest to give written notice to such holder by U.S. certified mail of any alleged default under this Lease, provided that holder has theretofore registered its name and address with the Port District simultaneously with the giving of notice to Lessee, of any alleged default under this Lease.

Section 4.11 - Any notice required under the terms of this lease shall be deemed to have been given when sent by registered or certified mail or overnight courier, postage prepaid, to Lessee at 4303 Kennedy Avenue, East Chicago, Indiana 46312, and to Lessor at 2801 Rock Road, Granite City, Illinois, 62040, or at such other place as Lessee or Lessor may from time to time designate in writing. Such notice shall be considered to have been delivered three (3) business days after the date of depositing same, if service is undertaken by depositing of said notice or notices in the United States Mail, which date shall be evidenced by the records of the Post Office Department. A copy of said Notice will also be sent to Rosemary Gulliksen at Sonnenschein Nath & Rosenthal LLP, 233 S. Wacker Drive, Suite 7800, Chicago, Illinois 60606, but said action shall not be deemed to be required to accomplish effective notice to the Lessee hereunder.

WITNESS the hands and corporate seals of the parties hereto on the date first hereinabove stated.

TRI-CITY REGIONAL PORT DISTRICT

BY:_____
CHAIRMAN

ATTEST:

_____
SECRETARY

ROBINSON STEEL CO., INC.

BY:_____
NAME: Paul J. Labriola
TITLE: President and CEO

ATTEST:

_____
SECRETARY

(4155730v3)

CONSENT OF ASSIGNMENT OF THE AMENDED AND RESTATED AGREEMENT OF LEASE BETWEEN TRI-CITY REGIONAL PORT DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS AND ROBINSON STEEL CO., INC., AN INDIANA CORPORATION TO ROBINSON LASER, LLC

This Agreement, made this 12th day of March, 2012 between the Tri-City Regional Port District, a Municipal Corporation of the State of Illinois, hereinafter sometimes referred to as the "Port District" or "Lessor," and Robinson Steel Co., Inc., an Indiana Corporation with its principal place of business at 4303 Kennedy Avenue, East Chicago, Indiana 46312, hereinafter sometimes referred to as "Lessee," and Robinson Laser, LLC, a Delaware limited liability company, with its principal office at 4303 Kennedy Ave., East Chicago, IN 46312, hereinafter sometimes referred to as "Assignee."

WITNESSETH

WHEREAS, the Port District has among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the District in Madison County, Illinois; and

WHEREAS, the Port District has a lease with the Department of the Army No. DACW43-1-06-65, as amended; and

WHEREAS, Robinson Steel Co., Inc., wishes to assign its interest in and to the aforesaid Amended and Restated Agreement of Lease between the Tri-City Regional Port District and Robinson Steel Co., Inc. to Robinson Laser, LLC; and

WHEREAS, Robinson Laser, LLC is willing to assume Robinson Steel's responsibilities and obligations to the Port District under the aforesaid Agreement.

NOW, THEREFORE, in consideration of the premises and One Dollar ($1) and other good and valuable consideration in hand paid and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. The Port District consents to the Assignment of the amended and restated agreement of lease between Tri-City Regional Port District, a municipal corporation of the State of Illinois and Robinson Steel Co., Inc., an Indiana Corporation to Robinson Laser, LLC.

2. Robinson Laser, LLC hereby assumes the Agreement described herein and shall make all payments required thereby and shall comply with all terms and conditions of said Agreement required to be performed by Robinson Steel, and said Agreement is hereby incorporated herein as Exhibit A attached hereto. All the terms of said Agreement shall be read and understood herein in the same manner as they are expressed in said Agreement.

3. Said consent to the assignment by the Port District and any assignment of the Agreement is subject to the Port District's Lease with the Department of the Army, No. DACW43-1-06-65, as amended, and conditioned upon the receipt of the Consent of the Corps of Engineers to said Assignment.

4. Said consent by the Port District shall not act or be construed as a release of any responsibility or obligation Robinson Steel has pursuant to the original Agreement should Assignee default or otherwise fail to fully perform thereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date above mentioned.

TRI-CITY REGIONAL PORT DISTRICT

Chairman

ATTEST:

Secretary

ROBINSON STEEL CO., INC.

Name: Paul J Labriola
Title: president & CEO

ATTEST:

ROBINSON LASER, LLC

Name: Paul J Labriola
Title: manager

ATTEST:

EXHIBIT B

AGREEMENT OF EASEMENT

This AGREEMENT OF EASEMENT (this "Easement"), dated as of November 4, 2024, is between America's Central Port District, formerly known as Tri-City Regional Port District, a Municipal Corporation of the State of Illinois ("Lessor") and Plateplus, Inc., a Delaware corporation ("Lessee").

WITNESSETH THAT:

WHEREAS, in October 2017, Lessor was notified by Cargill, Inc. that Lessee had entered into an asset purchase agreement with Cargill, Inc. which included substantially all of the assets related to the U.S. metals business of Cargill, including Cargill's leasehold interest in the Lessor's property; and

WHEREAS, by various assignments, Lessee has succeeded to the rights and obligations of the Original Lessee under the Lease Agreement; and

WHEREAS, Lessee desires to expand its rail business at property located at 2325 North Street, Granite City, IL; and

WHEREAS, the planned rail extension is located outside of the leasehold limits thereby requiring an easement(s); and

WHEREAS, the Lessor and the Lessee desire to execute an easement to address the additional Railway Easement property that is needed.

NOW THEREFORE, the Lessor and the Lessee agree as follows.

1. Recitals. The preceding Recitals are true and accurate, and are incorporated in this Easement.

2. Additional Property. All references in the Lease, regardless of how denominated or referenced, shall mean and include the Easement property. All rights, interests, and obligations of the parties expressed in the Lease relative to the Railway Easement Property shall constitute rights, interests, and obligations of the parties in the Property, as though the Easement Property had been included in the definition of the Lease Property from the inception of the Lease. Without limiting the preceding, the parties acknowledge and agree that the present and historic use of the Easement Property for access between the Demised Premises and the Lessor's right of way is permissible and ratified.

3. Term. The term of this easement shall be twenty (20) years from the date of execution. The parties may negotiate an extension of the easement at that time.

4. Consideration. Consideration for the initial term of this Easement shall be $1.00.

5. Counterparts and Recording. This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument. The Lessor authorizes the Lessee to cause a fully assembled counterpart original of this Easement to be recorded in the land records of Madison County, Illinois.

IN WITNESS WHEREOF, the parties have executed this Easement as of this date first set forth above.

[Signature Pages Follow]

Executed this 12th day of October, 2021

AMERICA'S CENTRAL PORT DISTRICT f/k/a Tri-City Regional Port District, a Municipal Corporation of the State of Illinois

By: Tyrone Echols
Name: Tyrone Echols
Title: Chairman

ATTEST:
By: Ed Hagnauer
Name: Ed Hagnauer
Title: Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

I, Roberta J. Williams, IN AND FOR SAID County, in the State aforesaid, do hereby certify that Tyrone Echols, personally known to me to be the Chairman of the Board and Ed Hagnauer, personally known to me to be the Secretary of said Port District Board, and personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman and Secretary, they signed and delivered the said instrument as Chairman and Secretary of said Board, and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of said District as their free and voluntary act, and as the free and voluntary act and deed of said Board, for the uses and purposed therein set forth.

GIVEN under my hand and notarial seal this 12th day of October, 2021.

OFFICIAL SEAL
ROBERTA J WILLIAMS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/01/23

SEAL

Roberta J. Williams
NOTARY PUBLIC

Executed this 4th day of NOVEMBER, 2021

PLATEPLUS, INC., a Delaware corporation

By: K. Ikeuchi

Name: KOTA IKEUCHI

Title: COO

STATE OF TEXAS)
) SS.
COUNTY OF MONTGOMERY)

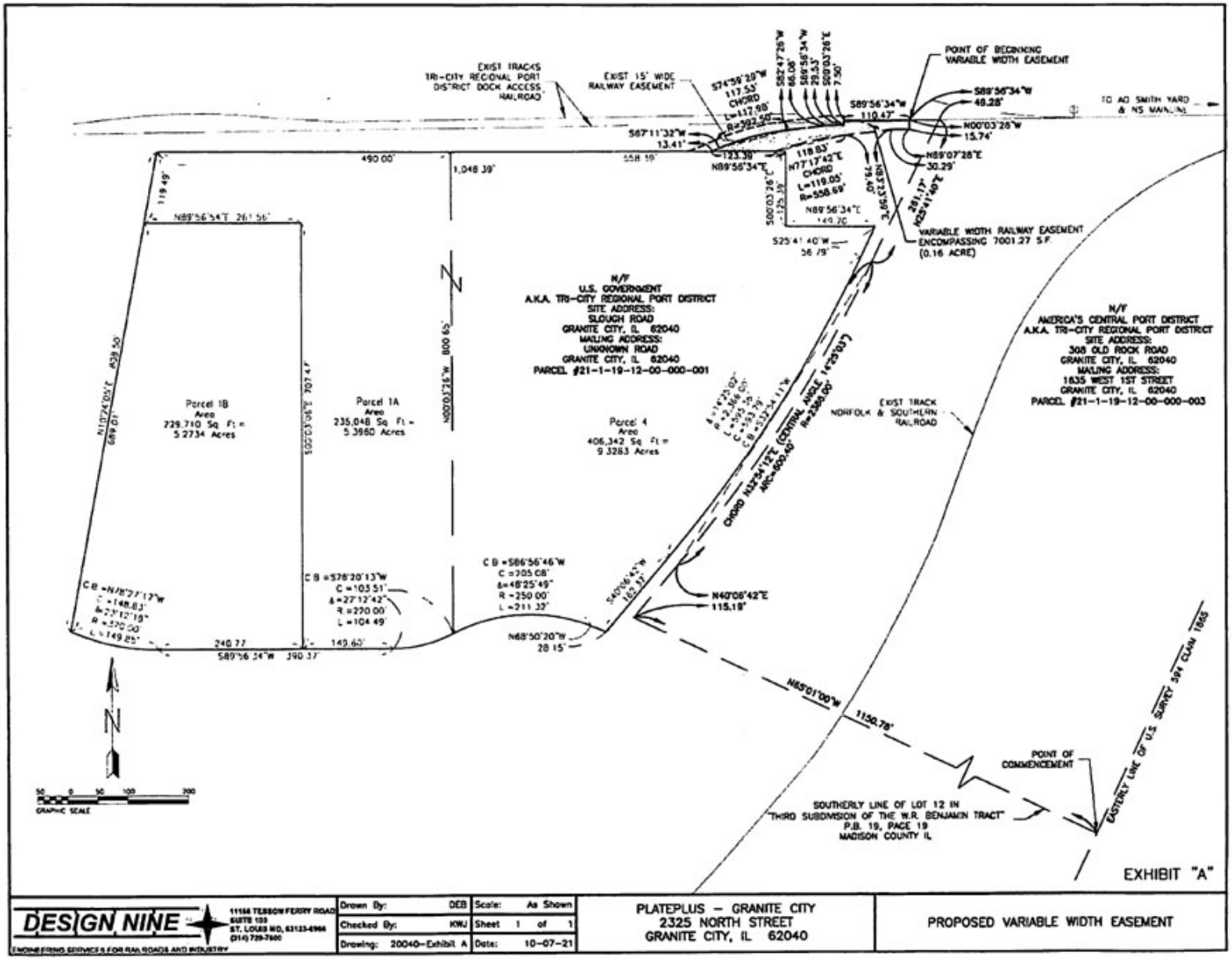
I, BERRY JOE JOHNSON, IN AND FOR SAID County, in the State aforesaid, do hereby certify that KOTA IKEUCHI, personally known to me to be the CEO and ____, personally known to me to be the ____ of Plateplus, Inc., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of NOVEMBER, 2021

BERRY JOE JOHNSON
Notary Public, State of Texas
Comm. Expires 12-10-2024
Notary ID 125140453

SEAL

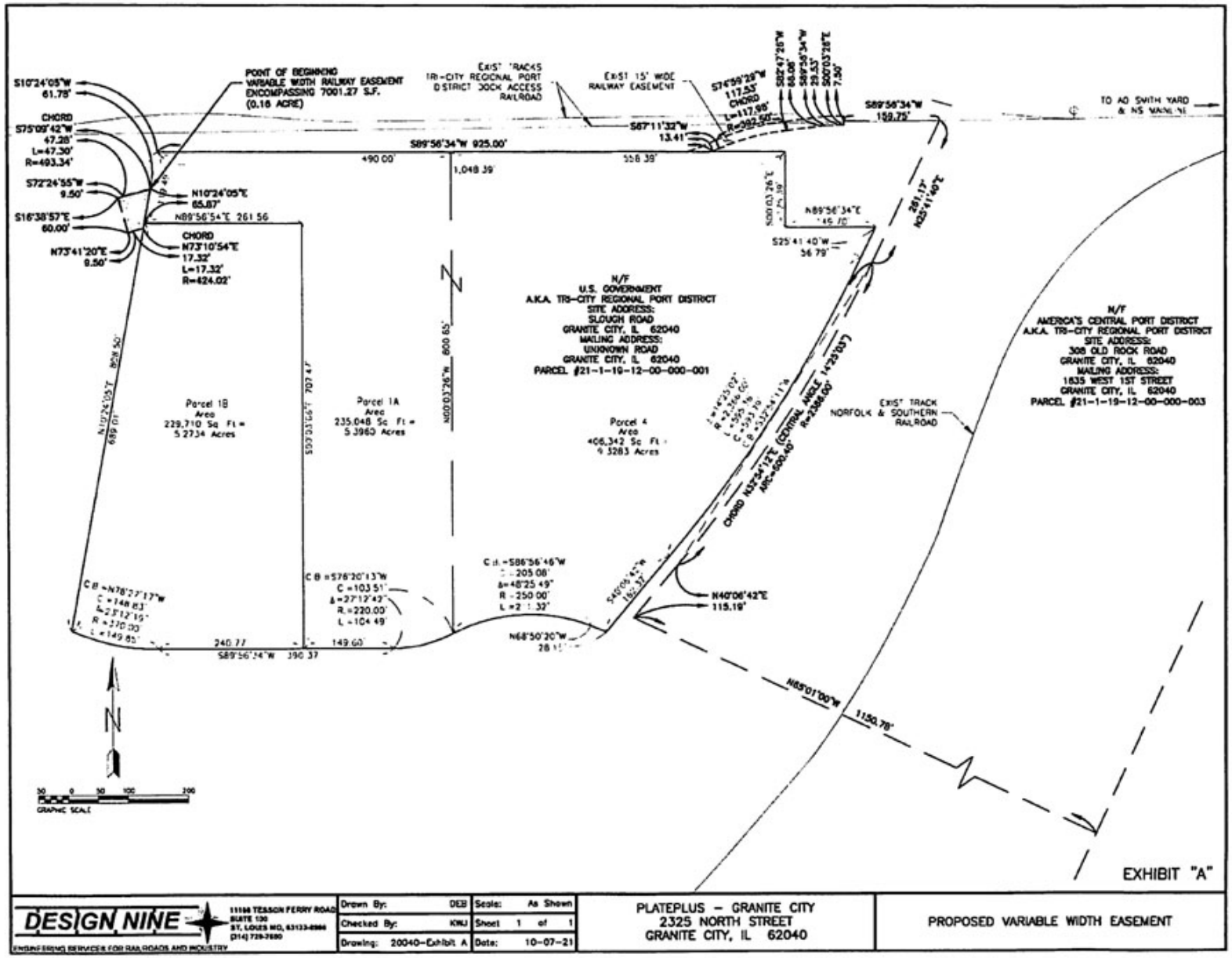
Berry Joe Johnson
NOTARY PUBLIC



DESIGN NINE ENGINEERING SERVICES FOR RAILROADS AND INDUSTRY 11158 TESSON FERRY ROAD SUITE 103 ST. LOUIS MO, 63123-8966 (314) 729-7600	Drawn By: DEB	Scale: As Shown	PLATEPLUS – GRANITE CITY 2325 NORTH STREET GRANITE CITY, IL 62040	PROPOSED VARIABLE WIDTH EASEMENT
	Checked By: KWJ	Sheet 1 of 1		
	Drawing: 20040–Exhibit A	Date: 10–07–21		

A variable width railway easement for the construction, establishment, use, maintenance and operation described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594 Claim 1865 with the southerly line of Lot 12 in "Third Subdivision of the W. R. Benjamin Tract", as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled, also known as Chouteau Slough Road and Alton St. Louis Wagon Road); thence along said centerline the following, North 40 degrees 06 minutes 42 seconds East a distance of 115.19 feet; thence along a curve to the left having a radius of 2386 feet, a chord bearing of North 32 degrees 54 minutes 12 seconds East, a central angle of 14 degrees 25 minutes 03 seconds, an arc distance of 600.40 feet; thence North 25 degrees 41 minutes 40 seconds East a distance of 261.17 feet to the centerline of the Tri-City Regional Port District Dock Access Railroad; thence leaving said centerline of Old Rock Road, South 89 degrees 56 minutes 34 seconds West a distance of 49.28 feet along said centerline of Dock Access railroad to the point of beginning of the herein described variable width easement; thence South 89 degrees 56 minutes 34 seconds West for a distance of 110.47 feet ; thence South 00 degrees 03 minutes 26 seconds East for a distance of 7.50 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 29.53 feet; thence South 82 degrees 47 minutes 26 seconds West for a distance of 66.08 feet; thence along a curve to the left having a radius of 392.50 feet, an arc distance of 117.98 feet and a chord bearing of South 74 degrees 59 minutes 29 seconds West for a distance of 117.53 feet; thence South 67 degrees 11 minutes 32 seconds West for a distance of 13.41 feet; thence North 89 degrees 56 minutes 34 seconds East for a distance of 123.39 feet; thence along a curve to the right having a radius of 558.69 feet, an arc distance of 119.05 feet and a chord bearing of North 77 degrees 17 minutes 42 seconds East for a distance of 118.83 feet; thence North 83 degrees 23 minutes 59 seconds East for a distance of 79.40 feet; thence North 89 degrees 07 minutes 28 seconds East for a distance of 30.29 feet; thence North 00 degrees 03 minutes 26 seconds West for a distance of 15.74 feet to the point of beginning of the variable width easement.


POINT OF BEGINNING
VARIABLE WIDTH RAILWAY EASEMENT
ENCOMPASSING 7001.27 S.F.
(0.16 ACRE)
EXIST TRACKS
TRI-CITY REGIONAL PORT
DISTRICT DOCK ACCESS
RAILROAD
EXIST 15' WIDE
RAILWAY EASEMENT
TO AD SMITH YARD
& NS MAINLINE
S10°24'05"W
61.75'
CHORD
S75°09'42"W
47.28'
L=47.30'
R=493.34'
S72°24'55"W
9.50'
S16°38'57"E
60.00'
N73°41'20"E
9.50'
N10°24'05"E
65.87'
N89°56'54"E 261.56
CHORD
N73°10'54"E
17.32'
L=17.32'
R=424.02'
S67°11'32"W
13.41'
S89°56'34"W 925.00'
490.00'
1,048.39'
558.39'
S89°56'34"W
159.75'
S82°47'26"W
66.08'
S89°56'34"W
29.33'
S00°03'26"E
7.50'
CHORD
S76°56'29"W
117.53'
L=117.98'
R=382.50'
S00°03'26"E
N89°56'34"E
S25°41'40"W
36.79'
281.17'
N25°41'40"E
N/F
U.S. GOVERNMENT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
SLOUGH ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
UNKNOWN ROAD
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-001
N/F
AMERICA'S CENTRAL PORT DISTRICT
A.K.A. TRI-CITY REGIONAL PORT DISTRICT
SITE ADDRESS:
308 OLD ROCK ROAD
GRANITE CITY, IL 62040
MAILING ADDRESS:
1635 WEST 1ST STREET
GRANITE CITY, IL 62040
PARCEL #21-1-19-12-00-000-003
Parcel 1B
Area
229,710 Sq Ft =
5.2734 Acres
Parcel 1A
Area
235,048 Sq Ft =
5.3960 Acres
Parcel 4
Area
406,342 Sq Ft =
9.3283 Acres
N10°24'05"E 828.50'
689.01'
S09°03'56"E 707.47'
N00°03'26"W 800.65'
CHORD N32°24'12"E (CENTRAL ANGLE 14°23'03")
ARC=600.40'
R=2386.60'
NORFOLK & SOUTHERN
EXIST TRACK
RAILROAD
C.B.=N78°27'13"W
C=148.83'
Δ=29°12'19"
R=330.00'
L=149.85'
240.77'
S89°56'34"W 390.37'
C.B.=S76°20'13"W
C=103.51'
Δ=27°12'42"
R=220.00'
L=104.49'
C.B.=S86°56'46"W
C=205.08'
Δ=48°25.49"
R=250.00'
L=211.32'
S40°09'42"W
182.37'
N40°06'42"E
115.19'
N68°50'20"W
28.11'
N65°01'00"W
1150.78'
N
50 0 50 100 200
GRAPHIC SCALE
EXHIBIT "A"
DESIGN NINE
ENGINEERING SERVICES FOR RAILROADS AND INDUSTRY
11166 TESSON FERRY ROAD
SUITE 130
ST. LOUIS MO, 63123-8966
(314) 729-7600
Drawn By: DEB
Checked By: KWJ
Drawing: 20040-Exhibit A
Scale: As Shown
Sheet 1 of 1
Date: 10-07-21
PLATEPLUS - GRANITE CITY
2325 NORTH STREET
GRANITE CITY, IL 62040
PROPOSED VARIABLE WIDTH EASEMENT

A variable width railway easement for the construction, establishment, use, maintenance and operation described as follows:

Commencing at the intersection of the easterly line of U.S. Survey 594 Claim 1865 with the southerly line of Lot 12 in "Third Subdivision of the W. R. Benjamin Tract", as recorded in Plat Book 19 on Page 19 in the Recorder's Office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds West, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled, also known as Chouteau Slough Road and Alton St. Louis Wagon Road); thence along said centerline the following, North 40 degrees 06 minutes 42 seconds East a distance of 115.19 feet; thence along a curve to the left having a radius of 2386 feet, a chord bearing of North 32 degrees 54 minutes 12 seconds East, a central angle of 14 degrees 25 minutes 03 seconds, an arc distance of 600.40 feet; thence North 25 degrees 41 minutes 40 seconds East a distance of 261.17 feet to the centerline of the Tri-City Regional Port District Dock Access Railroad; thence leaving said centerline of Old Rock Road, South 89 degrees 56 minutes 34 seconds West a distance of 159.75 feet along said centerline of Dock Access railroad; thence South 00 degrees 03 minutes 26 seconds East for a distance of 7.50 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 29.53 feet; thence South 82 degrees 47 minutes 26 seconds West for a distance of 66.08 feet; thence along a curve to the left having a radius of 392.50 feet, an arc distance of 117.98 feet and a chord bearing of South 74 degrees 59 minutes 29 seconds West for a distance of 117.53 feet; thence South 67 degrees 11 minutes 32 seconds West for a distance of 13.41 feet; thence South 89 degrees 56 minutes 34 seconds West for a distance of 925.00 feet; thence South 10 degrees 24 minutes 05 seconds West for a distance of 61.78 feet to the point of beginning of the herein described easement; thence along a curve to the left having a radius of 493.34 feet, an arc distance of 47.30 feet and a chord bearing of South 75 degrees 09 minutes 42 seconds West for a distance of 47.28 feet; thence South 72 degrees 24 minutes 55 seconds West for a distance of 9.50 feet; thence South 16 degrees 38 minutes 57 seconds East for a distance of 60.00 feet; thence North 73 degrees 41 minutes 20 seconds East for a distance of 9.50 feet; thence along a curve to the left having a radius of 424.02 feet, an arc distance of 17.32 feet and a chord bearing of North 73 degrees 10 minutes 54 seconds East for a distance of 17.32 feet; thence North 10 degrees 24 minutes 05 seconds East for a distance of 65.87 feet to the point of beginning of the variable width easement.

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease ("**Agreement**"), is made this 5th day of April, 2022, by and between Plateplus Inc., a Delaware corporation, with its principal office at 21 Waterway Avenue, Suite 525, The Woodlands, Texas 77380 ("**Assignor**"), and Friedman Industries, Incorporated, a Texas corporation, with its principal office at 1121 Judson Road, Suite 124, Longview, Texas 75601 ("**Assignee**").

WITNESSETH

WHEREAS, America's Central Port District, formerly known as Tri-City Regional Port District (the "**Port District**"), has among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the District in Madison County, Illinois; and

WHEREAS, the Port District has a lease with the Department of the Army No. DACW43-1-06-65, as may be amended; and

WHEREAS, the Port District and National Robinson, L.L.C., a Delaware limited liability company entered into an Agreement of Lease on January 23, 1998 for the lease of that certain parcel of land in Madison County, Illinois, generally known as Parcel 5 (Old Rock Road) and located at 333 Old Rock Road, Granite City, Illinois (as more particularly described in the Lease)(the "**Lease**"); and

WHEREAS, National Robinson, L.L.C., a Delaware limited liability company assigned all of its rights, interests and obligations in and under the Lease to Cargill Robinson, LLC, a Delaware limited liability company, and Cargill Robinson, LLC, a Delaware limited liability company assumed all of National Robinson, L.L.C., a Delaware limited liability company's rights, interests and obligations in and under the Lease; and

WHEREAS, Cargill Robinson, LLC, a Delaware limited liability company assigned all of its rights, interests and obligations in and under the Lease to Assignor, and Assignor assumed all of Cargill Robinson, LLC, a Delaware limited liability company's rights, interests and obligations in and under the Lease; and

WHEREAS, Assignor and Assignee are parties, along with others, to an Asset Purchase Agreement dated on or about the date of this Agreement, under which Assignor agrees to transfer to Assignee, and Assignee agrees to purchase from Assignor certain assets including all of Assignor's rights, interest and obligations in and under the Lease (the "**APA**"); and

WHEREAS, Assignor wishes to assign its rights and interests in and to, and obligations under the aforesaid Lease between the Port District and Assignor to Assignee; and

WHEREAS, Assignee is willing to assume Assignor's responsibilities and obligations to the Port District under the Lease.

NOW, THEREFORE, in consideration of the premises and ONE AND NO/100 DOLLARS ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. Assignor hereby assigns all of its rights, interest and obligations in the Lease to Assignee.

2. Assignee hereby assumes the obligations under the Lease and shall make all payments required thereby and shall comply with all terms and conditions of said Lease required to be performed by Assignor, and said Lease is hereby incorporated as **Exhibit A** attached hereto. All the terms of said Lease shall be read and understood herein in the same manner as they are expressed in said Lease.

3. The effectiveness of this Agreement is conditioned upon the successful completion of the Closing under the APA by no later than the 30th day of April, 2022, or such later date as the parties may agree in writing, in any event not to be later than June 15, 2022 (the "**Outside Closing Date**"). If the Closing does not occur on or before the Outside Closing Date, then this Agreement is automatically void and of no further force or effect. The assignment is effective as and from the Closing Date. The terms "**Closing**" and "**Closing Date**" having the definitions given them in the APA.

4. The parties may execute this Agreement in counterparts, each of which constitutes an original, and both of which together constitute only one agreement. The signatures of both parties do not need to appear on the same counterpart, and delivery of an executed counterpart signature page electronically is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement.

[*Signatures on following page(s)*]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By:_____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By:_____
Mike Taylor
President and CEO

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement on the date mentioned first hereinabove.

ASSIGNOR:

PLATEPLUS INC.,
a Delaware corporation

By: _____
Akito Nakamura,
President and CEO

ASSIGNEE:

FRIEDMAN INDUSTRIES, INCORPORATED,
a Texas corporation

By: _____
Mike Taylor,
President and CEO

EXHIBIT A

CONSENT AGREEMENT

THIS CONSENT AGREEMENT (this "Consent") is entered into as of January 11 2010, by and among TRI-CITY REGIONAL PORT DISTRICT, a Municipal Corporation of the State of Illinois, created by the State of Illinois and authorized by the Tri-City Regional Port District Act of 1959, hereinafter sometimes referred to as "Port District", "District", or "Lessor" and the undersigned parties.

WITNESSETH:

WHEREAS, by that certain Agreement of Lease dated as of July 23, 1998 (the "Lease") by and between the Port District, as lessor, and National Robinson, L.L.C. as lessee ("National Robinson"), National Robinson leased that certain parcel of land containing approximately 10.40 acres, as more particularly described in the Lease (the "Land") in Madison County, Illinois, on the terms and conditions set forth in the Lease;

WHEREAS, National Robinson, L.L.C., was wholly owned by Robinson Steel Co., Inc., an Indiana corporation ("Robinson Steel Co.");

WHEREAS, subsequent to the execution of the Lease, National Robinson constructed a steel processing and warehouse facility on the Land (the "Improvements", and together with the Land, the "Demised Premises");

WHEREAS, pursuant to the terms of Section 2.7 of the Lease, National Robinson, as lessee was permitted to assign its interest in and to the Lease, without the prior approval of the Port District, to any members of National Robinson or any such member's respective "Affiliates" (as such term is defined in the Lease) (each of the foregoing, a "Permitted Party" per the terms of the Lease);

WHEREAS, National Robinson assigned the Lease to its "Affiliate", Cargill Robinson LLC, a Delaware limited liability company ("Cargill Robinson"), per the terms of that certain Assignment and Assumption Agreement, dated on October 12, 2007, a copy of which is attached hereto as **Exhibit A** (the "Lease Assignment Agreement");

WHEREAS, pursuant to the terms of that certain Assignment and Assumption Agreement dated October 12, 2007, a copy of which is attached hereto as **Exhibit B** (the "Membership Interest Assignment Agreement"), Robinson Steel Co.: (i) transferred 50% of the membership interests in Cargill Robinson LLC to Cargill, Incorporated ("Cargill, Inc."), and (ii) continued to retain 50% of the membership interests in Cargill Robinson for itself;

WHEREAS, pursuant to the terms of Section 2.7 of the Lease, each of Robinson Steel Co. and Cargill Robinson entered into that certain Full and Complete Release dated October 12, 2007, a copy of which is attached hereto as **Exhibit C** (the "Release Agreement");

WHEREAS, Cargill, Inc. now desires to acquire the remaining fifty percent (50%) membership interests in and to Cargill Robinson, pursuant to the terms of that certain Assignment and Assumption Agreement by and between Robinson Steel Co. and Cargill, Inc., a

copy of which is attached hereto as **Exhibit D** (the "Cargill Buyout Assignment Agreement"), such that following such acquisition, Cargill, Inc. will own 100% of the membership interests in Cargill Robinson;

WHEREAS, each of Robinson Steel Co. and Cargill, Inc. desire to have the Port District consent to the Cargill Buyout Assignment Agreement and to recognize Cargill Robinson, LLC, as wholly owned by Cargill, Inc., as the "Lessee" under the Lease; and

WHEREAS, the Port District has agreed to grant its consent to the assignment on the terms and conditions set forth herein;

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

1. **Port District's Consent**. The Port District hereby grants its consent to the Cargill Buyout Assignment Agreement as well as to having Cargill Robinson, LLC (as wholly owned by Cargill, Inc.) as the "Lessee" under the Lease (the "Landlord's Consent"), subject to the following terms and conditions:

(a) Except as otherwise specifically provided herein, nothing contained in this Consent shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions or conditions contained in the Lease, or to waive any breach in the due keeping, observance or performance thereof, or to enlarge or increase the Port Authority's obligations under the Sublease.

(b) This Consent shall not be construed as a consent by the Port Authority to, or as permitting, any other or further assignment of the Lease, and no such further assignment shall be made without the prior approval of the Port Authority in each instance, except to the extent expressly permitted under the Lease.

(c) This Consent shall inure to the benefit of, and be binding upon, the parties hereto and (subject to the provisions of this Consent) to their respective successors and assigns. This Consent shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Illinois, without regard to conflicts of laws principles.

2. **No Default; Rental Payments**. To the best of the Port Authority's knowledge, there are no defaults under the Lease. To the best of the Port Authority's knowledge all rent due and payable under the Lease is current and there are no outstanding amounts that currently remain unpaid.

3. **Counterparts**. This Consent may be executed in one or more counterparts each of which, when so executed and delivered, shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the parties have caused this Consent to Assignment to be duly executed as of the day and year first above written.

TRI-CITY REGIONAL PORT DISTRICT

BY: _____
CHAIRMAN

CARGILL ROBINSON LLC,

By: _____
Name: _____
Title: _____

ROBINSON STEEL CO., INC., an Indiana corporation

BY: _____
NAME: Paul J. Labriola
TITLE: President and CEO

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Mike Taylor
Title: Vice President

IN WITNESS WHEREOF, the parties have caused this Consent to Assignment to be duly executed as of the day and year first above written.

TRI-CITY REGIONAL PORT DISTRICT

BY:_____
CHAIRMAN

CARGILL ROBINSON LLC,

By: _____
Name: Michael J. Taylor
Title: Manager

ROBINSON STEEL CO., INC., an Indiana corporation

BY:_____
NAME: Paul J. Labriola
TITLE: President and CEO

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Michael J. Taylor
Title: Vice President

IN WITNESS WHEREOF, the parties have caused this Consent to Assignment to be duly executed as of the day and year first above written.

TRI-CITY REGIONAL PORT DISTRICT

BY:_____
CHAIRMAN

CARGILL ROBINSON LLC,

By: _____
Name: _____
Title: _____

ROBINSON STEEL CO., INC., an Indiana corporation

BY:_____
NAME: Paul J. Labriola
TITLE: President and CEO

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Michael J. Taylor
Title: Vice President

EXHIBIT A

LEASE ASSIGNMENT AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

AGREEMENT made as of the 12th day of October, 2007, by and between NATIONAL ROBINSON, L.L.C., a Delaware limited liability company ("Assignor"), and CARGILL ROBINSON LLC, a Delaware limited liability company ("Assignee").

WITNESSETH:

WHEREAS, by that certain Agreement of Lease dated as of July 23, 1998 (the "Lease") by and between Tri-City Regional Port District, as lessor, and Assignor as lessee, Assignor leased that certain parcel of land containing approximately 10.40 acres, as more particularly described in the Lease (the "Land") in Madison County, Illinois, on the terms and conditions set forth in the Lease;

WHEREAS, subsequent to the execution of the Lease, the Assignor constructed a steel processing and warehouse facility on the Land (the "Improvements", and together with the Land, the "Demised Premises");

WHEREAS, pursuant to the terms of Section 2.7 of the Lease, Assignor may assign its interest in and to the Lease to any members of Assignor or any such member's respective "Affiliates" (as such term is defined in the Lease) (each of the foregoing a "Permitted Party");

WHEREAS, as of the date hereof, Robinson Steel Company, Inc., a Delaware corporation is the sole member of each of Assignor and Assignee, and, as such, Assignee is a Permitted Party to whom Assignor may freely assign the Lease to per the express terms of the Lease;

WHEREAS, Assignor desires to assign to Assignee all of its right, title and interest in and to the Lease and the Demised Premises to Assignee in accordance with the terms of this Agreement as of the date hereof;

WHEREAS, Assignee desires to accept such assignment of the Lease, the Land and the Improvements and all of Assignor's right, title and interest therein; and

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

1. As of the date hereof, Assignor hereby grants, bargains, sells, conveys and assigns to Assignee the Lease, the leasehold estate created thereby, and all of Assignor's right, title and interest therein, as of the date hereof, together with Assignor's right, title and interest in and to the Land and any and all Improvements located thereon.

2. As of the date hereof, Assignee hereby accepts the assignment of the Lease, the leasehold estate created thereby, and all of Assignor's right, title, and interest therein, as of the

date hereof, together with the assignment of all of Assignor's right, title and interest in and to the Land and any and all Improvements located thereon.

3. As of the date hereof, Assignee hereby assumes, as of the date hereof, the responsibilities of "Tenant" under the Lease and agrees to perform and observe the obligations, covenants and provisions to be performed and observed by "Tenant" under the Lease from and after the date hereof.

4. Each party, for itself and its successors and assigns, has covenanted and by this Assignment and Assumption Agreement does covenant with the other party, its successors and assigns, that it will do, execute and deliver or will cause to be done, executed and delivered all such further acts and will take such further action, in order better to assure, convey and confirm unto the other party, its successors and assigns, the assignment and assumption hereby affected as the other party and its successors or assigns shall reasonably request.

5. This Assignment and Assumption Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ASSIGNOR:

NATIONAL ROBINSON, L.L.C., a Delaware limited liability company

By: _____
Name: Paul J. Labriola
Title: Manager

ASSIGNEE:

CARGILL ROBINSON LLC, a Delaware limited liability company

By: _____
Name: Paul J. Labriola
Title: Manager

Signature Page - Assignment and Assumption Agreement

EXHIBIT B

MEMBERSHIP INTEREST ASSIGNMENT AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is dated as of October 12, 2007, by and between Robinson Steel Co., Inc., an Indiana corporation ("Assignor"), and Cargill, Incorporated, a Delaware corporation ("Assignee"), and is made with reference to the following recitals:

A. Assignor owns one hundred percent (100 %) of the membership interests (the "Membership Interest") in Cargill Robinson LLC, a Delaware limited liability company ("CR LLC").

B. Assignor and Assignee, with CR LLC, have entered into that certain Membership Interest Purchase Agreement, dated the date herewith ("Purchase Agreement"), pursuant to which Assignor desires to assign and sell to Assignee all of its right, title and interest in fifty percent (50%) of the Membership Interest (the "50% Interest"), and Assignee desires to acquire Assignor's right, title and interest in the 50% Interest, for the consideration, and in accordance with the terms and conditions, specified therein (the "Purchase"). (Each initially capitalized term which is not defined herein shall have the meaning ascribed to such term in the Purchase Agreement.)

C. Execution and delivery of this Agreement is a condition to the Closing of the Purchase.

NOW, THEREFORE, in order to consummate the assignment and sale, and in consideration of the mutual agreements set forth in the Purchase Agreement and this Agreement, Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, sells, conveys, transfers and assigns all of Assignor's right, title and interest in and to the 50% Interest to Assignee for consideration of $8,750,000, paid by Assignee in cash by wire transfer (the "Purchase Price").

2. Acceptance of Assignment. Assignee hereby accepts the foregoing assignment of the 50% Interest and assumes all liabilities and obligations with respect to the 50% Interest arising after the Closing Date, and that relate to the period after the Closing Date.

3. Further Acts of Assignor. Assignor shall, at the reasonable request of Assignee, take all such actions as from time to time may be necessary or appropriate to carry into effect the provisions of this Agreement, to establish or confirm Assignee's ownership of the 50% Interest.

4. Further Acts of Assignee. Assignee shall, at the reasonable request of Assignor, take all such actions as from time to time may be necessary or appropriate to carry into effect the provisions of this Agreement, to establish or confirm Assignee's obligations with respect to the liabilities and obligations of Assignor assumed by Assignee pursuant to this Agreement.

5. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and, to the extent permitted by the terms of the Limited Liability Company Agreement dated the date herewith between Assignor and Assignee, their respective successors and assigns.

6. Governing Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

7. Entire Agreement. This Agreement, along with the Purchase Agreement; the Limited Liability Company Agreement between Assignor and Assignee; the Processing Agreement between Assignor and Assignee; the Buy-Sell Agreement between Assignor and Assignee; the Supply Agreement between Assignor and Assignee, the Distributor Agreement between Assignor and Assignee; the

Industrial Building Sublease Agreement between Assignor and CR LLC; and the Master Equipment Lease between Assignor and CR LLC, all of which agreements are dated the date herewith, constitute the entire agreement between Assignor and Assignee relating to the Purchase, and supersede all prior agreements relating thereto, whether written or oral.

8. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page.

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

ASSIGNOR:

ROBINSON STEEL CO., INC.,
an Indiana corporation

By: _____
Name: Paul J. Labriola
Title: President and CEO

ASSIGNEE:

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Mike Taylor
Title: Vice President

Signature Page - Assignment and Assumption Agreement

Industrial Building Sublease Agreement between Assignor and CR LLC; and the Master Equipment Lease between Assignor and CR LLC, all of which agreements are dated the date herewith, constitute the entire agreement between Assignor and Assignee relating to the Purchase, and supersede all prior agreements relating thereto, whether written or oral.

8. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page.

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

ASSIGNOR:

ROBINSON STEEL CO., INC.,
an Indiana corporation

By: _____
Name: Paul J. Labriola
Title: President and CEO

ASSIGNEE:

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Mike Taylor
Title: Vice President

Signature Page - Assignment and Assumption Agreement

EXHIBIT C

RELEASE AGREEMENT

FULL AND COMPLETE RELEASE

WHEREAS, the River and Harbor Act of 2 March 1945, House Document No. 231, 76th Congress, Second Session, authorized modification of the existing Mississippi River nine-foot navigation project by providing for : the construction of an eight-mile long lateral canal with a bottom width of 300 feet on the left bank, or Illinois side, of the Mississippi River between river miles 184 and 194.4; a 110 foot by 1,200 foot main lock; a 110 foot by 600 foot auxiliary lock; and other appurtenant features, including levees which were constructed on each side of the canal, which said items are referred to as the Chain of Rocks Project and hereinafter referred to as the Project; and

WHEREAS, The United States of America, by and through the U.S. Army Corps of Engineers, St. Louis District, hereinafter referred to as the GOVERNMENT, did construct said Project and does operate and maintain said Project; and

WHEREAS, in connection with the construction, operation and maintenance of the Project, the GOVERNMENT did acquire certain real property interests within Madison County, Illinois, including the fee simple interest in certain properties and certain lesser interests in certain properties; and

WHEREAS, the operation plan for the Project includes the right, authority and necessity to occasionally impound water up to elevation 423 N.G.V.D. in certain areas of real property owned by the GOVERNMENT, which the GOVERNMENT has the full legal right to do, without liability for any damages to property or injuries to persons or any other claims of any nature that may arise as the result of the exercise of such rights; and

WHEREAS, the Tri-City Regional Port District, a body corporate and politic created by the legislature of the State of Illinois (hereinafter referred to as the "LESSEE") is the Lessee of a substantial amount of federal property at the Chain of Rocks Canal Project (hereinafter referred to as the leasehold premises) under (a) No. DA-23-065-ENG-410, granted to the Bi-State Development agency on June 18, 1952 (amended or supplemented on April 25, 1954, June 19, 1959 and February 1, 1963); (b) No. DA-23-065-CIVENG-62-29 granted to the Bi-State Development Agency on July 20, 1965 and amended or supplemented on February 24, 1964, both of which were assigned to Lessee on April 15, 1975; and (c) No. DA-23-065-CIVENG-62-44, granted to Lessee on September 11, 1961 and amended or supplemented on February 4, 1964, March 4, 1966, and April 4, 1966; and

WHEREAS, in all said leases, the GOVERNMENT reserves certain rights, including but not limited to the right of the United States, its offices, agents, employees, contractors and subcontractors to enter upon the leasehold premises at any time and for any purpose necessary or convenient in connection with river and harbor and flood control work, including but not limited to, construction, maintenance, repair, enlargement and reconstruction of the east canal levee of the Chain of Rocks Canal, construction and maintenance of the facilities for underseepage control, and interior drainage and necessary impoundment of water, and under the specific terms of the leases, the LESSEE, SUBLESSEES, and assigns have no claim for damages of any character on account thereof against the United States or any officer, agent, employee, contractor or subcontractor thereof; and

WHEREAS, the LESSEE and National Robinson L.L.C., a Delaware limited liability company, as sublessee ("NATIONAL ROBINSON"), entered into that certain Agreement of Lease dated July 23, 1998 (the "Sublease"), pursuant to which NATIONAL ROBINSON leased a portion of the leasehold premises and desired to construct and develop certain structural improvements consisting of a 105,000 square foot steel processing facility located on the leasehold premises below elevation 423 N.G.V.D., and in areas subject to the impoundment of water by the GOVERNMENT and have requested the permission of the GOVERNMENT, in accordance with the terms of the lease cited above, to do so; and

WHEREAS, the GOVERNMENT granted such permission to the construction of said steel processing facility, without accepting any liability or responsibility whatsoever with regard to possible damages to property or injuries to persons, or any other claims or damages whatsoever that may arise as the result of such permission, and in connection therewith, LESSEE and NATIONAL ROBINSON executed that certain FULL AND COMPLETE RELEASE to and for the benefit of the GOVERNMENT, dated as of July, 1998 (the "Original Release"); and

WHEREAS, concurrently herewith, the Sublease has been (i) assigned by NATIONAL ROBINSON to an affiliated entity, Cargill Robinson LLC, a Delaware limited liability company ("CARGILL ROBINSON"), and (ii) further sublet by Cargill Robinson to its member, Robinson Steel Company, Inc., a Delaware corporation ("ROBINSON STEEL");

WHEREAS, in connection with the aforementioned affiliated entity assignments, ROBINSON STEEL and CARGILL ROBINSON have agreed, per the terms of the Sublease, to execute and deliver for the benefit of the GOVERNMENT, this FULL AND COMPLETE RELEASE.

NOW, THEREFORE, in consideration of the permission the assignments described in the Recitals above, each of ROBINSON STEEL and CARGILL ROBINSON do hereby release and discharge the United States of America or any officer, agent, employee, contractor or subcontractor thereof, from any and all past and future claims for damages to property, injuries to persons, flood damages, loss of business, or any other claims for damages or liability of any nature whatsoever arising out of or as the result of the construction or existence of the said improvements on the leasehold premises. ROBINSON STEEL and CARGILL ROBINSON do hereby jointly and severally, hold the United States of America harmless from any and all such damages and ROBINSON STEEL and CARGILL ROBINSON do also hereby, jointly and severally, indemnify the United States of America or any officer, agent, employee, contractor, or subcontractor thereof, against such damages.

Each of ROBINSON STEEL and CARGILL ROBINSON do further state that they are fully apprised of the requirement that the GOVERNMENT periodically impound water upon the leasehold premises, and ROBINSON STEEL and CARGILL ROBINSON do warrant and agree not to exert any efforts, of a legal or other nature, too impede or interfere with the exercise of said rights by the GOVERNMENT or with any appurtenant flood fight efforts that the GOVERNMENT may elect to implement on the leasehold premises.

Nothing contained herein shall prevent ROBINSON STEEL and CARGILL ROBINSON from discussing with or suggesting alternatives to the impoundment of water on the leasehold premises; nor shall anything specified herein prevent ROBINSON STEEL and CARGILL ROBINSON from recommending modifications of the impoundment procedure, including, but not limited to the appropriate elevations for impoundment of water and the areas of said impoundment of water to the Corps of Engineers or any other agency or arm of the United States Government, their members or staffs during other than actual times of flood fighting. Nothing contained herein shall prevent ROBINSON STEEL and CARGILL ROBINSON, from acting to prevent the flooding of improvements they have installed on the leased premises during flooding by sand bagging or other actions as long as these actions don't endanger or impeded the Corps' overall flood protection effort.

IN WITNESS WHEREOF, ROBINSON STEEL and CARGILL ROBINSON have executed this FULL AND COMPLETE RELEASE this 12th day of October, 2007.

ROBINSON STEEL CO., INC., an Indiana corporation

By: _____
Name: Paul J. Labriola
Title: President and CEO

CARGILL ROBINSON LLC, a Delaware limited liability company

By: _____
Name: Paul J. Labriola
Title: Manager

STATE OF ILLINOIS :
COUNTY OF COOK :

On this 12th day of OCTOBER, 2007, before me appeared Paul Labriola, to me personally known, who, being by me duly sworn did say that he is the PRESIDENT + CEO of Robinson Steel Company, Inc., a Delaware corporation and that said instrument was signed and sealed in behalf of said limited liability company by authority of its board of directors, and said Paul Labriola acknowledged said instrument to be the free act and deed of said limited liability company.

Jacqueline L. Ulbrich
NOTARY PUBLIC

"OFFICIAL SEAL"
JACQUELINE L. ULBRICH
Notary Public, State of Illinois
My Commission Expires 03/19/11

STATE OF ILLINOIS :
COUNTY OF COOK :

On this 12th day of OCTOBER, 2007, before me appeared Paul Labriola, to me personally known, who, being by me duly sworn did say that he is the MANAGER of Cargill Robinson LLC, a Delaware Limited Liability Company and that said instrument was signed and sealed in behalf of said limited liability company by authority of its board of directors, and said Paul Labriola acknowledged said instrument to be the free act and deed of said limited liability company.

Jacqueline L. Ulbrich
NOTARY PUBLIC

"OFFICIAL SEAL"
JACQUELINE L. ULBRICH
Notary Public, State of Illinois
My Commission Expires 03/19/11

EXHIBIT D

CARGILL BUYOUT ASSIGNMENT AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is dated as of January ___, 2010, by and between Robinson Steel Co., Inc., an Indiana corporation ("Assignor"), and Cargill, Incorporated, a Delaware corporation ("Assignee"), and is made with reference to the following recitals:

A. Assignor owns fifty percent (50 %) of the membership interests (the "Membership Interest") in Cargill Robinson LLC, a Delaware limited liability company.

B. Assignor and Assignee have entered into that certain Asset Purchase and Sale Agreement, dated as of December 14, 2009, as amended by the Amendment No. 1 to the Asset Purchase and Sale Agreement, dated as of January ___, 2010, between Assignor and Assignee (as amended, the "Amended Agreement"), pursuant to which Assignor desires to assign and sell to Assignee all of its right, title and interest in the Membership Interest, and Assignee desires to acquire Assignor's right, title and interest in the Membership Interest, for the consideration, and in accordance with the terms and conditions, specified therein. (Each initially capitalized term which is not defined herein shall have the meaning ascribed to such term in the Amended Agreement.)

C. Execution and delivery of this Agreement is a condition to the Closing of the transactions contemplated by the Amended Agreement.

NOW, THEREFORE, in order to consummate such assignment and sale, and in consideration of the foregoing (which is incorporated by reference herein), and the mutual agreements set forth in the Amended Agreement and this Agreement, Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, sells, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Membership Interest for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged (the "Assignment").

2. Acceptance of Assignment. Assignee hereby accepts the foregoing Assignment and assumes all liabilities and obligations with respect to the Membership Interest arising after the Closing Date that relate to the period after the Closing Date (the "Assumption").

3. Further Acts of Assignor. Assignor shall, at the reasonable request of Assignee, take all such actions as from time to time may be necessary or appropriate to effectuate the provisions of this Agreement and to establish or confirm Assignee's ownership of the Membership Interest.

4. Further Acts of Assignee. Assignee shall, at the reasonable request of Assignor, take all such actions as from time to time may be necessary or appropriate to effectuate the provisions of this Agreement and to establish or confirm Assignee's obligations with respect to the Assumption.

5. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or give to, any person, other than the parties to this Agreement, any rights, remedies, obligations or liabilities.

7. Governing Law; Consent to Jurisdiction, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to conflict of law principles. Each party hereto hereby agrees that any proceeding relating to this Agreement and the

transactions contemplated hereby or thereby shall be brought solely in the state or federal court located in Chicago, Illinois. Each party hereto hereby consents to personal jurisdiction in any such action brought in any such state or federal court, consents to service of process by registered mail made upon such party, waives any objection to venue in any such state or federal court and any claim that any such state or federal court is an inconvenient forum.

8. Counterparts and Electronic Signatures. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page. A signature sent electronically shall be deemed to be an original signature.

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

ASSIGNOR:

ROBINSON STEEL CO., INC.,
an Indiana corporation

By: _____
Name: Paul J. Labriola
Title: President and CEO

ASSIGNEE:

CARGILL, INCORPORATED,
a Delaware corporation

By: _____
Name: Mike Taylor
Title: Vice President

7/9/98

AGREEMENT OF LEASE BETWEEN TRI-CITY REGIONAL PORT DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS AND NATIONAL ROBINSON, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY

This Agreement of Lease is entered into this 23rd day of July, 1998 by and between the Tri-City Regional Port District, a Municipal Corporation of the State of Illinois, created by the State of Illinois and authorized by the Tri-City Regional Port District Act of 1959, as amended, hereinafter sometimes referred to as "Port District", "District", or "Lessor" and National Robinson, L.L.C. a Delaware limited liability company, with its principal place of business at 4303 Kennedy Avenue, East Chicago, Indiana, 46312, hereinafter sometimes referred to as "Company" or "Lessee",

W I T N E S S E T H :

WHEREAS, the Port District has, among its privileges and powers, the power to construct, lease, operate and maintain terminals and port facilities and to perform all functions incidental thereto and necessary to accomplish the Port District's primary purpose within the boundaries of the Tri-City Regional Port District in Madison County, Illinois; and

WHEREAS, the Port District has obtained leases of parcels of land from the Department of the Army (wherein the District is sometimes identified as the "Tri-Cities Regional Port District") said leases being respectively designated No. DA-23-065-CIVENG-62-44 executed by the Army on 16th day of August, 1961, and by the Port District on the 11th day of September, 1961, as amended by Supplemental Agreement No. 1 dated September 1, 1964, Supplemental Agreement No. 2 dated the 4th day of March, 1966, and Supplemental

Agreement No. 3 dated the 30th day of May, 1973. Containing 217.3 acres more or less, adjoining the harbor which has been constructed by the Federal Government in connection with its Chain of Rocks canal project in Madison County, Illinois. Said lease as amended is for a term of 60 years ending the 31st day of August, 2023.

Said leases are hereinafter referred to as the "Government Leases"; and

WHEREAS, the Port District and the Company desire to enter into a Lease of certain land.

NOW, THEREFORE, in consideration of the premises and One Dollar ($1.00) and other good and valuable consideration in hand paid and the mutual promises and covenants the parties hereto agree as follows, to-wit:

ARTICLE I - THE PREMISES

Section 1.1 - The District agrees to demise and lease, and by these presents does demise and lease to the Company, the following described real estate, hereinafter called "Demised Premises" or "Premises" to- wit:

> Parcel 5 - A tract of land being part of U.S. Survey 594, Claim 1865 and U.S. Survey 581, Claim 1258 in the south half of Section 12, Township 3 North, Range 10 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:
>
> Commencing at the intersection of the easterly line of U.S. Survey 594, Claim 1865 with the southerly line of Lot 12 in the "3rd Subdivision of the W. R. Benjamin Tract" as recorded in Plat Book 19 on Page 19 in the Recorder's office of Madison County, Illinois; thence North 65 degrees 01 minutes 00 seconds west, along the southerly line of said subdivision and its westerly extension, a distance of 1150.78 feet to the centerline of Old Rock Road (as traveled) (also known as Chouteau Slough and Alton-St. Louis Wagon Road); thence along said centerline as

follows:

North 40 degrees 06 minutes 42 seconds east a distance of 115.19 feet; around a curve to the left having a radius of 2386 feet, chord bearing North 32 degrees 54 minutes 12 second east, through a central angle of 14 degrees 25 minutes 03 seconds, an arc distance of 600.40 feet; north 25 degrees 41 minutes 40 seconds east a distance of 261.17 feet to the centerline of the Tri-City Regional Port District Dock Access railroad (Norfolk & Southern);

Thence North 59 degrees 19 minutes 47 second west a distance of 519.11 feet to an iron pin at the point of beginning of the tract herein described; thence continuing on the previous course of North 59 degrees 19 minutes 47 seconds west a distance of 537 feet; thence north 30 degrees 40 minutes 13 seconds east a distance of 845 feet; thence south 59 degrees 19 minutes 47 seconds east a distance of 497.75 feet; thence south 14 degrees 19 minutes 47 seconds east a distance of 55.50 feet; thence south 30 degrees 40 minutes 13 seconds west a distance of 805.75 feet to the point of beginning, containing 10.40 acres.

All as shown and delineated on Exhibit A attached hereto (which shall in no event be construed to be the survey required pursuant to Section 3.6 hereof), to have and to hold said described land for a term ending on the 31st day of August, 2023, with all rights and privileges, easements and appurtenances thereto belonging, and subject to all restrictions, rights and privileges arising under and by virtue of the Government Lease hereinabove referred to, for the use of Company in the manner hereinafter provided for the purpose of constructing, installing, operating and maintaining facilities for the processing of steel into sheets and plates, said facilities to consist of:

An approximately 105,000 square foot processing/warehouse facility with approximate dimensions of 150' x 700', to be constructed by the Company. The facility will include a cold reduction mill and cut-to-length line with a production capacity of approximately 200,000 tons of steel per year, five (5) overhead cranes, approximately 2,250 square feet of office space and approximately 770 feet of rail track to serve the facility.

Construction of the facilities to be built by the Company on the Demised Premises described above shall commence within ninety (90) days after final approval of such

improvements is received from the Corps of Engineers pursuant to Section 1.8 hereof and shall be constructed and in operation within 18 months thereafter (the "Construction Period"). Except as otherwise provided below, if said facilities are not constructed and in operation at the end of the Construction Period, at the written election of the Port District, this Lease shall terminate and become null and void and this Lease shall be of no further force or effect. Notwithstanding any of the above, this Lease shall not terminate at the end of such Construction Period, provided Company has commenced construction of the facilities described above and is proceeding in good faith and with due diligence to complete construction of the facilities and commence operations therein. There shall be excluded from the computation of such Construction Period, and such period shall be extended by, any delays due to strikes, riots, Acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other cause of any kind whatsoever, except those resulting from lack of funds, which is beyond Lessee's reasonable control. In the event the District fails or neglects to exercise the above described right to terminate this Lease within sixty (60) days subsequent to the termination of the Construction Period, as extended as permitted above, the foregoing termination right shall be deemed permanently waived.

Subject to Lessor's right of relocation set forth in Section 3.7(b) hereof, simultaneously with the execution of the Lease by the Port District, the Port District shall grant to Lessee a non-exclusive easement for roadway, railway and utility purposes upon the property identified as Parcel 6 on Exhibit A. Said easement shall be granted substantially in the form set forth in Exhibit B attached hereto. The timing of recordation of such easement in the Madison County land records shall be by mutual agreement of the Parties.

The Lessee shall have the option of extending this Lease for an additional twenty (20) year term in the manner hereinafter provided (it being understood that such option may be exercised on one or more occasions if the Government Lease is extended on more than one occasion.) This option is subject to the extension of the existing term of the Government Lease which terminates on the 31st day of August, 2023. If said Government Lease is not extended for an additional 20 years, then the option herewith granted to the Lessee shall be limited to a term equal to or less than (whichever Lessee elects) the number of years represented by each extension of said Government Lease. The Port District will make a diligent and good faith effort to extend said Government Lease and will initiate negotiations for an extension thereof before August 31, 2020, said date being three years prior to the termination of the original term of said Government Lease on August 31, 2023. The Port District will keep Lessee advised of the status of said negotiations and shall deliver to Lessee a true and accurate copy of the applicable extension agreement promptly upon its execution. All of the terms and conditions of this Lease shall continue in full force and effect for any such extended period except that the rental to be paid during the said extended period shall be the rental due under the calculation described in Section 1.4 hereof at the time of any such extension or extensions. The Lessee shall give the Port District written notice of its intention to extend its primary term for the period or periods hereinabove described at least six (6) months prior to the expiration of its primary lease (or the then applicable option term) or within thirty days after receipt of the applicable extension agreement for the Government Lease, whichever is later.

Section 1.2 - Lessor agrees to provide for Lessee's use (in conjunction with other

users), at no cost to the Lessee, all existing and future trucking concourses and pipelines controlled by the Lessor adjacent to the Demised Premises and a means of reasonable ingress and egress to the area under lease to the Company. Lessee shall be entitled to the non-exclusive use of the existing Port Truck Haul Road connecting the Port District General Cargo Dock by an extension of North Street with Old Rock Road. The location of said Truck Haul Road is shown on Exhibit A as attached. The Haul Road follows the following described line:

> Starting from the existing roadway serving the General Cargo Dock and the Granite City Steel Dock, the Haul Road will connect to the East Canal Levee Road and then follow the levy road northerly to a point approximately 550 feet north of Rock Road, the haul road will then follow an extension of North Street, which will be constructed as part of the haul road, connecting the levy road and Old Rock Road.

Said Haul Road has been constructed to accommodate a load limit of 18,000 pounds per axle.

The use of said trucking concourses and pipelines and means of ingress and egress is to be subject, at all times during the period of this lease, to the rights of the Lessor or its assigns to construct, operate, maintain and use said facilities, and further subject to the right of the Lessor to determine speed and safety procedure, to control and approve of the method of operation, including the switching and handling of trucks or rail cars, if any, over and along any roadway or trackage adjacent to the leased premises (except for the roadway, railway and utility easement described on Exhibit B attached hereto, which operation shall be governed by the terms of said easement) and area service ways used in conjunction with or in relation to the Demised Premises; provided, however, that Lessor shall not exercise such

rights in any manner that will be incompatible with Lessee's reasonable use and operation of its Demised Premises.

Section 1.3 - The land and the improvements that may hereafter be erected thereon and which are to be operated by Lessee, are to be used for the purpose of constructing, installing, operating and maintaining a processing/warehouse and office facility for the processing of steel into sheets and plate and the storage thereof which shall be duly licensed at all times when a license for such operation is required. Said installations and their maintenance and operation shall be in accordance with the power and authority of the District as created by an Act of the Legislature of the State of Illinois. Lessor hereby represents that this Lease and the construction of said facilities are consistent with and in accordance with the power and authority of the District under the Act.

Section 1.4 - Lessee hereby agrees and covenants to pay Lessor, at said Lessor's office, located at 2801 Rock Road, Granite City, Illinois, 62040, or at such other place in Madison County, Illinois, as said Lessor may, from time to time, designate in writing, a rental of One Thousand Six Hundred Thirty-six and 60/100 Dollars ($1,636.60) per acre, per annum made in quarterly installments. The quarterly installments shall be made each January 1, April 1, July 1 and October 1. The first rental payment for the Demised Premises will be due July 1, 1998 and the final rental payment shall be pro rated for any part of a quarter remaining at the time of termination of this Lease.

If payment is not made to the Lessor within five days of the date when due, a penalty equal to the then existing prime interest rate (as publicly established from time to time by the First National Bank of Chicago or its successors) plus an additional 6 percentage points,

calculated on an annual basis, may be assessed by the Lessor against the late payment for the period of time from the due date until the date paid and if assessed shall be paid by the Lessee. Said rental is to be adjusted only upward in accordance with the Producers Price Index (PPI) for industrial commodities as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor index, every five (5) years on the anniversary of this Lease. Such increase, if any, shall be determined by comparing the then applicable PPI to the most currently available PPI as of the date of this Lease. The rate of any rental increase for any five year period, however, shall not exceed 18% of the then existing rental payment irrespective of an increase in the Producer Price Index. The rental described herein shall be payable during the primary term and the option term described in Section 1.1 hereof. The rental provisions made in this Paragraph are subject to and conditioned upon the renewal or extension of said Government Lease at the level of the rentals currently required under said Lease. If said rentals on said Government Lease are increased, during the term of this Lease or any extension thereof, the rentals then payable by Lessee to Lessor under this Lease hereafter shall be increased by a like amount on a per acre basis; however, Lessor and Lessee expressly acknowledge and agree that the maximum amount of rent increases due from Lessee per acre under this Lease, which rent increases are attributable to increases in rentals of the Government Lease (as opposed to increases based on the Producer's Price Index, more fully described above), shall not exceed $500.00 per acre in the aggregate through the primary term of this Lease.

Section 1.5 - In addition to the rental, Lessee shall pay all charges for heating, cooling, and water and all electricity, gas, sewer and other utility services rendered to the Demised

Premises, only. Lessee will pay the cost of installation of any meter required to determine the amount of charges for the utilities service furnished to the Demised Premises. Notwithstanding the immediately preceding sentence, Lessor will provide the extension of water and sewer utilities as described in Section 1.7 hereof. Nothing herein shall be interpreted to require the Lessor to extend electric or gas service to the Demised Premises.

Section 1.6 - The improvements and installations described herein and any improvements and installations subsequently installed on the Demised Premises shall be erected on the Demised Premises by the Lessee. Said improvements erected on the Demised Premises for or on behalf of the Lessee shall be Lessee's property, but, said improvements shall remain on the Demised Premises during the term of this Lease and shall not be removed during the term except as provided in section 2.13 of this Lease. The use of any improvements erected on said Demised Premises shall be consistent with the statutory and constitutional powers of the Port District, and shall be in compliance with this lease and the laws of the State of Illinois and the United States of America, and the applicable laws of the County of Madison, whose boundaries may encompass the Demised Premises and shall be subject to compliance with the provisions of the Government Lease, which, by this reference is made a part hereof and the plans and specifications of any improvement hereinafter situated on said Demised Premises must be approved by the Tri-City Regional Port District and the Corps of Engineers, St. Louis District. By the execution of this Lease, Lessor certifies that the use of the Demised Premises, pursuant to the immediately following paragraph and Sections 1.1 and 1.3 hereof is consistent with the statutory and constitutional powers of the Port District.

Specifically, Lessee shall have the right, at its sole cost and expense, to erect and install on the Demised Premises the improvements and facilities listed in Section 1.1 and such other improvements and facilities as shown on the plans and specifications approved hereunder, and to extend or alter said improvements and facilities from time to time and to extend an electric service line, and a natural gas main, to the premises, the location of such extensions to be approved by the Lessor. Any approval by the Lessor required under this Lease shall not be unreasonably withheld; provided, however, that with respect to the construction of any improvements (a) Lessee provides the Lessor and the Corps of Engineers, St. Louis District, with plans and specifications for any such construction or alterations and such plans and specifications are approved by the Lessor and the Corps of Engineers, and (b) none of the construction activity materially interferes with the business operation of other tenants of the Lessor or occurs off the Demised Premises without the Lessor's consent. Lessee shall accomplish the completion of any construction free and clear of all mechanic's liens.

Section 1.7 - Lessor, as a condition of this Lease, has agreed to construct certain roadway, rail track facilities, culverts, water line and sewer line adjacent to the leased premises and more fully described in Exhibit C attached hereto (the "Lessor's Infrastructure Improvements"), which shall be used by the Company in conjunction with other tenants of the District or the successors and assigns of the District. The Lessor will be responsible for maintenance of the subject facilities.

Each of the Lessor's Infrastructure Improvements shall be completed and available to Lessee on or before its respective construction completion date set forth on Exhibit C. The

construction completion dates shall be extended, by any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions (except those imposed by Lessor) or any other cause of any kind whatsoever, except those resulting from lack of funds, to complete the Lessor's Infrastructure Improvements, which is beyond the Lessor's reasonable control.

Section 1.8 - The rights herein granted to the Lessee are limited to the operations authorized to be conducted on lands demised under the Government Lease described in the recitals herein. This Lease and the construction of all improvements made hereunder are subject to the approval of the Corps of Engineers. Upon receipt of Lessee's final plans and specifications for the improvements which Lessee proposes to build upon the Demised Premises, Lessor will make a good faith effort to obtain the Corps of Engineers' approval of the Lease and the construction of the facilities described in Section 1.1, and represents it has obtained preliminary written approval for construction of the facilities described in Section 1.1, a copy of which is attached hereto as Exhibit D (the "Preliminary Approval"). The Port District and the Company agree to address the Corps of Engineers' requirements set forth in the Preliminary Approval in the manner set forth in Exhibit E attached hereto and in Section 3.10 of this Lease. The Port District shall also make a good faith effort to obtain the Corps of Engineers' approval of the construction of such other improvements as may subsequently be approved by the Port District hereunder, which approval shall not be unreasonably withheld or delayed.

Section 1.9 - This Lease is made subject to easements for construction, operation and maintenance of railroad tracks, roadways, walks, pipelines, poles and wires, upon, over and

across the land affected by said Lease whether said easements are now in effect or may hereafter be placed in effect by the exercise of the Lessor's rights, herewith reserved, to locate said easements for its purpose over and across said land. The Lessor shall make its best effort to locate any such new easements or any relocation of presently existing easements in a manner designed to best avoid interference with Lessee's use of the Demised Premises. This Lease is also made specifically subject to the rights of the United States Government specified in the Government Lease with respect to easements, land regulations and supplemental controls specified therein. Lessee shall be credited in rentals for any deprivation of the use of the land covered by this Lease which results from the establishment or relocation of such easements hereafter in proportion to the amount of land in the Demised Premises which can no longer be used by Lessee.

If the Lessee is deprived of the use of all or any part of the manufacturing and storage facility described herein as a result of the creation or relocation of the aforesaid easements or the creation of the aforesaid regulations and controls, the rental described herein shall abate on a proportional basis, based on that portion of Lessee's facility that Lessee is unable to utilize for the purpose for which it was built.

If the Lessee is deprived of the use of all or any part of the manufacturing and storage facility described herein for a period of ninety (90) days or more as a result of the creation or relocation of the aforesaid easements, regulations and controls to the extent, in Lessee's reasonable opinion, that Lessee is unable to utilize the facility for the purpose for which it was built, Lessee may elect, by written notice to Lessor, given within one hundred and twenty (120) days after the date on which Lessee was first deprived of the use of the facility, to

terminate this Lease, as of the date of such notice, and shall, within nine (9) months after such termination (subject to reasonable extensions of time due to force majeure) remove any and all improvements made thereon by Lessee, including any roadway, track or utility constructed by Lessee on the easement attached hereto as Exhibit B, unless said obligation to remove is excused by direction of the Lessor. Nothing in this lease or paragraph contained shall operate to bind the Lessor to compensate for the taking of any land or facilities by the United States Government under the terms and conditions of the Government Lease and in such event nothing in this Lease shall be deemed to deprive the Lessee by any compensation received or claim made therefor from the United States Government for any taking by the United States Government.

ARTICLE II - LESSEE'S COVENANTS

Section 2.1 - Except for the obligations imposed on Lessor under Sections 1.5, 1.7, 3.2, 3.3, 3.7(b) and 3.10 herein, Lessee covenants and agrees that it will be responsible for and pay all costs associated with Lessee's lease of said land, including, but not limited to, all taxes and assessments (but only to the extent that such taxes and assessments are levied on the Demised Premises, and not on any other real property, and that such taxes and assessments are due and payable based on assessments made during the term of this Lease) and costs incurred for labor, necessary to create and to operate and maintain the facilities installed on said leased land by Lessee, and payment for commodities and contractual services for maintenance and operation, payment for utility and sanitary sewer charges, and payment for insurance. The Lessee understands and agrees that Lessor will make no physical improvements to the land described in Section 1.1 or, except as provided in Section 3.7(b), be

responsible for the cost of any such improvements or installations made thereon and that none of the costs pertaining to operation of the facility shall be or become an obligation or responsibility of the Port District.

Section 2.2 - Lessee shall pay the rental specified in Section 1.4 above as same becomes due and payable.

Section 2.3 - Lessee covenants and agrees to operate the facilities and improvements subject to the terms and conditions set forth herein.

Section 2.4 - Lessee covenants and agrees that during the entire term of this Lease, it will keep the Demised Premises in good order, condition, and repair and it will maintain and repair all roads, tracks, buildings, and other facilities hereinafter erected on the Demised Premises by Lessee. Nothing contained herein shall be deemed to excuse the Lessee from maintaining or repairing, any rail spur and any railway, roadway or utility improvements installed by the Lessee on the non-exclusive roadway, railway and utility easement described in Exhibit B, in accordance with this Paragraph 2.4, but subject to the limitations set forth in said easement. If Lessee fails or refuses to provide said maintenance and repair for any of its facilities or improvements described in this paragraph, Lessor may, but need not, take the necessary steps to put said Demised Premises and facilities, in good order, condition or repair, and Lessee shall pay Lessor the cost thereof as rent hereunder and Lessor may take action on Lessee's default in payment after ten (10) days' written notice of the amount due in the same manner as in the event of Lessee's default in Payments as hereinafter provided. Prior to Lessor's exercise of the rights granted in the immediately preceding sentence, Lessee shall have the right to cure said default as described in Paragraph 4.1(b) of this Lease.

Section 2.5 - Lessee shall permit Lessor and or an engineer designated by Lessor to enter upon the Demised Premises at all reasonable hours for the purpose of inspecting same, and Lessor shall not, except in cases of emergency, exercise this privilege in such a way as to unreasonably interfere with Lessee's business. Such inspections shall be conducted during normal business hours and in the company of Lessee's representatives.

Section 2.6 - Lessee shall not, without the prior written consent of Lessor, use or occupy the Demised Premises for any purpose whatsoever other than that specified in Sections 1.1 and 1.3 above. Lessee shall not use the Demised Premises for any unlawful purpose and shall at its own expense, comply with all ordinances, laws, rules, and regulations of the Tri-City Regional Port District, the County of Madison, the State of Illinois, the United States of America and all lawful authorities, agencies and departments of the aforementioned governmental entities having jurisdiction in the premises. Lessee will also be responsible for installing or erecting all environmental pollution control devices that are or may be hereafter required by a local, state or federal regulatory agency with respect to Lessee's facilities and for the proper operation and maintenance of said environmental pollution control devices.

Lessee shall be responsible for the clean-up of any spillage of materials delivered to or shipped from its facilities by any means of conveyance and shall immediately undertake to clean up such spillage whether such spillage occurs on the Demised Premises or land or roadways adjacent to or leading to or from the Demised Premises, unless such spillage is caused by Lessor, its agents, representatives or employees or any other party acting within Lessor's control. Notwithstanding the preceding sentence, however, it is understood and agreed that Lessee's responsibility is limited to any spillage that occurs during the term of this

Lease or during any construction activity initiated by Lessee prior to the commencement of the term of this Lease.

Lessee further agrees not to use or permit to be brought upon the Demised Premises or to permit to be done thereon any act or thing which will invalidate or which, if brought on, would be in conflict with any insurance policy covering the Demised Premises or bring or keep anything thereon which will not comply with all rules, orders, regulations, or requirements of the Board of Fire Underwriters or any similar organization and Lessee shall at all times make a good faith effort to comply with all such rules, orders, regulations or requirements. Lessee shall not do or permit anything on the Demised Premises which constitutes a public nuisance. Lessor shall provide Lessee with copies of its insurance policies at least bi-annually.

Lessee agrees to indemnify and hold the Lessor harmless from any and all penalties, damage or charges actually imposed or losses or expenses actually incurred by the Lessor solely as a result of the violation of any Federal, State or Municipal law or regulation or ordinance by the Lessee, its customers, officers, agents, employees, guests or invitees which violation(s) occurs at or on the Demised Premises and arises directly out of or as a result of, the operations of Lessee at or on the Demised Premises.

Section 2.7 - The Lessee shall not assign, transfer, sublease or sell this Lease or any right thereunder without the prior written approval of the Lessor, which approval shall not be unreasonably withheld or processing thereof delayed nor shall Lessee assign, transfer, sublease or sell this Lease without the prior approval of the District Engineer, United States Army Engineer District, St. Louis, Missouri. However, Lessee without obtaining the prior consent

of Lessor, may enter into contracts of the kind usually and customarily entered into in the conduct of the Lessee's business permitted under the terms and provisions of this Lease. Notwithstanding any assignment or sale, Lessee shall at all times remain liable for performance of all covenants and conditions to be performed under this Lease, including, but not limited to payment of all monetary amounts herein specified.

Notwithstanding any of the above, the Port District recognizes and agrees that the Lessee may assign the Lease or may sublease the Demised Premises to any members of the Lessee or any such member's respective Affiliates (collectively, a "Permitted Party"") and further agrees that a Permitted Party may assign its interest in this Lease to another Permitted Party. However, this right to sublease or assign is specifically conditioned upon the execution of a "Waiver and Consent" by such sublessee or assignee under this Section 2.7 in substantially the form attached hereto as Exhibit F. For the purpose of this Section 2.7, "Affiliate" shall mean any entity controlling, controlled by or under common control with National Robinson, L.L.C. or a member of National Robinson L.L.C., or an entity into which National Robinson L.L.C. or a member of National Robinson L.L.C. merges.

Section 2.8 - Lessee shall give Lessor immediate written notice of all accidents of which Lessee has actual knowledge and which occur on the Premises.

Section 2.9 - Lessee agrees to indemnify and hold Lessor, the United States Government and the Secretary of the Army (collectively, an "Indemnitee") harmless from any and all liability, judgment, costs, damages and expenses, including reasonable attorneys' fees (collectively "Damages"), that actually accrue against, are charged to, or are recovered from Lessor by reason of, or on account of damages to: the property of Lessor; the property of

Lessee; or the property of any third party or parties; or the property of, injury to, or death of any person, arising solely from Lessee's use, alteration, occupancy or operation of the facilities or improvements on the land herewith demised and any easements herewith granted, including acts of Lessee's agents, contractors and subcontractors, but not including any Damages arising solely from the negligence, misconduct or breach of this Lease by Lessor. Lessor shall give Lessee prompt and timely notice upon receipt of any actual written claim made or suit instituted by service of summons and complaint on an Indemnitee, which is covered by the indemnification in this Section 2.9. If any such proceeding is brought against an Indemnitee, Lessee shall retain counsel to defend the Indemnitee at Lessee's sole cost and expense. Lessee shall give Lessor prompt and timely notice of any accidents or incidents arising out of Lessee's use and occupancy of and operations on the Demised Premises, and facilities and improvements erected thereon which in any way adversely affects Lessor or its insurer with respect to the Demised Premises. Nothing contained herein will require either party to give notice of claims or litigation against that party or that are unrelated to this Lease.

Provided that Lessee has been given the opportunity to compromise and defend the claim, any final non-appealable judgment rendered against Lessor by a court of competent jurisdiction for any cause for which Lessee is liable under this Section 2.9, shall be conclusive against Lessee as to liability and dollar amount. Except as hereinafter provided, Lessee shall, at its own expense, keep in force or cause to be kept in force, insurance of the following types and in not less than the following amounts, issued by a company or companies of sound and adequate financial responsibility, licensed to do business in the State

of Illinois, and reasonably approved by Lessor, to-wit:

a) Comprehensive public liability insurance in the amount of $5,000,000 per person and in the amount of $5,000,000 per accident.

b) Comprehensive property damage insurance in the amount of $5,000,000 per accident.

Said amounts of coverage shall be reviewed every three (3) years, upon the anniversary of this lease, during the effectiveness of this lease and increased if necessary by amounts mutually and reasonably agreed upon by the Lessor and Lessee.

Lessee shall furnish to Lessor certificates evidencing such insurance, naming Indemnitee as additional insureds thereunder.

Lessee shall also carry Worker's Compensation and Employer's Liability Insurance to cover accidental injury to any of Lessee's employees as provided by the Workmen's Compensation Law of Illinois. Evidence of procuring and maintenance of such insurance shall be furnished by Lessee to Lessor.

Section 2.10 - Lessee agrees that in case of the substantial damage or destruction of the facilities constructed by Lessee and situated on the Demised Premises, the Lessee shall within three hundred and sixty-five (365) days of the date of said damage or destruction (subject to reasonable extensions of time due to force majeure) either (1) restore the facilities constructed by Lessee to their original condition, ordinary wear and tear excepted, or (ii) restore the premises in the manner provided in Section 2.13, and terminate this Lease, without further liability to Lessor.

Section 2.11 - Lessee covenants and agrees:

A. That this lease is subject to, subordinant to, and limited by the

terms of the Government Leases.

B. Not to do nor permit anything to be done which constitutes a breach of the Government Lease or cause the Government Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in the Department of the Army under said Government Lease; to indemnify and hold the Port District harmless, and does hereby indemnify and hold the Port District harmless, from and against all claims of any kind or nature whatsoever that the Port District actually suffers or incurs as a direct result of any breach or default on the part of Lessee by reason of which the Government Leases may be terminated or forfeited, except to the extent that the cause of said claims is due to the fault or neglect of the Port District or its agents, representatives or employees and/or some third party other than the Lessee;

C. That the Lessee has read and is familiar with the terms of the Government Lease.

Section 2.12 - Intentionally Omitted.

Section 2.13 - At the expiration of this Lease or any valid extension thereof, the Lessee shall deliver the possession of the Demised Premises to the Port District in good order and condition, ordinary wear and tear excepted, and shall, within a reasonable time period after the expiration or termination of this Lease, remove any and all improvements made thereon by Lessee, including any roadway, track or utilities constructed by Lessee on the easement attached as Exhibit B, unless said obligation to remove is excused by direction of the Port District. For the purpose of this paragraph, ordinary wear and tear shall not include any spills or deposits of hazardous substances or materials upon the Demised Premises which occur during the period the Demised Premises is in Lessee's possession; and, restoration of the Demised Premises shall include the removal of such materials from the Demised Premises. Upon the Lessee's failure to so remove and restore said Premises, the Port District may

restore the Premises and facilities or remove same and Lessee shall be liable for payment of the documented cost thereof to the Port District.

Section 2.14 - Lessee covenants that it will not make any capital additions, improvements or modifications to the erected structural aspects of the facilities that Lessee erects on the leasehold property without the prior written consent of the Lessor, which shall not be unreasonably withheld, nor will the Lessee undertake any action which will result in the creation of a lien on the facility or the premises. The Lessor shall consider and respond to Lessee's request for approval under this Section 2.14 within 60 days of the actual receipt of such request. Failure of the Lessor to act within that time period shall be considered to be operative as a consent to said addition, improvements or modifications.

Section 2.15 - Lessee covenants that it will, at the termination of this Lease, by lapse of time or otherwise, yield up immediate possession to the Port District (subject to Lessee's right to enter the demised premises for a reasonable period of time after the expiration or termination of this Lease in order to permit Lessee an opportunity to comply with the terms of Section 2.13 above; provided, however, that in no event shall a time period beyond 90 days be considered reasonable). Upon failing to do so, Lessee will pay as liquidated damages for the time such possession is withheld, the sum equivalent to Two Hundred Percent (200%) of the rent payments applicable under this Lease as of the date on which this Lease expires or terminates, computed on a monthly basis. Such payment shall not prevent the Port District from exercising all rights it may have to prevent Lessee from holding possession of the facility.

ARTICLE III - LESSOR'S COVENANTS

Section 3.1 - Lessor represents, warrants and covenants that it has good and sufficient interest in and to the Demised Premises herein described and has lawful right to make this Lease for the term aforesaid, and that it has taken all actions necessary to assure the lawful execution of this Lease and covenants that if, Lessee shall pay the rental and perform all the covenants and provisions of this Lease to be performed by said Lessee, Lessee shall have the right, during the term of this Lease or any extension thereof, to freely, peaceably and quietly occupy and enjoy the full and exclusive possession of the premises and the tenements, hereditament and appurtenances thereunto belonging and, the rights and privileges herein granted, without molestation or hinderance, and Lessor or its Representatives will defend Lessee's rights as herein granted. Lessor's title and right to hold said land is subject to, and based upon, the above-described Government Lease. There are no other agreements with the Department of the Army affecting the Demised Premises other than the aforesaid Government Lease and same is in full force and effect and Lessor has no knowledge of any default in its obligations thereunder.

Section 3.2 - Lessor will accomplish the extension of water and public sewer services described in Section 1.7 hereof, all at Lessor's expense. Construction of said utility services shall be completed on or before June 30, 1999 subject to a reasonable extension of time due to force majeure. It is understood that Lessee will provide for separate metering of said services to the Demised Premises as provided in Section 1.5 above.

Section 3.3 - Lessor will maintain and keep in repair, satisfactory to accomplish Lessee's reasonable use thereof, all roads, and access ways located on Port District property or property controlled by the Lessor and used by Lessee for access to the Demised Premises.

Failure of Lessor to act to clear said access roads of any physical obstruction which limits Lessee's use of said facilities within ten days of the first instance of said obstruction shall constitute authority for Lessee to remove said obstacle at Lessor's expense.

Section 3.4 - Lessor covenants and agrees that it will comply with the terms and conditions of the Government Lease during the term of this Lease or any extension thereof and will promptly advise Lessee of any notice of default, breach or forfeiture given to the Lessor by the Department of the Army. The Lessor will not violate, breach, cancel, amend or reduce the term of the Government Lease affecting Lessee's Demised Premises herein specified during the term of this Lease or any extension thereof.

Section 3.5 - Lessor will promptly notify Lessee of receipt of any notice from the Secretary of the Army that the Army's right under Paragraph 18 of the Government Lease may be exercised to terminate the Government Lease by reason of non-use of all or any substantial portion of the 217.3 acres covered in the Government Lease for a period of five consecutive years. Lessor will act with due diligence to prevent such cause for termination of the Government Lease.

Section 3.6 - Lessor represents and warrants: (a) that it has a good and merchantable leasehold interest in and to the Demised Premises and Parcel 6 shown and described on Exhibit A (the "Subject Parcels") subject to the terms of the Government Lease, (b) that the Subject Parcels have access to public roads, (c) that Parcel 6 is contiguous to the Demised Premises without any gaps or gores, (d) that there are no matters and no third party has any rights, except under the terms of the Government Lease or this Lease which would in any way interfere with the Lessee's improvement or use of the Demised Premises or the

nonexclusive easement granted pursuant to Section 1.1 above and (d) that the Demised Premises and Parcel 6 are zoned for the uses described above. Lessor, at its cost, will obtain and deliver to Lessee within thirty (30) days after the date of this Lease a new title policy providing extended coverage insuring the Lessee's leasehold interest or easement (as the case may be) in the Subject Parcels in form and substance reasonably acceptable to Lessee, and a current survey prepared by a surveyor, reasonably acceptable to Lessee, in accordance with ALTA Standards and certified to Lessee and the title insurer showing the boundaries of the Subject Parcels and identifying and locating any encroachments, easements or reservations applicable thereto in form and substance reasonably acceptable to Lessee.

Section 3.7 - (a) The Port District represents and warrants, or covenants, as the case may be, that the Port District has no knowledge of past or current presence, disposal, or storage of any hazardous or toxic substances or materials at, on, in or under the Demised Premises, except as described in that certain report entitled "Phase I Environmental Report Site Assessment Parcel 5 - Levee Road Site, Granite City, Illinois" dated June 12, 1998 prepared in accordance with Illinois law by Phillips Service Corp. (the "Parcel 5 Report").

(b) The Port District represents or warrants, as the case may be, that the Port District has no knowledge of past or current presence, disposal or storage of any hazardous or toxic substances at, on, in or under the easement parcel (Parcel 6) described in Exhibit B attached hereto, except as described in that certain report entitled "Phase I Environmental Site Assessment Addendum Parcel 6 - Railroad Easement Site", dated July 6, 1998 (the "Parcel 6 Report"). The Port District covenants and agrees to perform any further investigations

required or recommended by the Corps of Engineers and/or the Illinois Environmental Protection Agency as a condition of the approval of this Lease or the construction of the improvements described in Section 1.1 hereof and Exhibit B. In the event the Corps of Engineers and/or the Illinois Environmental Protection Agency require any removal or remediation of such hazardous materials at, on, in or under Parcel 6, Lessor shall within five (5) business days of receiving such investigation(s) or learning of such requirement notify the Lessee thereof in writing. Lessor, by written notice to Lessee (the "Election Notice"), given no more than thirty (30) days after Lessor receiving such investigation(s) or learning of such requirement, shall elect to either, at its sole cost:

(i) no more than thirty (30) days after delivery of the of the Election Notice, commence the remediation and removal of the hazardous materials at, on, in or under Parcel 6 to the satisfaction of the Corps of Engineers and/or the Illinois Environmental Protection Agency and to the Lessee's reasonable satisfaction. Lessee shall be deemed to be satisfied by such remediation and removal, if such remediation and removal has been approved either by (i) the Corps of Engineers or the Illinois Environmental Protection Agency or (b) by the unappealable order of a court having jurisdiction with respect to the issue. Lessor shall use diligent efforts to complete such remediation and removal in time sufficient to allow completion of the Lessor's Infrastructure Improvements to be constructed on Parcel 6 by the date or dates set forth in Exhibit C hereof; or

(ii) grant Lessee a roadway, railway and utility easement in an alternate

location or locations which contain no hazardous materials, shall not increase Lessee's cost of operation, shall permit the proposed roadway to terminate on the southern property line of the Demised Premises and shall provide the rail track equal access to the southside receiving bays to be constructed by Lessee on the Demised Premises as the configuration shown on the site plan drawing number SC312, dated June, 1998, prepared by Sheppard, Morgan & Schwaab, Inc. Lessor agrees to compensate Lessee upon demand an amount equal to Lessee's increased cost of construction arising from the relocation of the easement to an alternate location or locations. All representations, warranties, covenants and agreements pertaining to Parcel 6 and the easement to be granted pursuant to Section 1.1 hereof shall apply equally to the alternate location or locations and the easement to be granted thereon. Such alternate easement or easements shall be in substantially the same form shown on Exhibit B.

Section 3.8 - Lessor covenants and agrees that it has delivered to Lessee true, accurate and complete copies of the Government Lease which relates to the Demised Premises described in Section 1.1 hereof.

Section 3.9 - Lessor hereby covenants and agrees that, throughout the term of this Lease and any extension thereof, Lessor shall continuously maintain comprehensive general liability insurance and property damage insurance applicable to its territory and properties. Such insurance coverages shall be maintained in amounts, and shall provide for deductible amounts, deemed from time to time, normal and customary for governmental bodies comparable to the Lessor.

Section 3.10 - The Lessor hereby represents that it has retained Bauer Technical Services, Inc., a qualified soil scientist to perform a wetlands delineation study on the Demised Premises. Said soil scientist has completed such wetland delineation study dated April 16, 1998 in a manner that is consistent with generally recognized industry standards applicable to scientists providing professional services in this area of expertise. The study determined that there were no wetlands on the Demised Premises. The parties agree that they will reasonably cooperate with each other in satisfying the Corps of Engineers' requirements referred to in subparagraph h of the Preliminary Approval with respect to wetlands. In the event that preservation of the adjacent wetlands is required for the purpose of satisfying the Corps of Engineers' requirements with respect to Lessee's initial improvements upon the Demised Premises described in Section 1.1 above and shown on the plans and specifications for the initial improvements approved by the Corps of Engineers and Lessor, the Lessor hereby agrees to obtain or set aside land for such purpose at no cost to the Lessee. Except as agreed to in the preceding sentence, in the event the Lessee and the Lessor cannot otherwise agree on either (i) the method of satisfying the Corps of Engineers' requirements or (ii) which party shall bear the responsibility (including, but not limited to the financial responsibility) for satisfying such requirements, the Lessee may terminate this Lease by written notice to the Lessor and thereafter this Lease shall have no further force or effect.

Section 3.11 - Upon written request of the Lessee, the Lessor shall enter into an agreement with a Permitted Party, as subtenant of all or part of the Demised Premises or any other subtenant approved pursuant to Section 2.7 (the "Non-Disturbance Agreement") in a form that is mutually agreeable to the Lessor and such subtenant. Said Agreement will

provide that so long as the subtenant complies with all the terms of its sublease, the Lessor, in the exercise of any of its rights or remedies under this Lease, shall not deprive the subtenant, of the right of possession of the property leased in the sublease during the term of the sublease or the use of the roadway, railway and utility easement attached hereto as Exhibit B or join subtenant as a party in any action or proceeding to enforce or terminate this Lease or the easements described in this Lease or obtain possession of the property leased in the sublease or terminate the rights granted pursuant to the said easements for any reason other than a breach by subtenant under the terms of the sublease which would entitle the Lessee to dispossess subtenant thereunder; provided that the following condition is met: Simultaneously with execution of the Non-Disturbance Agreement, subtenant at the Lessor's written request, shall agree in writing, in such form as reasonably requested by the Lessor, that if this Lease is terminated before the term of the sublease terminates or expires, subtenant will be deemed attorned to the Lessor, and will become the Lessor's tenant under the Sublease and the rent on the subleased premises shall be paid at the per acre rental rate established and adjusted in the manner set forth in Section 1.4 hereof. Such rent shall be paid in quarterly installments pursuant to Section 1.4.

ARTICLE IV - MUTUAL COVENANTS

Section 4.1 - If one or more of the following events (hereinafter sometimes called "defaults") shall happen and be continuing, same shall be and constitute a basis for Lessor, at its option, to treat Lessee as being in default under this Lease:

(a) If Lessee defaults in the payment of any of the rentals provided to be paid hereunder and such default shall continue for ten (10) days after written notice of such non-payment by Lessor to Lessee.

(b) If Lessee defaults in the observance or performance of any other covenant, condition, agreement or provision hereof which is not remedied within thirty (30) days after written notice of such default from Lessor to Lessee; provided, however, no default on the part of the Lessee in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have in good faith been commenced promptly by Lessee to rectify the same and shall be pursued to completion with diligence and continuity under the terms and conditions of this Lease.

(c) If Lessee becomes bankrupt or admits its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for Lessee, or for the major part of its property.

(d) If a trustee or receiver is appointed for Lessee or for the major part of its property and is not discharged within ninety (90) days after such appointment.

(e) If bankruptcy, reorganization, arrangements, insolvency, or liquidation proceedings, or any other proceedings for relief under any of the bankruptcy laws or similar laws for the relief of debtors, are instituted by or against Lessee, and are not dismissed within ninety (90) days after such institution.

In any such case, Lessor may at its option exercise any one or more of the following remedies:

(1) Lessor may terminate this Lease and Lessee's right to possession thereunder by giving to Lessee written notice of Lessor's intention so to do, in which event the term of this Lease or any renewal thereof shall end, and all right, title and interest of Lessee hereunder shall expire on the date designated in such notice, which shall not be less than ten (10) days after the date of the notice by Lessor of its intention so to terminate, but Lessee shall not be released thereby from obligation to make further payments of rentals due hereunder for the full period to which said Lessee committed itself under the terms of this Lease.

(2) Lessor may enforce the provisions of this Lease and may enforce and protect the right of Lessor hereunder by a suit or suits in

equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy, but Lessee shall not thereby be released from obligation to make further payments of rentals due.

Section 4.2 - If Lessor exercises either of the remedies provided for in Subparagraph (1) or (2) of Section 4.1 hereof, Lessor may then or at any time thereafter re-enter and take complete and peaceful possession of the Demised Premises, with or without process of law, and may remove all persons therefrom, and Lessee covenants in any such event peacefully and quietly to yield up and surrender the Demised Premises to Lessor and to continue payment of the rentals provided hereunder.

Section 4.3 - If Lessor terminates the right to possession as provided in Subparagraph (1) of Section 4.1 hereof, Lessor may re-enter the Demised Premises and take possession of all thereof (including any and all equipment and apparatus thereon), may remove any portion of the equipment, machinery and apparatus thereon which Lessor elects to so do, and may sublet or relet the Demised Premises or any part thereof from time to time for all of any part of the unexpired part of the then term thereof, or for a longer period, and Lessor may collect the rents from such reletting or subletting, and apply the same, first, to the payment of the expense of re-entry and re-letting, and secondly, to the rentals herein provided to be paid by Lessee, and in the event the proceeds of such reletting or subletting are at any time hereafter not sufficient to pay in full the foregoing, Lessee shall remain and be liable therefor, and Lessee promises and agrees to pay the amount of such deficiency from time to time, and Lessor may at any time and from time to time sue and recover judgment for any such deficiency or deficiencies. Upon the occurrence of any default by Lessee under this Lease,

Lessor shall use due diligence in attempting to obtain a reletting of the facilities and to mitigate its damages.

Section 4.4 - In the event of the termination of this Lease by Lessor as provided for by Subparagraph (1) of Section 4.1 hereof, Lessor shall be entitled to recover from Lessee all the rentals accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Lessee for which Lessee is liable or in respect of which Lessee under any of the provisions hereof has agreed to indemnify Lessor, which may be then owing and unpaid, and all costs and expenses, including court costs and reasonable attorneys' fees incurred by Lessor in the enforcement of its rights and remedies hereunder, and in addition, Lessor shall be entitled to recover the actual damages, including reasonable attorneys fees and court costs, which Lessor actually sustains by reason of the breach of any of the covenants of this Lease. Lessee shall be entitled to credit for any rentals received by Lessor from a reletting of the Premises.

Section 4.5 - This Lease covers in full each and every obligation of every kind and nature whatsoever between Lessee and Lessor concerning the Demised Premises.

Section 4.6 - If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by the laws of the State of Illinois.

Section 4.7 - The removal of the facilities or improvements from the Premises described in Section 1.1 shall not be operative to cause an abatement in the rentals herein provided for but said rentals shall continue to be due and payable for the term of this Lease

or any extension thereof.

If the Lessee is deprived of the use of the manufacturing and storage facility described herein as a result of substantial damage to or destruction of the facilities, as a result of fire, windstorm or other natural hazards, the rental described herein shall abate. Said abatement, if same is justified, shall remain in effect for a period of not to exceed one (1) year from the date of the said damage or destruction. Said abatement will, however, in any event, cease to be applicable upon Lessee's commencement of the reconstruction and restoration of the facility or commencement of restoration of the Premises and termination of the Lease pursuant to the provisions of Section 2.10.

Section 4.8 - Nothing herein contained shall operate to make or be construed to constitute Lessor and Lessee partners.

Section 4.9 - Lessor and Lessee each agree to act promptly and in a reasonable manner in respect to any and all matters arising under this Lease.

Section 4.10 - With respect to any pledge, mortgage, deed of trust, or other security interest on Lessee's leasehold interest and/or property, that may hereafter be granted or established by Lessee with the prior approval of the Lessor (which approval shall not be unreasonably withheld), the Lessor agrees for the benefit of any mortgagee or holder of such mortgage, pledge, deed of trust, or other security interest to give written notice to such holder by U.S. certified mail of any alleged default under this Lease, provided that holder has theretofore registered its name and address with the Lessor simultaneously with the giving of notice to Lessee, of any alleged default under this Lease.

Section 4.11 - Any notice required under the terms of this lease shall be deemed to

have been given when sent by registered or certified mail or overnight courier, postage prepaid, to Lessee at 4303 Kennedy Avenue, East Chicago, Indiana, 46312, and to Lessor at 2801 Rock Road, Granite City, Illinois, 62040, or at such other place as Lessee or Lessor may from time to time designate in writing. Such notice shall be considered to have been delivered three (3) business days after the date of depositing same, if service is undertaken by depositing of said notice or notices in the United States Mail, which date shall be evidenced by the records of the Post Office Department. A copy of said Notice will also be sent to Sheldon Fink, Sonnenschein Nath & Rosenthal, 8000 Sears Tower, Chicago, Illinois, 60606, but said action shall not be deemed to be required to accomplish effective notice to the Lessee hereunder.

Section 4.12 - This Lease is contingent upon the unconditional approval by the Corps of Engineers of (a) this Lease and (b) the construction of the improvements contemplated in this Lease including, but not limited to, the roadway, railway and utility improvements to be constructed upon the easement described in Sections 1.1 and 3.7(b) hereof. In the event such approval is not received from the Corps of Engineers on or before September 3, 1998 (the "Condition Date"), this Lease shall automatically terminate and neither of the parties hereto shall have any further obligation or liability hereunder. The Termination Date may be extended from time to time by written agreement of the Lessee and Lessor.

WITNESS the hands and corporate seals of the parties hereto on the date first hereinabove stated.

TRI-CITY REGIONAL PORT DISTRICT, a municipal corporation

By: _____
Chairman

ATTEST:

_____
SECRETARY

NATIONAL ROBINSON, L.L.C., a Delaware limited liability company

By: _____
Its: MANAGER

STATE OF ILLINOIS :
: SS
COUNTY OF MADISON :

I, Velda M. Taylor, in and for said County, in the State aforesaid, do hereby certify that Michael Thornton, personally known to me to be the Chairman of the Tri-City Regional Port District Board, and Charles E. Ring Jr., personally known to me to be the Secretary of said Tri-City Regional Port District Board, and personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman and Secretary, they signed and delivered the said instrument as Chairman and Secretary of said Board, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Commissioners as their free and voluntary act, and as the free and voluntary act and deed of said Board, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of August, 1998.

"OFFICIAL SEAL"
VELDA M. TAYLOR
Notary Public, State of Illinois
My Commission Expires 08/29/99

Velda M. Taylor
Notary Public

STATE OF ILLINOIS :
: SS
COUNTY OF COOK :

I, _____, in and for said County, in the State aforesaid, do hereby certify that Paul Labriola, personally known to me to be the Manager of National Robinson, L.L.C., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument as Manager of said limited liability company and pursuant to authority, given by the limited liability company as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of July, 1998.

"OFFICIAL SEAL"
GAIL L. SAXTON
Notary Public, State of Illinois
My Commission Expires 8/3/2000

Gail L. Saxton
Notary Public

Exhibit 10.12

THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This **THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT** (this "Amendment"), dated as of July 6, 2022, is by and among **FRIEDMAN INDUSTRIES, INCORPORATED**, a Texas corporation (the "Borrower"), **JPMORGAN CHASE BANK, N.A.**, a national banking association, as a Lender, Issuing Bank and Swingline Lender (as each is defined in the below-referenced Credit Agreement) and as Administrative Agent (the "Administrative Agent") and the other lenders party to the Credit Agreement (defined below)(the "Lenders"). Capitalized terms used in this Amendment, to the extent not otherwise defined herein, shall have the same meaning as in the Credit Agreement, as amended hereby.

RECITALS:

WHEREAS, the Borrower, the other Loan Parties, the Lenders and the Administrative Agent are parties to that certain Amended and Restated Credit Agreement, dated as of May 19, 2021 (as the same has been amended as of the date hereof and as may be further amended or modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower and the other Loan Parties have requested that the Lenders and Administrative Agent amend certain provisions of the Credit Agreement in the manner and on the terms and conditions provided for herein; and

NOW, THEREFORE, in consideration of the foregoing and the agreements, promises and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1: Amendments to Credit Agreement. Effective as of the Effective Date, the Credit Agreement is hereby amended as follows:

(a) Amendment to Section 2.04(a) of the Credit Agreement. Section 2.04(a) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

> SECTION 2.04. Protective Advances. (a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) if an Event of Default under clauses (a), (b), (h) or (i) of the definition thereof or resulting from a breach of Section 6.12 has occurred and is continuing, to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement that have not been paid by Borrowers on or before the date required, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, the Aggregate Revolving Exposure after giving effect to the Protective Advances being made shall not exceed the Aggregate Revolving Commitment and no Protective Advance shall cause an Overadvance in excess of the amount permitted under Section 2.05(b). Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be CBFR Borrowings. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by 100% of the Lenders (other than any Defaulting Lender). Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(b) Amendment to Section 2.05(b) of the Credit Agreement. Section 2.05(b) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(b) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation), on behalf of the Revolving Lenders, (x) make Revolving Loans (including Protective Advances) to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (y) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that, no Overadvance shall result in a Default due to Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute CBFR Borrowings. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited as follows: (i) the aggregate amount of Overadvances shall not to exceed an amount equal to ten percent (10%) of Availability at any time, (ii) no Overadvance may remain outstanding for more than thirty days, (iii) no Overadvance may be made prior to the 30th day following the most recently occurring Overadvance (disregarding for purposes of this clause (iii) involuntary Overadvances described below) and (iv) no Overadvance shall cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Revolving Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. For purposes of this paragraph, the discretion granted to Administrative Agent hereunder shall not preclude involuntary Overadvances that may result from time to time due to the fact that the Borrowing Base was unintentionally exceeded for any reason, including, but not limited to Collateral previously deemed to be "Eligible Accounts", "Eligible Inventory" or "Eligible Equipment", as applicable, becomes ineligible or collections of Accounts applied to reduce outstanding Revolving Borrowings are thereafter returned for insufficient funds.

(c) Amendment to Section 5.13 of the Credit Agreement. Section 5.13 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

SECTION 5.13. Depository Banks. Each Borrower and each Subsidiary will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity and other deposit accounts for the conduct of its business.

(d) Amendment to Commitment Schedule. The Commitment Schedule to the Credit Agreement is hereby deleted and replaced with the Commitment Schedule attached hereto as Annex I.

SECTION 2: No Waiver. Nothing contained in this Amendment shall be construed as a waiver by the Administrative Agent of any covenant or provision of the Credit Agreement, the other Loan Documents, this Amendment, or of any other contract or instrument between any Loan Party and the Administrative Agent, and the failure of the Administrative Agent at any time or times hereafter to require strict performance by any Loan Party of any provision thereof shall not waive, affect or diminish any rights of the Administrative Agent to thereafter demand strict compliance therewith. The Administrative Agent hereby reserves all rights granted under the Credit Agreement, the other Loan Documents, this Amendment and any other contract or instrument between any Loan Party and the Administrative Agent.

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

(a) No Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing as of the date hereof;

(b) Representations and Warranties. As of the Effective Date and, after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects on and as of the date hereof to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date; and

(c) Authority. (i) The execution, delivery and performance by each Loan Party of this Amendment are within its respective organizational powers and have been duly authorized by all necessary corporate or limited liability company action on the part of such Person, (ii) this Amendment is the legal, valid and binding obligation of each Loan Party enforceable against such Person in accordance with its terms and (iii) neither the execution, delivery or performance by each Loan Party of this Amendment (1) violates any law or regulation, or any order or decree of any governmental authority, (2) conflicts with or results in the breach or termination of, constitutes a default under or accelerates any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Person is a party or by which such Person or any of its property is bound, (3) results in the creation or imposition of any Lien upon any of the Collateral (other than any Lien in favor of the Administrative Agent or a Lender), (4) violates or conflicts with the organizational or governing documentation of such Person, or (5) requires the consent, approval or authorization of, or declaration or filing with, any other Person, except for those already duly obtained.

(d) Organizational Documents. No amendment, restatement, supplement or other modification has been made to the certificate or articles of incorporation or organization of the Borrower or to the by-laws or operating, management or partnership agreement, or any other organizational or governing documents of the Borrower since May 19, 2021.

SECTION 4: Conditions Precedent. This Amendment shall become effective only upon the satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions have been satisfied being herein called the ("Effective Date")):

(a) Documentation. The Administrative Agent shall have received each of the following, each in form and substance satisfactory to the Administrative Agent, in its sole discretion, and, where applicable, each duly executed by each party thereto, other than the Administrative Agent (each of which shall be deemed to constitute a "Loan Document" pursuant to the Credit Agreement):

(i) this Amendment or counterparts hereof;

(ii) such other documents, instruments, and agreements as the Administrative Agent may reasonably request in connection with the transactions contemplated by this Amendment and the other Loan Documents, each in form and substance reasonably satisfactory to the Administrative Agent.

(b) Payment of Fees. Borrower shall have paid to Administrative Agent and Lenders, as applicable:

(i) the Arrangement Fee due and payable on the Effective Date pursuant to the Second Amendment Fee Letter, as set forth in Paragraph 1 thereof;

(ii) the New Lender Fee due and payable on the Effective Date pursuant to the Second Amendment Fee Letter, as set forth in Paragraph 2 thereof;

(iii) costs and expenses incurred by BMO Harris, N.A. in connection with the assignment and acceptance of Commitments under the Credit Agreement and payable pursuant to the Assignment and Assumption dated as of the date hereof; and

(iv) any fees and expenses owing to the Administrative Agent pursuant to Section 9.03(a) of the Credit Agreement.

SECTION 5: Ratification; Reference to and Effect on Loan Documents.

(a) Ratification. Except as specifically amended above, the Credit Agreement and the other Loan Documents shall remain in full force and effect. Notwithstanding anything contained herein, the terms of this Amendment are not intended to and do not effect a novation of the Credit Agreement or any other Loan Document. Each of the Loan Parties hereby ratifies and reaffirms each of the terms and conditions of the Loan Documents to which it is a party and all of its obligations thereunder. Each of the Loan Parties hereby agrees that all liens and security interests securing payment of the Obligations under the Credit Agreement and each of the other Loan Documents are hereby collectively renewed, ratified and brought forward as security for the payment and performance of the Obligations.

(b) References. Upon the effectiveness of this Amendment, each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

SECTION 6: Miscellaneous.

(a) Successors and Assigns. This Amendment shall be binding on and shall inure to the benefit of the Loan Parties, the Administrative Agent and their respective successors and assigns.

(b) Entire Agreement. This Amendment constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all other understandings, oral or written, with respect to the subject matter hereof.

(c) Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) Severability. Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

(e) Counterparts. This Amendment may be executed in any number of separate original counterparts (or telecopied counterparts with original execution copy to follow) and by the different parties on separate counterparts, each of which shall be deemed to be an original, but all of such counterparts shall together constitute one agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopy shall be effective as delivery of a manually executed counterpart of this Amendment.

(f) Incorporation of Credit Agreement Provisions. The provisions contained in Section 9.09 (Governing Law; Jurisdiction; Consent to Service of Process) and Section 9.10 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(g) RELEASE. FOR AND IN CONSIDERATION OF LENDERS' AGREEMENTS CONTAINED HEREIN, BORROWER, TOGETHER WITH ITS PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND ITS CURRENT AND FORMER OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND ITS PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, "**RELEASORS**") HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER WAIVES AND DISCHARGES LENDERS AND EACH OF THEIR PARENTS, DIVISIONS, SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, PARTICIPANTS, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS CURRENT AND FORMER DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, AND EACH OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, HEIRS AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, THE "**RELEASED PARTIES**") FROM ALL POSSIBLE CLAIMS, COUNTERCLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AMENDMENT IS EXECUTED THAT ANY OF THE RELEASORS MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION ARISING DIRECTLY OR INDIRECTLY FROM ANY LAWSUIT, ANY PRIOR OR EXISTING LOANS BETWEEN RELEASORS AND RELEASED PARTIES, ANY OF THE LOAN DOCUMENTS, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER ANY OF THE LOAN DOCUMENTS AND/OR NEGOTIATION FOR AND EXECUTION OF THIS AMENDMENT, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. EACH OF THE RELEASORS WAIVES THE BENEFITS OF ANY LAW, WHICH MAY PROVIDE IN SUBSTANCE: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MUST HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE DEBTOR." EACH OF THE RELEASORS UNDERSTANDS THE FACTS IT BELIEVES TO BE TRUE AT THE TIME OF MAKING THE RELEASE PROVIDED FOR HEREIN MAY LATER TURN OUT TO BE DIFFERENT THAN IT NOW BELIEVES, AND INFORMATION NOT NOW KNOWN OR SUSPECTED MAY LATER BE DISCOVERED. EACH OF THE RELEASORS ACCEPTS THIS POSSIBILITY, AND EACH OF THEM ASSUMES THE RISK OF THE FACTS TURNING OUT TO BE DIFFERENT AND NEW INFORMATION BEING DISCOVERED AND EACH OF THEM FURTHER AGREES THE RELEASE PROVIDED FOR HEREIN SHALL IN ALL RESPECTS CONTINUE TO BE EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BECAUSE OF ANY DIFFERENCE IN SUCH FACTS OR ANY NEW INFORMATION.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Amendment has been executed on the date first written above, to be effective upon satisfaction of the conditions set forth herein.

BORROWER:

FRIEDMAN INDUSTRIES, INCORPORATED

By: /s/ Alex LaRue
Name: Alex LaRue
Title: Chief Financial Officer

LENDERS:

JPMORGAN CHASE BANK, N.A.,
individually and as Administrative Agent, Issuing Bank and Swingline Lender

By: /s/ John Watkins
Name: John Watkins
Title: Authorized Officer

BMO HARRIS BANK N.A.

By: /s/ Quinn Heiden
Name: Quinn Heiden
Title: Managing Director

Annex I

COMMITMENT SCHEDULE

Lenders	Revolving Commitment
JPMorgan Chase Bank, N.A.	$100,000,000
BMO Harris Bank N.A.	$50,000,000
Total	**$150,000,000**

EXHIBIT 13.1

THE COMPANY'S ANNUAL
REPORT TO SHAREHOLDERS FOR
THE FISCAL YEAR ENDED MARCH 31, 2022



2022
ANNUAL REPORT

FINANCIAL HIGHLIGHTS

	2022	2021
Net sales	$ **285,234,752**	$ 126,102,533
Net earnings	$ **14,066,322**	$ 11,424,475
Net earnings per share (Basic)	$ **2.04**	$ 1.63
Cash dividends per share	$ **0.08**	$ 0.08
Stockholders' equity	$ **79,686,648**	$ 65,339,976
Working capital	$ **64,551,208**	$ 48,462,364

TO OUR SHAREHOLDERS:

Fiscal year 2022 was another uniquely challenging year for Friedman Industries, Incorporated (the "Company") with historic volatility in the price of hot-rolled coil ("HRC"). We started the year with the HRC price at approximately $1,300 per ton and ended the year with the price at approximately $1,380 per ton but the twelve months between were a roller coaster. From April 2021 through September 2021, HRC price increased approximately 50% going from approximately $1,300 per ton to approximately $1,950 per ton. This was the continuation of a historic upward price cycle that started in fiscal 2021 associated primarily with supply chain related disruptions stemming from the impact of the COVID-19 pandemic. From October 2021 through February 2022, HRC price declined approximately 52% going from $1,950 per ton to $940 per ton. In March 2022, HRC price started increasing in response to the Russian invasion of Ukraine and increased approximately 47% during the month from approximately $940 per ton to approximately $1,380 per ton. Fiscal 2022 and fiscal 2021 were two of the most challenging years in Company history and we delivered historic year-end results back-to-back with net earnings of $14.0 million and $11.4 million, respectively.

Fiscal 2022 was the most challenging supply market to purchase HRC in my 40 years in the steel business. We actually grew our sales volume because of our intense focus on supplier diversification. During fiscal 2022, we purchased inventory from 16 different suppliers and grew our sales volume in the most challenging sourcing year by 15%. The sourcing of steel is the most important factor for the Company's success and we will continue to ensure that supplier optionality and detailed analysis of industry and economic conditions allow us to prosper.

During fiscal 2022, we announced the construction of a new location in Sinton, Texas which would be located on the campus of Steel Dynamics, Inc.'s new flat rolled steel mill. We were excited by the potential of this investment at the time of announcement and are more excited now as we near completion of the new location. The land improvements and building are substantially complete and the steel processing equipment is being installed. We expect equipment installation and commissioning during August 2022 and September 2022 with operating levels starting to expand during October 2022.

On April 30, 2022, we completed a major acquisition of two facilities from Plateplus, Inc. ("Plateplus"). The facilities are located in East Chicago, Indiana and Granite City, Illinois and allow the Company to expand its competitive reach into the midwestern United States. Additionally, the Company purchased all of the steel inventory from two other Plateplus locations in Loudon, Tennessee and Houston, Texas. Plateplus has provided us toll processing services of this inventory as we work to transition customer business that was typically handled in Loudon and Houston to our Decatur, Alabama and Sinton, Texas locations. As part of the transaction, we welcomed 76 new employees to the Friedman team that were previously Plateplus employees. We expect to hire approximately 25 additional Plateplus employees as transition services and toll processing activities conclude. We believe this transaction will be transformative for the future of Friedman.

I am very proud of what our team has accomplished in the short time I have been CEO of the Company. I believe the strategic initiatives we have implemented will provide long-term value for the Company and its shareholders.

You are invited to attend the Annual Meeting of Shareholders scheduled to start at 10:00 a.m. (Central Time) on Tuesday, September 13, 2022, in the offices of Norton Rose Fulbright US LLP, 1301 McKinney, 51st Floor, Houston, Texas 77010.

Sincerely,



Michael J. Taylor
President and Chief Executive Officer
Chairman of the Board of Directors

OFFICERS

Michael J. Taylor
President and Chief Executive Officer

Howard Henderson
Vice President of Operations — Texas Tubular Division

Jonathan Holcomb
Vice President of Sales — Coil Divisions and Vice President of Purchasing

Alex LaRue
Chief Financial Officer — Secretary and Treasurer

Steve Teeter
Vice President of Operations — Coil Divisions

Michael Thompson
Vice President of Sales — Tubular Division

COMPANY OFFICES AND WEBSITES

CORPORATE OFFICE & COIL PRODUCTS SALES OFFICE
1121 Judson Road, Suite 124
Longview, Texas 75601
903-758-3431

TUBULAR PRODUCTS SALES OFFICE
3681 FM 250
Lone Star, Texas 75668
903-639-2511

WEBSITES*
www.friedmanindustries.com
www.texastubular.com

COUNSEL
Norton Rose Fulbright US LLP
1301 McKinney, Suite 5100
Houston, Texas 77010

AUDITORS
Moss Adams LLP
500 Dallas Street, Suite 2500
Houston, TX 77002

TRANSFER AGENT AND REGISTRAR
American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

* Information on our websites is expressly not incorporated by reference into this document.

DIRECTORS

Durga D. Agrawal
President, Piping Technology & Products, Inc. (pipe fabrication)
Houston, Texas

Max Reichenthal
President, Texas Iron and Metal (steel product sales)
Houston, Texas

Sandy Scott*
Retired, formerly, Chief Executive Officer of Sprint Industrial Holdings (rental equipment and transporation company), currently serving on the boards of directors of Terra Nova Solutions, Rowland Inc., CEDA International, DWD International, LLC and Goodwill of Houston
Houston, Texas

Joel Spira
Private investor; formerly, Partner, Weinstein Spira & Company (accounting firm)
Houston, Texas

Tim Stevenson
Chief Executive Officer and Founder, Metal Edge Partners (metals price risk management and strategic advisory services)
Plymouth, Minnesota

Michael J. Taylor, *Chairman of the Board*
President and Chief Executive Officer of the Company
Houston, Texas

Sharon Taylor*
Vice President and Chief Financial Officer, Martin Midstream Partners L.P. and Martin Resource Management Corporation (terminalling, processing, transportation, storage and packaging services for petroleum products and by-products)
Kilgore, Texas

Joe L. Williams
Partner, Pozmantier, Williams and Stone Insurance Consultants, LLC (insurance and risk management consultants)
Houston, Texas

** Sandy Scott and Sharon Taylor were appointed to the Board of Directors subsequent to fiscal year-end.*

ANNUAL REPORT ON FORM 10-K

Shareholders may obtain without charge a copy of the Company's Annual Report on Form 10-K for the year ended March 31, 2022, as filed with the U.S. Securities and Exchange Commission. Written requests should be addressed to: Alex LaRue, Chief Financial Officer — Secretary and Treasurer, Friedman Industries, Incorporated, P.O. Box 2192, Longview, Texas 75606.

DESCRIPTION OF BUSINESS

Friedman Industries, Incorporated (the “Company”) is a manufacturer and processor of steel products and operates in two product segments: coil products and tubular products.

Coil Products

The coil product segment consists of the operation of two hot-rolled coil processing facilities; one in Hickman, Arkansas (“Hickman”) and the other in Decatur, Alabama (“Decatur”). The Hickman facility operates a temper mill and a cut-to-length line and the Decatur facility operates a stretcher leveler cut-to-length line. The equipment at both facilities improves the flatness and surface qualities of the coils and cuts the coils into sheet and plate of prescribed lengths. The Hickman facility is capable of cutting sheet and plate with thicknesses ranging from 14 gauge to ½” thick in widths ranging from 36” wide to 72” wide. The Decatur facility is capable of cutting sheet and plate with thicknesses ranging from 14 gauge to ½” thick in widths ranging from 36" wide to 96" wide. The coil product segment sells its prime grade inventory under the Friedman Industries name but also maintains an inventory of non-standard coil products, consisting primarily of mill secondary and excess prime coils, which are sold through the Company’s XSCP division. The coil product segment also processes customer-owned coils on a fee basis.

The Hickman and Decatur facilities are substantially similar with respect to products produced. The Company makes shipments of coil products based on which facility offers the desired product or, if the product is available at both facilities, based on other factors, such as customer location, freight conditions and the ability of the facility to fulfill the order on a timely basis. Coil products are sold on a wholesale, rapid-delivery basis in competition with other processors of hot-rolled steel coils. Shipments are made via unaffiliated truckers or by rail.

On May 25, 2021, the Company announced plans for a new facility in Sinton, Texas that will be part of the coil product segment. The new facility is on the campus of Steel Dynamics, Inc.'s ("SDI") new flat roll steel mill in Sinton, Texas. The Company's new location consists of an approximately 70,000 square foot building located on approximately 26.5 acres leased from SDI under a 99-year agreement. The Company contracted with Red Bud Industries to build one of the world’s largest stretcher leveler cut-to-length lines, capable of handling material up to 1” thick, widths up to 96” and yields exceeding 100,000 psi. The Company expects the equipment commissioning to occur during August 2022 and September 2022 and then expects expanded production levels beginning in October 2022. The total cost of the project is estimated to be $21 million.

The coil segment purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company’s business.

The Company sells coil products and processing services to approximately 230 customers located primarily in the midwestern, southwestern and southeastern regions of the United States. The Company’s principal customers for these products and services are steel distributors and customers manufacturing steel products such as steel buildings, railroad cars, barges, tanks and containers, trailers, component parts and other fabricated steel products.

Tubular Products

The tubular product segment consists of the Company’s Texas Tubular Products division (“TTP”) located in Lone Star, Texas. TTP operates two electric resistance welded pipe mills with a combined outside diameter (“OD”) size range of 2 3/8” OD to 8 5/8” OD. Both pipe mills are American Petroleum Institute (“API”) licensed to manufacture line pipe and oil country pipe and also manufacture pipe for structural purposes that meets other recognized industry standards. TTP has a pipe finishing facility capable of applying threads and couplings to oil country tubular goods and performing other services that are customary in the pipe finishing process. The pipe finishing facility is currently idled. TTP’s inventory consists of raw materials and finished goods. Raw material inventory consists of hot-rolled steel coils that TTP will manufacture into pipe. Finished goods inventory consists of pipe TTP has manufactured and mill reject pipe that TTP purchased from U.S. Steel Tubular Products, Inc.

The Company sells its tubular products nationally to approximately 110 customers. The Company’s principal customers for these products are steel and pipe distributors.

TTP purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company’s business.

Significant financial information relating to the Company’s two product groups, coil and tubular products, is contained in Note 13 of the Notes to the Company’s Consolidated Financial Statements appearing herein.

RANGE OF HIGH AND LOW SALES PRICES OF COMMON STOCK

	Fiscal 2022		Fiscal 2021	
	High	Low	High	Low
First Quarter	$ 15.63	$ 7.92	$ 5.44	$ 4.14
Second Quarter	14.36	11.11	6.50	4.95
Third Quarter	14.83	8.59	7.30	5.55
Fourth Quarter	12.00	7.37	9.90	6.70

CASH DIVIDENDS DECLARED PER SHARE OF COMMON STOCK

	Fiscal 2022	Fiscal 2021
First Quarter	$ 0.02	$ 0.02
Second Quarter	0.02	0.02
Third Quarter	0.02	0.02
Fourth Quarter	0.02	0.02

The Company's Common Stock is traded principally on the NYSE American (trading symbol FRD).

The approximate number of shareholders of record of Common Stock of the Company as of April 29, 2022 was 175. Because many of the Company's common shares are held by brokers and other institutions on behalf of shareholders, the Company is unable to estimate the total number of individual shareholders represented by these record holders.

CONSOLIDATED BALANCE SHEETS

ASSETS

	March 31,	
	2022	2021
CURRENT ASSETS:		
Cash	$ **2,598,102**	$ 8,191,001
Accounts receivable, net of allowances for bad debts and cash discounts of $99,819 and $32,834 at March 31, 2022 and 2021, respectively	**35,670,657**	20,377,967
Inventories	**67,946,122**	36,016,093
Current portion of derivative assets	**4,240,740**	622,400
Other current assets	**14,906,194**	12,327,174
TOTAL CURRENT ASSETS	**125,361,815**	77,534,635
PROPERTY, PLANT AND EQUIPMENT:		
Land	**1,179,831**	1,179,831
Buildings and yard improvements	**8,581,676**	9,199,704
Machinery and equipment	**30,422,066**	35,253,000
Construction in process	**15,925,306**	9,614
Less accumulated depreciation	**(26,002,820)**	(30,180,893)
	30,106,059	15,461,256
OTHER ASSETS:		
Cash value of officers' life insurance and other assets	**270,416**	148,494
Deferred income tax asset	**2,133,295**	1,864,424
Income taxes recoverable	**1,403,485**	—
TOTAL ASSETS	$ **159,275,070**	$ 95,008,809

LIABILITIES AND STOCKHOLDERS' EQUITY

	March 31,	
	2022	2021
CURRENT LIABILITIES:		
Accounts payable and accrued expenses	$ **44,803,602**	$ 15,185,038
Income taxes payable	**—**	1,455,099
Dividends payable	**137,120**	138,117
Contribution to retirement plan	**250,000**	50,000
Employee compensation and related expenses	**1,085,676**	2,643,538
Current portion of financing lease	**104,689**	102,689
Current portion of derivative liability	**14,429,520**	7,979,380
Current portion of Paycheck Protection Program loan	**—**	1,518,410
TOTAL CURRENT LIABILITIES	**60,810,607**	29,072,271
POSTRETIREMENT BENEFITS OTHER THAN PENSIONS	**119,591**	108,609
OTHER NON-CURRENT LIABILITIES	**221,767**	315,978
ASSET BASED LENDING FACILITY	**18,436,457**	—
LONG TERM PORTION OF PAYCHECK PROTECTION PROGRAM LOAN	**—**	171,975
TOTAL LIABILITIES	**79,588,422**	29,668,833
COMMITMENTS AND CONTINGENCIES (SEE NOTE 5 AND NOTE 11)		
STOCKHOLDERS' EQUITY:		
Common stock, par value $1:		
Authorized shares — 10,000,000		
Issued shares — 8,344,975 shares and 8,334,785 shares at March 31, 2022 and 2021, respectively	**8,344,975**	8,334,785
Additional paid-in capital	**30,442,361**	30,003,462
Accumulated other comprehensive loss	**(10,268,509)**	(11,187,841)
Treasury stock at cost (1,488,966 shares and 1,435,248 shares at March 31, 2022 and 2021, respectively)	**(7,741,197)**	(7,203,342)
Retained earnings	**58,909,018**	45,392,912
TOTAL STOCKHOLDERS' EQUITY	**79,686,648**	65,339,976
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ **159,275,070**	$ 95,008,809

See accompanying notes.

CONSOLIDATED STATEMENTS OF OPERATIONS

	Year Ended March 31,	
	2022	2021
Net sales	$ **285,234,752**	$ 126,102,533
Costs and expenses:		
Cost of products sold	**244,247,474**	102,517,335
Selling, general and administrative	**12,467,366**	7,835,184
Interest expense	**255,320**	24,619
	256,970,160	110,377,138
EARNINGS FROM OPERATIONS	**28,264,592**	15,725,395
Other income (loss), net	**(9,934,034)**	(503,422)
EARNINGS BEFORE INCOME TAXES	**18,330,558**	15,221,973
Provision for (benefit from) income taxes:		
Current	**4,825,975**	2,459,009
Deferred	**(561,739)**	1,338,489
	4,264,236	3,797,498
NET EARNINGS	$ **14,066,322**	$ 11,424,475
Weighted average number of common shares outstanding:		
Basic	**6,623,769**	6,703,654
Diluted	**6,623,769**	6,703,654
Net earnings per share:		
Basic	$ **2.04**	$ 1.63
Diluted	$ **2.04**	$ 1.63

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

	Year Ended March 31,	
	2022	2021
Net earnings	$ **14,066,322**	$ 11,424,475
Other comprehensive income (loss):		
Cash flow hedges, net of tax	**919,332**	(11,187,841)
	919,332	(11,187,841)
Comprehensive income	$ **14,985,654**	$ 236,634

See accompanying notes.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Common Stock	Accumulated Other Comprehensive Income (Loss)	Additional Paid-In Capital	Treasury Stock	Retained Earnings	Total
BALANCE AT MARCH 31, 2020	$ 8,295,160	$ —	$ 29,565,416	$ (5,525,964)	$ 34,530,755	$ 66,865,367
Net earnings	—	—	—	—	11,424,475	11,424,475
Other comprehensive income (loss)	—	(11,187,841)	—	—	—	(11,187,841)
Grants of restricted stock	39,625	—	(89,625)	50,000	—	—
Paid in capital – restricted stock units	—	—	527,671	—	—	527,671
Repurchase of shares	—	—	—	(1,727,378)	—	(1,727,378)
Cash dividends ($0.08 per share)	—	—	—	—	(562,318)	(562,318)
BALANCE AT MARCH 31, 2021	$ 8,334,785	$ (11,187,841)	$ 30,003,462	$ (7,203,342)	$ 45,392,912	$ 65,339,976
Net earnings	—	—	—	—	14,066,322	14,066,322
Other comprehensive income	—	919,332	—	—	—	919,332
Grants of restricted stock	10,190	—	(10,190)	—	—	—
Paid in capital – restricted stock units	—	—	449,089	—	—	449,089
Repurchase of shares	—	—	—	(537,855)	—	(537,855)
Cash dividends ($0.08 per share)	—	—	—	—	(550,216)	(550,216)
BALANCE AT MARCH 31, 2022	**$ 8,344,975**	**$ (10,268,509)**	**$ 30,442,361**	**$ (7,741,197)**	**$ 58,909,018**	**$ 79,686,648**

See accompanying notes.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended March 31,	
	2022	2021
OPERATING ACTIVITIES		
Net earnings	$ **14,066,322**	$ 11,424,475
Adjustments to reconcile net earnings to net cash provided by (used in) operating activities:		
Depreciation	**1,320,434**	1,012,917
Deferred taxes	**(561,739)**	1,338,489
Compensation expense for restricted stock	**449,089**	527,671
Change in post-retirement benefits other than pensions	**10,982**	8,745
Lower of cost or net realizable value inventory adjustment	**—**	274,093
Loss recognized on open derivatives not designated for hedge accounting	**1,216,500**	—
Deferred realized gain (loss) on derivatives designated for hedge accounting	**1,342,520**	(6,843,140)
Forgiveness of Paycheck Protection Program Loan	**(1,706,614)**	—
Changes in operating assets and liabilities:		
Accounts receivable	**(15,292,690)**	(8,672,623)
Inventories	**(31,930,029)**	(621,943)
Federal income taxes recoverable	**(1,403,485)**	448,665
Other current assets	**(123,890)**	454,489
Accounts payable and accrued expenses	**22,027,802**	5,386,439
Income taxes payable	**(1,455,099)**	1,455,099
Employee compensation and related expenses	**(1,557,862)**	2,233,760
Contribution to retirement plan	**200,000**	(250)
Net cash provided by (used in) operating activities	**(13,397,759)**	8,426,886
INVESTING ACTIVITIES		
Purchase of property, plant and equipment	**(8,064,599)**	(4,609,617)
Proceeds from sale of assets	**160,542**	30,957
Increase in cash value of officers' life insurance	**(13,853)**	(11,580)
Net cash used in investing activities	**(7,917,910)**	(4,590,240)
FINANCING ACTIVITIES		
Paycheck Protection Program loan proceeds	**—**	1,690,385
Cash dividends paid	**(551,212)**	(564,190)
Cash paid for principal portion of finance lease	**(102,689)**	(100,728)
Cash paid for share repurchases	**(537,855)**	(1,727,378)
Asset based lending facility proceeds	**18,436,457**	—
Net cash provided by (used in) financing activities	**17,244,701**	(701,911)
Increase (decrease) in cash and restricted cash	**(4,070,968)**	3,134,735
Cash and restricted cash at beginning of year	**20,192,486**	17,057,751
Cash and restricted cash at end of year	$ **16,121,518**	$ 20,192,486

Cash and restricted cash at March 31, 2022 and March 30, 2021 included $13,523,416 and $12,001,485, respectively, of cash required to collateralize open derivative positions. These amounts are reported in "Other current assets" on the Company's consolidated balance sheets at March 31, 2022 and March 31, 2021.

See accompanying notes.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF CONSOLIDATION: The consolidated financial statements include the accounts of Friedman Industries, Incorporated and its subsidiary (collectively, the "Company"). All material intercompany amounts and transactions have been eliminated.

REVENUE RECOGNITION: Revenue is generated primarily from contracts to manufacture or process steel products and is recognized when performance obligations are complete. Generally, the Company's performance obligations are satisfied, control of our products is transferred, and revenue is recognized at a single point in time, when title transfers to our customer for product shipped or when services are provided. Revenue is recorded in an amount that reflects the consideration expected to be received in exchange for those goods or services. SeeNote 14 for further information.

TRADE RECEIVABLES: The Company's receivables are recorded when billed, advanced or accrued and represent claims against third parties that will be settled in cash. The carrying value of the Company's receivables, net of the allowance for doubtful accounts and cash discounts allowed, represents their estimated net realizable value. The Company estimates its allowance for doubtful accounts based on historical collection trends, the age of outstanding receivables and existing economic conditions. Trade receivables are generally considered past due after 30 days from invoice date. Past-due receivable balances are written-off when the Company's internal collection efforts have been unsuccessful in collecting the amount due. The balance of the Company's allowance for doubtful accounts was $84,819 and $17,834 at March 31, 2022 and March 31, 2021, respectively.

INVENTORIES: Inventories consist of prime coil, non-standard coil and tubular materials. Prime coil inventory consists primarily of raw materials, non-standard coil inventory consists primarily of raw materials and tubular inventory consists of both raw materials and finished goods. Cost for prime coil inventory is determined using the average cost method. Cost for non-standard coil inventory is determined using the specific identification method. Cost for tubular inventory is determined using the average cost method. All inventories are valued at the lower of cost or net realizable value. The Company did not have any lower of cost or net realizable value adjustments during fiscal 2022. During the first quarter of fiscal 2021, tubular finished goods inventory was written down $274,093 to lower the carrying value to net realizable value. Obsolete or slow-moving inventories are not significant based on the Company's review of inventories. Accordingly, no allowance has been provided for such items.

The following is a summary of inventory by product group:

	March 31,	
	2022	2021
Prime coil inventory	$ **50,482,022**	$ 23,079,012
Non-standard coil inventory	**1,063,374**	1,419,055
Tubular raw material	**9,049,598**	2,607,197
Tubular finished goods	**7,351,128**	8,910,829
	$ **67,946,122**	$ 36,016,093

Tubular raw material inventory consists of hot-rolled steel coils that the Company will manufacture into pipe. Tubular finished goods inventory consists of pipe the Company has manufactured and mill reject pipe that the Company purchased from U.S. Steel Tubular Products, Inc.

DERIVATIVE INSTRUMENTS: From time to time, the Company may use futures contracts to partially manage exposure to price risk. The Company elects hedge accounting for some of its derivatives. For derivatives designated for hedge accounting and classified as cash flow hedges, changes in fair value are recognized as a component of other comprehensive income and reclassified into earnings during the period in which the hedged transaction affects earnings. For derivatives designated for hedge accounting and classified as fair value hedges, changes in fair value are recognized in the same balance sheet line as the hedged item until the hedged item affects earnings. For derivatives where hedge accounting is not elected, changes in fair value are immediately recognized in earnings. The Company has forward physical purchase supply agreements in place for a portion of its monthly physical steel needs. These supply agreements are not subject to mark-to-market accounting due to the Company electing the normal purchase normal sales exclusion provided in Accounting Standards Codification 815 - Derivatives and Hedging. See Note 6 for further information about the Company's derivative instruments.

PROPERTY, PLANT AND EQUIPMENT: Property, plant and equipment is stated at cost. Depreciation is calculated primarily by the straight-line method over the estimated useful lives of the various classes of assets as follows:

Buildings (in years)	20
Machinery and equipment (in years)	10 to 15
Yard improvements (in years)	5 to 15
Loaders and other rolling stock (in years)	5 to 15

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. The Company assesses recoverability by comparing the carrying amount of the asset or asset group to estimated undiscounted future cash flows expected to be generated by the asset or asset group. If an asset or asset group is considered impaired, the impairment loss to be recognized is measured as the amount by which the asset's or asset group's carrying amount exceeds its estimated fair value. Long-lived assets to be disposed of by sale are reported at the lower of the carrying amount or fair value less cost to sell. The Company did not identify any indicators of impairment during fiscal 2022 or fiscal 2021.

When property, plant and equipment is sold or otherwise disposed of, any gains or losses are reflected in income. If a loss on disposal is expected, such losses are recognized when the assets are reclassified as assets held for sale.

Maintenance and repairs are expensed as incurred.

PAYCHECK PROTECTION PROGRAM LOAN: During fiscal 2021, the Company received a Paycheck Protection Program loan ("PPP Loan") as provided by the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The Company accounted for the PPP Loan in accordance with Accounting Standards Codification 470 - Debt. The principal balance of the loan and accrued interest payable were recorded as liabilities on the Company's Consolidated Balance Sheet at March 31, 2021. During the first quarter of fiscal 2022, the Company was granted full forgiveness of the PPP Loan. The forgiven principal and accrued interest were recognized as a gain on extinguishment of debt and recorded in "Other income (loss), net" on the Company's Statement of Operations for fiscal 2022. See Note 3 for additional information about the PPP Loan.

POSTRETIREMENT BENEFITS OTHER THAN PENSIONS: The Company maintains life insurance policies on each officer. From time to time and in its discretion, the Board of Directors of the Company has approved the transfer of the applicable policy to an officer upon their retirement. The Company's accrued liability for these potential future transfers was $119,591 and $108,609 at March 31, 2022 and March 31, 2021, respectively. The transfer of a life insurance policy to an officer is a noncash transaction.

SHIPPING COSTS: Sales are increased for freight billed to customers and freight costs are charged to cost of products sold.

SUPPLEMENTAL CASH FLOW INFORMATION: The Company paid interest of approximately $213,000 and $8,000 in fiscal 2022 and fiscal 2021, respectively. The Company paid income taxes of approximately $8,347,000, net of a tax refund of approximately $423,000, in fiscal 2022 and paid income taxes of approximately $10,000 in fiscal 2021. At March 31, 2022, the "Construction in process" balance of $15,925,306 consisted of $8,081,524 in accrued capital expenditures related to the Sinton facility for which cash outlay had not occurred.

INCOME TAXES: The Company accounts for income taxes under the liability method, whereby the Company recognizes deferred tax assets and liabilities, which represent differences between the financial and income tax reporting bases of its assets and liabilities. Deferred tax assets and liabilities are determined based on temporary differences between income and expenses reported for financial reporting and tax reporting. The Company has assessed, using all available positive and negative evidences, the likelihood that the deferred tax assets will be recovered from future taxable income.

The Company has also analyzed tax positions taken on tax returns filed and does not believe that any are more likely than not to be overturned by the respective tax jurisdiction. Therefore, no liability for uncertain tax positions has been recognized.

USE OF ESTIMATES: The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. The more significant estimates and judgements include forecasted purchases of hot-rolled coil and forecasted sales of prime coil inventory and manufactured pipe inventory in relation to hedging activities and the fair value of the pipe finishing facility, when impaired. From time to time, the Company hedges forecasted purchases and sales and may designate those transactions for hedge accounting. If the original forecasts are subsequently reduced, it could result in the Company's hedged positions exceeding revised forecasts, thus warranting immediate recognition in earnings of previously deferred hedge income or losses associated with excess hedges. A pattern of missed forecasts could call into question the Company's ability to accurately predict forecasted transactions and the propriety of using hedge accounting in the future for similar forecasted transactions. To mitigate against the negative consequences of missing forecasts we have set an internal policy to designate hedging instruments for accounting purposes only up to 75% of forecasted sales or purchases. Determination of forecasted purchases of hot-rolled coil and forecasted sales of prime coil inventory and manufactured pipe inventory require the Company to make assumptions related to customer demand and the volume and timing of inventory purchases. If impairment indicators are present, the pipe-finishing facility impairment analysis requires assumptions related to future operations of the facility and estimates related to the replacement cost and value in exchange for the assets. Actual results could differ from these estimates.

FINANCIAL INSTRUMENTS: Since the Company's financial instruments are considered short-term in nature, their carrying values approximate fair value.

EARNINGS PER SHARE: The Company uses the two-class method of calculating earnings per share, which determines earnings per share for each class of common stock and participating security as if all earnings of the period had been distributed. As the holders of restricted stock are entitled to receive non-forfeitable dividends during the restriction period, unvested shares of restricted stock qualify as participating securities. Unvested restricted shares participate on an equal basis with common shares; therefore, there is no difference in undistributed earnings allocated to each participating security. Unvested restricted stock is forfeitable until earned and therefore not considered outstanding for basic earnings per share. Net income per basic common share is computed using the weighted average number of common shares outstanding during the period and net income attributable to common stockholders is adjusted to allocate dividends paid to unvested shares as well as undistributed earnings. Net income per diluted common share is computed using the weighted average number of common shares and participating securities outstanding during the period.

ECONOMIC RELATIONSHIP: The Company purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company. In March 2020, U.S. Steel announced the idling of their Lone Star Tubular Operations which was the sole supplier of mill reject pipe to the Company. U.S. Steel's facility was idled as announced and the Company's receipts of mill reject pipe ceased in August 2020. At March 31, 2022, we had approximately 1,200 tons of mill reject inventory with substantially all of this material expected to sell in the following quarter. For the fiscal year ended March 31, 2022, sales of mill reject pipe totaled approximately $10,312,000 and accounted for approximately $3,824,000 of the tubular segment's operating profit for the period with approximately $1,280,000 of allocated operating, administrative and selling expenses included in the calculation of operating profit related to mill reject pipe. For the fiscal year ended March 31, 2021, sales of mill reject pipe totaled approximately $5,284,000 and accounted for approximately $1,313,000 of the tubular segment's operating profit for the period with approximately $802,000 of allocated operating, administrative and selling expenses included in the calculation of operating profit related to mill reject pipe. The Company is expanding its manufactured pipe sales to counteract the impact of mill reject sales ending in the near future.

Coil segment sales to O'Neal Steel accounted for approximately 11% of total Company sales in fiscal 2022. No other customers accounted for 10% or more of total Company sales in fiscal 2022. For fiscal year 2021, no individual customer accounted for 10% or more of total Company sales.

The Company’s sales are concentrated primarily in the midwestern, southwestern, and southeastern regions of the United States and are primarily to customers in the steel distributing and fabricating industries. The Company performs periodic credit evaluations of the financial conditions of its customers and generally does not require collateral. Generally, receivables are due within 30 days.

NEW ACCOUNTING PRONOUNCEMENTS: In December 2019, the FASB issued Accounting Standards Update 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes (“ASU 2019-12”), which simplifies accounting for income taxes by revising or clarifying existing guidance in ASC 740, as well as removing certain exceptions within ASC 740. We adopted this guidance on April 1, 2021. The adoption of this guidance did not have a material impact on the Company's Consolidated Financial Statements.

2. EQUITY COMPENSATION PLANS AND CAPITAL STOCK

The Company maintains the Friedman Industries, Incorporated 2016 Restricted Stock Plan (the "Plan"). The Plan is administered by the Compensation Committee (the "Committee") of the Board of Directors (the "Board") and continues indefinitely until terminated by the Board or until all shares allowed by the Plan have been awarded and earned. The aggregate number of shares of the Company's Common Stock eligible for award under the Plan is 500,000 shares. Subject to the terms and provisions of the Plan, the Committee may, from time to time, select the employees, directors or consultants to whom awards will be granted and shall determine the amount and applicable restrictions of each award. Restricted awards entitle recipients to vote and receive non-forfeitable dividends during the restriction period. Because dividends are non-forfeitable, they are reflected in retained earnings. Forfeitures are accounted for upon their occurrence. Because the Company accounts for forfeitures as they occur, the non-forfeitable dividends are reclassified from retained earnings to additional stock compensation for the actual forfeitures that occurred.

The following table summarizes the activity related to restricted stock units ("RSUs") for the two years ended March 31, 2022:

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Unvested at March 31, 2020	270,000	$ 6.37
Granted	89,625(1)	5.64
Vested	(20,000)	8.23
Unvested at March 31, 2021	339,625	$ 6.07
Granted	10,190	12.56
Vested	(210,292)	6.46
Unvested at March 31, 2022	139,523	$ 5.96

(1) 50,000 shares were issued out of treasury stock

We measure compensation expense for RSUs at the market price of our common stock as of the grant date. Compensation expense is recognized over the requisite service period applicable to each award. The Company recorded compensation expense of $449,089 and $527,671 in fiscal 2022 and fiscal 2021, respectively, relating to the RSUs issued under the Plan.

At March 31, 2022 and 2021 unrecognized compensation expense related to unvested RSUs was approximately $546,000 and $867,000, respectively, which is expected to be recognized over a weighted average period of approximately 2.2 years and 2.7 years, respectively.

As of March 31, 2022, a total of 130,185 shares were still available to be issued under the Plan.

The Company has 1,000,000 authorized shares of Cumulative Preferred Stock with a par value of $1 per share. The stock may be issued in one or more series, and the Board of Directors is authorized to fix the designations, preferences, rights, qualifications, limitations and restrictions of each series, except that any series must provide for cumulative dividends and must be convertible into Common Stock. There were no shares of Cumulative Preferred Stock issued as of March 31, 2022 or March 31, 2021.

Effective June 25, 2020, our Board of Directors authorized the repurchase, for retirement, of up to 1,062,067 shares of our common stock in open-market transactions or otherwise.

For the fiscal year ended March 31, 2021, we repurchased 253,220 shares of our common stock for cash of approximately $1.7 million. Additionally, the Company acquired 6,312 shares as employee withholding taxes paid on vested restricted stock.

3. DEBT

In April 2020, the Company received a $1,690,385 loan (the “PPP Loan”) from JPMorgan Chase Bank, N.A. (the “Bank”), under the Paycheck Protection Program, which was established under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), as modified by the Paycheck Protection Flexibility Act of 2020 (the “PPP Flexibility Act”). Pursuant to the terms of the CARES Act, the PPP Loan was eligible for forgiveness by the Small Business Administration ("SBA"), if and to the extent that the Company satisfied certain requirements. The term of the PPP Loan was two years from the funding date of the PPP Loan. The interest rate on the PPP Loan was 0.98%. Under the terms of the PPP Loan, interest accrued from the funding date of the PPP Loan but payment of both principal and interest was initially deferred for six months and then deferred further while forgiveness was considered. At March 31, 2021, the principal balance of the loan and accrued interest payable were recorded as liabilities on the Company’s Consolidated Balance Sheet. The Company submitted an application for forgiveness of the PPP Loan on April 21, 2021 and received notification on June 22, 2021 that full forgiveness of the loan was authorized by the SBA. The gain of $1,706,614 from this extinguishment of debt included both principal and interest and is recorded as a component of "Other income (loss), net" on the Company's Consolidated Statement of Operations for fiscal 2022.

On March 8, 2021, the Company entered into a Credit Agreement providing for a $10 million revolving line of credit facility (the "Interim Credit Facility) with JPMorgan Chase Bank, N.A. (the "Bank"). The term of the Interim Credit Facility had an expiration date of July 15, 2021 because the Company was evaluating options for longer term credit arrangements. On April 12, 2021, the Company executed a first amendment to the Interim Credit Facility that increased the size of the facility from $10 million to $20 million. On May 19, 2021, the Company entered into an Amended and Restated Credit Agreement ("ABL Facility") with the Bank that amends and restates the Interim Credit Facility and provides for asset-based revolving loans in an aggregate principal amount up to $40 million. On March 11, 2022, the Company executed a first amendment to the ABL Facility which increased the size of the facility from $40 million to $75 million. The ABL Facility matures on May 19, 2026 and is secured by substantially all of the assets of the Company. The Company can elect borrowing on a floating rate basis or a term basis. Floating rate borrowings accrue interest at a rate equal to the prime rate per annum. Term rate borrowings accrue interest at a rate equal to the SOFR rate applicable to the selected term plus 1.8% per annum. Availability of funds under the ABL Facility is subject to a borrowing base calculation determined as the sum of (a) 85% of eligible accounts receivable, plus (b) the product of 85% multiplied by the net orderly liquidating value percentage identified in the most recent inventory appraisal multiplied by eligible inventory. The ABL Facility contains a financial covenant restricting the Company from allowing its fixed charge coverage ratio to be, as of the end of any calendar month, less than 1.10 to 1.00 for the trailing twelve month period then ending. The fixed charge coverage ratio is calculated as the ratio of (a) EBITDA, as defined in the ABL Facility, minus unfinanced capital expenditures to (b) cash interest expense plus scheduled principal payments on indebtedness plus taxes paid in cash plus restricted payments paid in cash plus capital lease obligation payments plus cash contributions to any employee pension benefit plans. The ABL Facility contains other representations and warranties and affirmative and negative covenants that are usual and customary. If certain conditions precedent are satisfied, the ABL facility may be increased by up to an aggregate of $10 million, in minimum increments of $5 million. At March 31, 2022, the Company had a balance of $18,436,457 under the ABL Facility with an applicable interest rate of 2.72%. At March 31, 2022, the Company's borrowing base calculation provided access to approximately $68.4 million of the ABL Facility and the Company was in compliance with all covenants related to the ABL Facility. The ABL Facility was amended subsequent to fiscal year-end with additional information about the amendments located in Note 15.

4. LEASES

The Company's lease of its office space in Longview, Texas is the only operating lease included in the Company's right-of-use ("ROU") asset and lease liability. The lease calls for monthly rent payments of $4,878 and expires on April 30, 2024. The Company's other operating leases for items such as IT equipment and storage space are either short-term in nature or immaterial.

In October 2019, the Company received a new heavy-duty forklift under a 5-year finance lease arrangement with a financed amount of $518,616 and a monthly payment of $9,074.

The components of expense related to leases were as follows for the twelve months ended March 31, 2022 and March 31, 2021,

	Twelve Months Ended March 31, 2022	Twelve Months Ended March 31, 2021
Finance lease – amortization of ROU asset	$ **102,689**	$ 100,728
Finance lease – interest on lease liability	**6,202**	8,164
Operating lease expense	**58,536**	56,286
	$ **167,427**	$ 165,178

The following table illustrates the balance sheet classification for ROU assets and lease liabilities as of March 31, 2022 and March 31, 2021:

	March 31, 2022	March 31, 2021	Balance Sheet Classification
Assets			
Operating lease right-of-use asset	$ **113,168**	$ 4,850	Other assets
Finance lease right-of-use asset	**455,948**	481,880	Property, plant & equipment
Total right-of-use assets	$ **569,116**	$ 486,730	
Liabilities			
Operating lease liability, current	$ **52,270**	$ 4,850	Accrued expenses
Finance lease liability, current	**104,689**	102,689	Current portion of finance lease
Operating lease liability, non-current	**60,898**	—	Other non-current liabilities
Finance lease liability, non-current	**160,869**	265,557	Other non-current liabilities
Total lease liabilities	$ **378,726**	$ 373,096	

As of March 31, 2022, the weighted-average remaining lease term was 2.1 years for operating leases and 2.5 years for finance leases. The weighted average discount rate was 7% for operating leases and 1.9% for finance leases.

Maturities of lease liabilities as of March 31, 2022were as follows:

	Operating Leases	Finance Leases
Fiscal 2023	58,536	108,892
Fiscal 2024	58,536	108,892
Fiscal 2025	4,878	54,445
Fiscal 2026	—	—
Fiscal 2027	—	—
Total undiscounted lease payments	$ 121,950	$ 272,229
Less: imputed interest	(8,782)	(6,671)
Present value of lease liability	$ 113,168	$ 265,558

5. PROPERTY, PLANT AND EQUIPMENT

On May 25, 2021, the Company announced plans for a new facility in Sinton, Texas that will be part of the coil product segment. The new facility is on the campus of Steel Dynamics, Inc.'s ("SDI") new flat roll steel mill in Sinton, Texas. The Company's new location consists of an approximately 70,000 square foot building located on approximately 26.5 acres leased from SDI under a 99-year agreement with an annual rental payment of $1. The Company contracted Red Bud Industries to build a stretcher leveler cut-to-length line for the facility that is capable of handling material up to 1" thick, widths up to 96" and yields exceeding 100,000 psi. The Company expects the equipment commissioning to occur during August 2022 and September 2022 and then expects expanded production levels beginning in October 2022. The total cost of the project is estimated to be $21 million. At March 31, 2022, the Company's construction in process related to the Sinton project was $15,925,306 consisting of $7,843,782 in cash payments and $8,081,524 of accrued capital expenditures.

During the twelve months ended March 31, 2022, the Company wrote off fully depreciated fixed assets that were no longer in use with an original cost and accumulated depreciation of approximately $2,060,226. During the twelve months ended March 31, 2022, the Company disposed of equipment that was removed from its Decatur facility and received $160,542 in proceeds from the disposal of the equipment which had an original cost of $3,604,209 and accumulated depreciation of $3,447,465.

Depreciation Expense was $1,320,434 and $1,012,917 for fiscal 2022 and fiscal 2021, respectively.

6. DERIVATIVE FINANCIAL INSTRUMENTS

From time to time, we expect to utilize derivative financial instruments to minimize our exposure to commodity price risk that is inherent in our business. At the time derivative contracts are entered into, we assess whether the nature of the instrument qualifies for hedge accounting treatment according to the requirements of ASC 815 – Derivatives and Hedging ("ASC 815"). By using derivatives, the Company is exposed to credit and market risk. The Company's exposure to credit risk includes the counterparty's failure to fulfill its performance obligations under the terms of the derivative contract. The Company attempts to minimize its credit risk by entering into transactions with high quality counterparties, and uses exchange-traded derivatives when available. Market risk is the risk that the value of the financial instrument might be adversely affected by a change in commodity prices. The Company manages market risk by continually monitoring exposure within its risk management strategy and portfolio. For those transactions designated as hedging instruments, we document all relationships between hedging instruments and hedged items, as well as our risk-management objective and strategy for undertaking the various hedge transactions. We also assess, both at the hedge's inception and on an ongoing basis, whether the derivatives used in hedging transactions are highly effective in offsetting changes in cash flows or fair value of hedged items.

From time to time, derivatives designated for hedge accounting may be closed prior to contract expiration. The accounting treatment of closed positions depends on whether the closure occurred due to the hedged transaction occurring early or if the hedged transaction is still expected to occur as originally forecasted. For hedged transactions that occur early, the closure results in the realized gain or loss from closure being recognized in the same period the accelerated hedged transaction affects earnings. For hedged transactions that are still expected to occur as originally forecasted, the closure results in the realized gain or loss being deferred until the hedged transaction affects earnings.

If it is determined that hedged transactions associated with cash flow hedges are no longer probable of occurring, the gain or loss associated with the instrument is recognized immediately into earnings.

From time to time, we may have derivative financial instruments for which we do not elect hedge accounting.

The Company has forward physical purchase supply agreements in place for a portion of its monthly physical steel needs. These supply agreements are not subject to mark-to-market accounting due to the Company electing the normal purchase normal sale exclusion provided in ASC 815.

During fiscal 2022 and fiscal 2021, the Company entered into hot-rolled coil futures contracts which were designated as hedging instruments and classified as cash flow hedges, either as hedges of variable purchase prices or as hedges of variable sales prices. Accordingly, realized and unrealized gains and losses associated with the instruments are reported as a component of other comprehensive income and reclassified into earnings during the period in which the hedged transaction affects earnings. During fiscal 2022 and fiscal 2021, some of the Company's cash flow hedges were closed prior to expiration but the hedged transactions were still expected to occur as originally forecasted resulting in the realized gain or loss being deferred in other comprehensive income until the hedged transactions occur and affect earnings. At September 30, 2021, the Company removed some derivative instruments from hedge accounting due to the hedged transactions no longer being expected to occur. This was the result of the Company reducing its forecasted sales for the quarter ending December 31, 2021 due to anticipated customer reaction to a historic increase in steel prices reaching its peak and then starting to decline. Since these hedged sales were no longer expected to occur, a loss of $9,930,720 associated with these instruments was immediately recognized into earnings for the September 30, 2021 quarter and reported as a component of "Other income (loss), net". During fiscal 2022 and fiscal 2021, the Company also entered into hot-rolled coil futures contracts that were not designated as hedging instruments for accounting purposes. Accordingly, the change in fair value related to these instruments was immediately recognized in earnings.

The following table summarizes the fair value of the Company's derivative financial instruments and the respective line in which they were recorded in the Consolidated Balance Sheet as of March 31, 2022:

	Asset Derivatives		Liability Derivatives	
Derivatives designated as cash flow hedges:	**Balance Sheet Location**	**Fair Value**	**Balance Sheet Location**	**Fair Value**
Hot-rolled coil steel contracts hedging sales			Current portion of derivative liability	$8,905,500
Derivatives not designated as hedging instruments:				
Hot-rolled coil steel contracts	Current portion of derivative assets	$4,240,740	Current portion of derivative liability	$5,524,020

All derivatives are presented on a gross basis on the Consolidated Balance Sheet.

The following table summarizes the fair value of the Company's derivative financial instruments and the respective line in which they were recorded in the Consolidated Balance Sheet as of March 31, 2021:

	Asset Derivatives		Liability Derivatives	
Derivatives designated as cash flow hedges:	**Balance Sheet Location**	**Fair Value**	**Balance Sheet Location**	**Fair Value**
Hot-rolled coil steel contracts hedging purchases	Current portion of derivative assets	$ 530,640		
Hot-rolled coil steel contracts hedging sales	Current portion of derivative assets	$ 91,760	Current portion of derivative liability	$ 7,890,700
Hot-rolled coil steel contracts hedging sales			Other non-current liabilities	$ 50,420
Derivatives not designated as hedging instruments:				
Hot-rolled coil steel contracts			Current portion of derivative liability	$ 88,680

All derivatives are presented on a gross basis on the Consolidated Balance Sheet.

At March 31, 2022, the Company reported $933,200 in "Other current assets" on its Consolidated Balance Sheet related to futures contracts for the month of March 2022 that had reached expiration but were pending cash settlement. At March 31, 2021, the Company reported $501,360 in "Accounts payable and accrued expenses" on its Consolidated Balance Sheet related to futures contracts for the month of March 2021 that had reached expiration but were pending cash settlement.

The notional amounts (quantities) of our cash flow hedges outstanding at March 31, 2022 consisted of 24,880 tons hedging sales with maturity dates ranging from April 2022 to September 2022.

The following table summarizes the pre-tax gain (loss) recognized in other comprehensive income and the gain (loss) reclassified from accumulated other comprehensive income into earnings for derivative financial instruments designated as cash flow hedges for the twelve months ended March 31, 2022 and 2021:

	Pre-Tax Gain (Loss) Recognized in OCI	**Location of Gain (Loss) Reclassified from AOCI into Net Earnings**	**Pre- Tax Gain (Loss) Reclassified from AOCI into Net Earnings**
For the twelve months ended March 31, 2022			
Hot-rolled coil steel contracts	$ (19,907,820)	**Sales**	$ (31,752,920)
		Costs of goods sold	10,632,900
Total	$ (19,907,820)		$ (21,120,020)
For the twelve months ended March 31, 2021			
Hot-rolled coil steel contracts	$ (14,751,900)	**Costs of goods sold**	$ 6,414,500
Total	$ (14,751,900)		$ 6,414,500

The estimated amount of losses recognized in AOCI at March 31, 2022 expected to be reclassified into net earnings within the succeeding twelve months is $13,539,700. This amount consists of $5,500,620 in realized losses associated with closed hedges and $8,039,080 associated with open hedges that was computed using the fair value of the cash flow hedges as of March 31, 2022 and is subject to change before actual reclassification from AOCI to net earnings.

The following table summarizes the loss recognized in earnings for derivative instruments not designated as hedging instruments during fiscal 2022:

	Location of Loss Recognized in Earnings	Loss Recognized in Earnings for Fiscal Year Ended March 31, 2022
Hot-rolled coil steel contracts	Other income (loss), net	$ (11,636,120)

The following table summarizes the loss recognized in earnings for derivative instruments not designated as hedging instruments during fiscal 2021:

	Location of Loss Recognized in Earnings	Loss Recognized in Earnings for Fiscal Year Ended March 31, 2021
Hot-rolled coil steel contracts	Other income (loss), net	(515,160)

The notional amount (quantity) of our derivative instruments not designated as hedging instruments at March 31, 2022 consisted of 14,640 tons of long positions with maturity dates ranging from April 2022 to December 2022 and 13,920 tons of short positions with maturity dates ranging from May 2022 to February 2023.

The following tables reflect the change in accumulated other comprehensive loss, net of tax, for the periods presented:

	Gain (Loss) on Derivatives
Balance at March 31, 2021	$ (11,187,841)
Other comprehensive loss, net of income, before reclassification	(15,098,091)
Total loss reclassified from AOCI (1)	16,017,423
Net current period other comprehensive income	919,332
Balance at March 31, 2022	$ (10,268,509)

(1) The loss reclassified from AOCI is presented net of taxes of $5,102,597 which are included in provision for (benefit from) income taxes on the Company's Consolidated Statement of Operations for the fiscal year ended March 31, 2022.

	Gain (Loss) on Derivatives
Balance at March 31, 2020	$ —
Other comprehensive loss, net of income, before reclassification	(6,323,084)
Total gain reclassified from AOCI (1)	(4,864,757)
Net current period other comprehensive loss	(11,187,841)
Balance at March 31, 2021	$ (11,187,841)

(1) The gain reclassified from AOCI is presented net of taxes of $1,549,743 which are included in provision for (benefit from) income taxes on the Company's Consolidated Statement of Operations for the fiscal year ended March 31, 2021.

At March 31, 2022 and March 31, 2021, cash of $13,523,416 and $12,001,485, respectively, was held by our clearing agent to collateralize our open derivative positions. These cash requirements are included in "Other current assets" on the Company's Consolidated Balance Sheet at March 31, 2022 and March 31, 2021.

7. FAIR VALUE MEASUREMENTS

Accounting standards provide a comprehensive framework for measuring fair value and sets forth a definition of fair value and establishes a hierarchy prioritizing the inputs to valuation techniques, giving the highest priority to quoted prices in active markets for identical assets and liabilities and the lowest priority to unobservable value inputs. Levels within the hierarchy are defined as follows:

- Level 1 – Quoted prices for identical assets and liabilities in active markets.
- Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the assets and liabilities, either directly or indirectly.
- Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities.

Recurring Fair Value Measurements

At March 31, 2022, our financial liabilities, net, measured at fair value on a recurring basis were as follows:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Commodity futures – financial liabilities, net	$ (10,188,780)	$ —	$ —	$ (10,188,780)
Total	$ (10,188,780)	$ —	$ —	$ (10,188,780)

At March 31, 2021, our financial liabilities, net, measured at fair value on a recurring basis were as follows:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Commodity futures – financial liabilities, net	$ (7,407,400)	$ —	$ —	$ (7,407,000)
Total	$ (7,407,400)	$ —	$ —	$ (7,407,000)

At March 31, 2022 and March 31, 2021, the Company did not have any fair value measurements on a non-recurring basis.

8. EARNINGS PER SHARE

Basic and dilutive net earnings per share is computed based on the following information:

	Year Ended March 31,	
	2022	2021
Numerator (basic and diluted)		
Net earnings	$ **14,066,322**	$ 11,424,475
Less: Allocation to unvested restricted stock units	**543,054**	492,462
Net earnings attributable to common shareholders	**13,523,268**	10,932,013
Denominator (basic and diluted)		
Weighted average common shares outstanding	**6,623,769**	6,703,654

9. INCOME TAXES

Components of tax expense (benefit) are as follows:

	Year Ended March 31,	
	2022	2021
Federal		
Current	$ **3,881,166**	$ 1,904,797
Deferred	**(478,918)**	1,100,368
	3,402,248	3,005,165
State		
Current	**944,809**	554,212
Deferred	**(82,821)**	238,121
	861,988	792,333
Total	$ **4,264,236**	$ 3,797,498

The U.S. federal statutory income tax rate is reconciled to the effective rate as follows:

	Year Ended March 31,	
	2022	2021
Income tax expense at U.S. federal statutory rate	**21.0%**	21.0%
Current year state and local income taxes net of federal income tax benefit	**3.7**	4.1
Other	**(1.4)**	(0.1)
Provision for income taxes	**23.3%**	25.0%

The Company's tax returns may be subject to examination by the Internal Revenue Service for the fiscal years ended March 31, 2019 through March 31, 2021. State and local returns may be subject to examination for fiscal years ended March 31, 2018 through March 31, 2021.

Deferred income taxes are provided for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's consolidated deferred tax assets (liabilities) are as follows:

	March 31,	
	2022	2021
Deferred tax liabilities:		
Depreciation	$ **(1,788,033)**	$ (1,945,788)
LIFO to average cost Section 481(a) adjustment	**—**	(301,110)
Total deferred tax liabilities	**(1,788,033)**	(2,246,898)
Deferred tax assets:		
Unrealized derivative loss - OCI	**3,271,192**	3,564,059
Inventory capitalization	**98,227**	63,468
Postretirement benefits other than pensions	**28,893**	26,240
Restricted stock compensation	**69,122**	328,434
Unrealized loss - mark to market derivatives	**388,213**	94,306
Other	**65,681**	34,815
Total deferred tax assets	**3,921,328**	4,111,322
Net deferred tax asset	$ **2,133,295**	$ 1,864,424

10. OTHER COMPREHENSIVE INCOME (LOSS)

The following table summarizes the tax effects on each component of Other Comprehensive Income (Loss) for the periods presented:

	Twelve Months Ended March 31, 2022		
	Before-Tax	**Tax Provision**	**Net-of-Tax**
Cash flow hedges	$ 1,212,200	$ (292,868)	$ 919,332
Other comprehensive income	$ 1,212,200	$ (292,868)	$ 919,332

	Twelve Months Ended March 31, 2021		
	Before-Tax	**Tax Benefit**	**Net-of-Tax**
Cash flow hedges	$ (14,751,900)	$ 3,564,059	$ (11,187,841)
Other comprehensive loss	$ (14,751,900)	$ 3,564,059	$ (11,187,841)

11. RETIREMENT PLAN

The Company maintains the Friedman Industries, Inc. Employees' Retirement and 401(k) Plan (the "Plan"). Employees fully vest in the Plan upon six years of service.

The retirement portion of the Plan covers substantially all employees, including officers. The Company's contribution expenses, which are determined at the discretion of the Board of Directors in an amount not to exceed 15% of the total compensation paid during the year to all eligible employees, were $200,000 for the year ended March 31, 2022 and $200,000 for the year ended March 31, 2021. Contributions, plan earnings and forfeitures of non-vested accounts of terminated participants are allocated to the remaining individual accounts determined by a point schedule based on years of employment with the Company.

Employees may participate in the 401(k) portion of the Plan. Employees are eligible to participate in the Plan when the employee has completed six months of service. Under the Plan, participating employees may defer a portion of their earnings up to certain limits prescribed by the Internal Revenue Service. The Company provides matching contributions under the provisions of the Plan. Contribution expense related to the 401(k) portion of the Plan was approximately $96,500 and $49,500 for the years ended March 31, 2022 and 2021, respectively.

12. RELATED PARTY TRANSACTIONS

The Company has engaged Metal Edge Partners, LLC ("Metal Edge") to provide services that include strategic advisory services, risk management services, procurement advisory services, steel market analytics and macro-economic analytics. Tim Stevenson serves as a member of our Board of Directors and serves as Chief Executive Officer of Metal Edge. For the fiscal year ended March 31, 2021, we paid Metal Edge $144,000 related to these services. Our agreement with Metal Edge may be terminated by either party, without cause, upon ninety days prior written notice. The Company did not have any related party transactions during fiscal year ended March 31, 2022 that exceeded the $120,000 disclosure threshold.

13. INDUSTRY SEGMENT DATA

The Company is engaged in the steel processing, pipe manufacturing and processing and steel and pipe distribution business. Within the Company, there are two product groups: coil and tubular. The Company's coil operations involve converting steel coils into flat sheet and plate steel cut to customer specifications and reselling steel coils. Through its tubular operations, the Company purchases, processes, manufactures and markets tubular products. The following is a summary of significant financial information relating to the product groups:

	Year Ended March 31,	
	2022	2021
NET SALES:		
Coil	$ **230,438,149**	$ 95,264,555
Tubular	**54,796,603**	30,837,978
TOTAL NET SALES	$ **285,234,752**	$ 126,102,533
OPERATING PROFIT:		
Coil	$ **31,790,710**	$ 16,466,713
Tubular	**2,423,655**	2,923,399
TOTAL OPERATING PROFIT	**34,214,365**	19,390,112
General corporate expenses	**(5,694,453)**	(3,640,098)
Interest expense	**(255,320)**	(24,619)
Other income (loss), net	**(9,934,034)**	(503,422)
TOTAL EARNINGS BEFORE INCOME TAXES	$ **18,330,558**	$ 15,221,973
IDENTIFIABLE ASSETS:		
Coil	$ **115,232,245**	$ 56,670,109
Tubular	**24,016,816**	17,883,612
	139,249,061	74,553,721
General corporate assets	**20,026,009**	20,455,088
TOTAL ASSETS	$ **159,275,070**	$ 95,008,809
DEPRECIATION:		
Coil	$ **974,119**	$ 653,708
Tubular	**330,652**	346,135
Corporate and other	**15,663**	13,074
	$ **1,320,434**	$ 1,012,917
CAPITAL EXPENDITURES:		
Coil	$ **8,005,370**	$ 4,505,589
Tubular	**20,709**	78,061
Corporate and other	**38,520**	25,967
	$ **8,064,599**	$ 4,609,617

Operating profit is total net sales less operating expenses, excluding general corporate expenses, interest expense and interest and other income (loss). General corporate expenses reflect general and administrative expenses not directly associated with segment operations and consist primarily of corporate and accounting salaries, professional fees and services, bad debts, retirement plan contribution expense, corporate insurance expenses, restricted stock plan compensation expense and office supplies. Other income (loss) for fiscal 2022 consisted primarily of a loss of $11,636,120 on derivative instruments not designated for hedge accounting partially offset by a $1,706,614 gain associated with the forgiveness of the Company's Paycheck Protection Program loan. Other income (loss) for fiscal 2021 consisted primarily of a $515,160 loss related to derivatives not designated for hedge accounting. At March 31, 2022 and March 31, 2021, corporate assets consisted primarily of cash, restricted cash, net deferred tax asset, income taxes recoverable and the cash value of officers' life insurance. Although inventory is transferred at cost between product groups, there are no sales between product groups.

14. REVENUE

Revenue is generated primarily from contracts to manufacture or process steel products. Most of the Company's revenue is generated by sales of material out of the Company's inventory but a portion of the Company's revenue is derived from processing of customer owned material. Generally, the Company's performance obligations are satisfied, control of our products is transferred, and revenue is recognized at a single point in time, when title transfers to our customer for product shipped or when services are provided. Revenues are recorded net of any sales incentives. Shipping and other transportation costs charged to customers are treated as fulfillment activities and are recorded in both revenue and cost of sales at the time control is transferred to the customer. Costs related to obtaining sales contracts are incidental and expensed when incurred. Because customers are invoiced at the time title transfers and the Company's rights to consideration are unconditional at that time, the Company does not maintain contract asset balances. Additionally, the Company does not maintain contract liability balances, as performance obligations are satisfied prior to customer payment for product. The Company offers industry standard payment terms.

The Company has two reportable segments: Coil and Tubular. Coil primarily generates revenue from cutting to length hot-rolled steel coils. Coil segment revenue consists of three main product types: Prime Coil, Non-Standard Coil and Customer Owned Coil. Tubular primarily generates revenue from the manufacture, distribution and processing of steel pipe. Tubular segment revenue consists of three main product or service types: Manufactured Pipe, Mill Reject Pipe and Pipe Finishing Services. The Company did not generate any revenue from pipe finishing services in the fiscal years ended March 31, 2022 and March 31, 2021. The pipe finishing facility is currently idled. The following table disaggregates our revenue by product for each of our reportable business segments for the fiscal years ended March 31, 2022 and 2021, respectively:

	Fiscal Year Ended March 31,	
	2022	2021
Coil Segment:		
Prime Coil	$ **219,483,437**	$ 85,933,199
Non-standard Coil	**9,596,821**	8,414,060
Customer Owned Coil	**1,357,891**	917,296
	$ **230,438,149**	$ 95,264,555
Tubular Segment:		
Manufactured Pipe	$ **44,484,652**	$ 25,554,333
Mill Reject Pipe	**10,311,951**	5,283,645
	$ **54,796,603**	$ 30,837,978

15. SUBSEQUENT EVENTS

On April 26, 2022, the Company entered into a definitive agreement with Plateplus Inc. ("Plateplus") whereby the Company acquired the real estate, buildings, equipment, inventory, and other assets of Plateplus' East Chicago, IN and Granite City, IL facilities and certain steel inventory and client relationships at Plateplus' Loudon, TN and Houston, TX facilities (the "Acquisition"). The addition of the East Chicago and Granite City locations to the Company's coil segment expands the Company's competitive footprint. Plateplus' relationships that were historically serviced out of Plateplus' Loudon and Houston locations will be transitioned to Friedman's facilities in Decatur, AL and Sinton, TX, respectively, providing immediate and meaningful operating efficiencies and cost synergies. The Acquisition closed effective as of midnight on April 30, 2022. Under the terms of the agreement, the Company acquired the assets for approximately $63.8 million in cash and 516,041 shares of the Company's common stock. All of the $63.8 million cash portion was financed by the Company's ABL facility. The Company's accounting and purchase price allocation for the acquisition is not yet complete. The final purchase price is subject to adjustment based on final net working capital levels. The shares issued to Plateplus in connection with the Acquisition are subject to a six-month lock-up period during which period the shares will be subject to certain restrictions on transfer.

The Company financed the transaction through the expansion of its existing $75 million asset-based lending facility provided by JPMorgan Chase Bank to $150 million. On April 29, 2022, the Company entered into a Second Amendment to the ABL Facility. The Second Amendment amends the ABL facility in order to increase the asset-based revolving loans available thereunder from an aggregate principal amount of up to $75 million to an aggregate principal amount of up to $150 million. Subject to the conditions set forth in the ABL Facility (as amended by the Second Amendment), the ABL Facility may be increased by up to an aggregate of $25 million, in minimum increments of $5 million. The Second Amendment also changed the interest rate applicable to floating rate borrowings from the prime rate to the prime rate minus 1%, increased the account receivable borrowing base component from 85% of eligible accounts receivable to 90% of eligible accounts receivable, and added covenant trigger provisions whereby the fixed charge coverage ratio covenant is only tested when availability falls below the greater of 15% of the revolving commitment or $22.5 million.

On July 6, 2022, the Company entered into a Third Amendment to the ABL Facility. The Third Amendment amends the ABL Facility in order to provide for the syndication of the asset-based revolving loans available thereunder with BMO Harris Bank, N.A. The Third Amendment also amends provisions of the ABL Facility authorizing the Agent to make protective advances under the ABL Facility and adds a covenant requiring each of the Company and its subsidiaries to maintain the Agent as its principal depository bank. In connection with the Third Amendment, the Company also entered into a new Revolving Note payable to BMO Harris Bank, N.A. in a principal amount of up to $50 million.

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS
FRIEDMAN INDUSTRIES, INCORPORATED

Description	Balance at Beginning of Period	Additions (A)	Deductions (B)	Balance at End of Period
Year ended March 31, 2022				
Allowance for doubtful accounts receivable (deducted from related asset account)	$ 17,834	$ 66,985	$ —	$ 84,819
Year ended March 31, 2021				
Allowance for doubtful accounts receivable (deducted from related asset account)	$ 67,417	$ —	$ (49,583)	$ 17,834

(A) Additions consist of charges to bad debt expense of $66,985 and $0 during fiscal years 2022 and 2021, respectively.
(B) Deductions consist of accounts receivable written off of $0 and $49,583 during fiscal years 2022 and 2021, respectively.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of
Friedman Industries, Incorporated

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Friedman Industries, Incorporated and subsidiary (the "Company") as of March 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for the years then ended, and the related notes and schedule (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of March 31, 2022 and 2021, and the consolidated results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of March 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated August 2, 2022 expressed an adverse opinion on the Company's internal control over financial reporting due to material weaknesses.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

Critical audit matters are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ MOSS ADAMS LLP

Houston, Texas
August 2, 2022

We have served as the Company's auditor since 2017.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of
Friedman Industries, Incorporated

Opinion on Internal Control over Financial Reporting

We have audited Friedman Industries, Incorporated and subsidiary (the "Company") internal control over financial reporting as of March 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, because of the effect of the material weaknesses identified below on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of March 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of Friedman Industries, Incorporated and subsidiary as of March 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for the years then ended, and the related notes and schedule (collectively referred to as the "consolidated financial statements") and our report dated August 2, 2022 expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and included in management's assessment in Management's Report on Internal Control over Financial Reporting:

Ineffective control activities to support the financial reporting process.

The Company did not design and implement appropriate control activities necessary to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements. Specifically:

- The Company did not design relevant control activities necessary to address all identified risks of material misstatement. Additionally, in certain cases, controls were designed and implemented without a sufficient period of time remaining to evidence operating effectiveness.
- The Company did not design and implement control activities to ensure completeness and accuracy of the data and reports used in performance of controls.
- Management review controls were not designed to operate at a level of precision sufficient to identify all potential material errors.
- Certain controls were not executed as designed or were performed without sufficient documentation supporting the execution of the controls.
- There is inadequate segregation of duties for certain transaction cycles.

We considered the material weaknesses in determining the nature, timing, and extent of audit tests applied in our audit of the Company's consolidated financial statements as of and for the year ended March 31, 2022, and our opinion on such consolidated financial statements was not affected.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of

compliance with the policies or procedures may deteriorate.

/s/ MOSS ADAMS LLP

Houston, Texas
August 2, 2022

We have served as the Company's auditor since 2017.

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

As of March 31, 2022, we performed an evaluation under the supervision and with the participation of management, including our Chief Executive Officer and our Chief Financial Officer, of the design and effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934 as amended (the "Exchange Act"). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded, as of the end of the period covered by this Annual Report that our disclosure controls and procedures were not effective due to material weaknesses in internal control over financial reporting as discussed in Management's Report on Internal Control over Financial Reporting provided below.

Notwithstanding the material weaknesses described in Management's Report on Internal Control Over Financial Reporting, our management has concluded that our consolidated financial statements for the periods covered by and included in this Annual Report are prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and fairly present, in all material respects, our financial position, results of operations and cash flows for each of the periods presented herein.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as is defined in the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management conducted an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this evaluation, our management concluded that our internal control over financial reporting was not effective at March 31, 2022 because of the material weaknesses described below.

Based on the COSO criteria, management identified control deficiencies that constitute material weaknesses. A "material weakness" is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses were identified:

Material weaknesses related to financial closing and reporting process

During its assessment of internal control over financial reporting, management concluded that the Company did not design and implement appropriate control activities necessary to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements. In certain cases, controls were designed and implemented late in the fiscal year, thus did not have sufficient time to evidence their operating effectiveness. Certain management review controls were not designed to operate at an appropriate level of precision to detect potential material errors. In addition, for certain controls, segregation of duties was not adequate. For a number of controls, documentation of completeness and accuracy of key reports was not adequately maintained as well as support for evidence of performance was insufficient. Management also identified instances of certain controls missing that would be necessary to address risks of material misstatement in some transaction cycles.

Plan for Remediation

The Company will continue to engage third party consultants to assist the Company with further evaluation, design, precision and documentation supporting execution of its internal controls over financial reporting. The Company has determined that the number of accounting personnel and the limited utilization of information technology in its control structure are the primary contributing factors to the material weaknesses identified. As a part of the transaction with Plateplus, the Company expects to have eight additional accounting personnel convert from Plateplus employment to Friedman employment in the September 2022 to October 2022 timeframe. Additionally, as part of the Plateplus transaction, the Company expects to transfer the enterprise resource planning ("ERP") system that was in place at Plateplus to Friedman at the end of August 2022. The Company will then work to integrate all of its operations into the transferred ERP system. The Company expects the additional accounting personnel to allow for improved segregation of duties and consistent execution of controls. The Company expects the new ERP system to allow for many of the Company's current manual controls and missing controls to be performed by the design and capabilities of the ERP system rather than relying on manual human execution.

Attestation Report of the Registered Public Accounting Firm

The Company's registered public accounting firm's attestation report on our internal control over financial reporting is set forth on page 26 of this Annual Report to Shareholders for the Fiscal year ended March 31, 2022.

Changes in Internal Control over Financial Reporting

Except for the matters discussed above, there were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

COMPANY OVERVIEW

Friedman Industries, Incorporated is a manufacturer and processor of steel products and operates in two reportable segments: coil products and tubular products.

The coil product segment consists of the operation of two hot-rolled coil processing facilities; one in Hickman, Arkansas ("Hickman") and the other in Decatur, Alabama ("Decatur"). The Hickman facility operates a temper mill and a cut-to-length line and the Decatur facility operates a stretcher leveler cut-to-length line. The equipment at both facilities improves the flatness and surface qualities of the coils and cuts the coils into sheet and plate of prescribed lengths. The Hickman facility is capable of cutting sheet and plate with thicknesses ranging from 14 gauge to ½" thick in widths ranging from 36" wide to 72" wide. The Decatur facility is capable of cutting sheet and plate with thicknesses ranging from 14 guage to ½" thick in widths ranging from 36" wide to 96" wide. The coil product segment sells its prime grade inventory under the Friedman Industries name but also maintains an inventory of non-standard coil products, consisting primarily of mill secondary and excess prime coils, which are sold through the Company's XSCP division. The coil product segment also processes customer-owned coils on a fee basis.

On May 25, 2021, the Company announced plans for a new facility in Sinton, Texas that will be part of the coil product segment. The new facility is on the campus of Steel Dynamics, Inc.'s ("SDI") new flat roll steel mill in Sinton, Texas. The Company's new location consists of an approximately 70,000 square foot building located on approximately 26.5 acres leased from SDI under a 99-year agreement. The Company contracted with Red Bud Industries to build one of the world's largest stretcher leveler cut-to-length lines, capable of handling material up to 1" thick, widths up to 96" and yields exceeding 100,000 psi. The Company expects the equipment commissioning to occur during August 2022 and September 2022 and then expects expanded production levels beginning in October 2022. The total cost of the project is estimated to be $21 million. At March 31, 2022, the Company's construction in process related to the Sinton project was $15,925,306 consisting of $7,843,782 in cash payments and $8,081,524 of accrued capital expenditures. The Company expects to fund the remainder of the Sinton capital expenditure through a combination of cash generated from operations and funds drawn under the ABL Facility. After an initial ramp up period, the Company expects the facility's annual shipments could be in the range of 110,000 tons to 140,000 tons for fiscal 2024.

The tubular product segment consists of the Company's Texas Tubular Products division ("TTP") located in Lone Star, Texas. TTP operates two electric resistance welded pipe mills with a combined outside diameter ("OD") size range of 2 3/8" OD to 8 5/8" OD. Both pipe mills are American Petroleum Institute ("API")
licensed to manufacture line pipe and oil country pipe and also manufacture pipe for structural purposes that meets other recognized industry standards. TTP has a pipe finishing facility capable of applying threads and couplings to oil country tubular goods and performing other services that are customary in the pipe finishing process. The pipe finishing facility is currently idled. TTP's inventory consists of raw materials and finished goods. Raw material inventory consists of hot-rolled steel coils that TTP will manufacture into pipe. Finished goods inventory consists of pipe TTP has manufactured and new mill reject pipe that TTP purchased from U.S. Steel Tubular Products, Inc.

RESULTS OF OPERATIONS

Year ended March 31, 2022 compared to year ended March 31, 2021

During the year ended March 31, 2022 ("fiscal 2022"), sales, costs of goods sold and gross profit increased $159,132,219, $141,730,139 and $17,402,080, respectively, from the comparable amounts recorded during the year ended March 31, 2021 ("fiscal 2021"). The increase in sales was related to both an increase in sales volume and an increase in the average selling price. Sales volume increased from approximately 173,000 tons in fiscal 2021 to approximately 200,000 tons in fiscal 2022. Discussion of the changes in sales volume and average selling price is expanded upon at the segment level in the following paragraphs. Gross profit as a percentage of sales decreased from approximately 18.7% in fiscal 2021 to approximately 14.4% in fiscal 2022. Gross profit for fiscal 2022 included $21,120,020 in recognized losses related to hedging activities while gross profit for fiscal 2021 included $6,414,500 in recognized gains related to hedging activities. Excluding the recognized hedging gains and losses, gross profit related to physical material as a percentage of sales was approximately 19.6% for fiscal 2022 compared to approximately 13.6% for fiscal 2021.

Our operating results are significantly impacted by the market price of hot-rolled steel coil. The Company experienced significant volatility in steel price during both fiscal 2022 and fiscal 2021. The start of fiscal 2021 coincided with the COVID-19 virus starting to have a broad impact across the United States. From March 2020 to August 2020 steel prices declined approximately 25% in response to the initial impacts of COVID-19 on steel industry demand. In August 2020, steel prices began a historic run up, increasing approximately 350% through September 2021. From October 2021 through February 2022, steel prices declined approximately 50% until starting to increase in March 2022 in response to the Russian invasion of Ukraine. With the volatility of steel prices, the Company saw periods of both expanding and contracting margins in fiscal 2022 and fiscal 2021. The overall results for both years is characterized by higher-than-average margins with fiscal 2022 being the most profitable year in Company history and fiscal 2021 being the third most profitable year.

Coil Segment

Coil product segment sales for fiscal 2022 totaled $230,438,149 compared to $95,264,555 for fiscal 2021. For a more complete understanding of the average selling prices of goods sold, it is helpful to exclude any hedging related gains or losses that are captured in sales and any sales generated from processing of customer owned material. Coil segment sales for fiscal 2022 were reduced by $28,441,660 for the recognition of hedging related losses. Coil segment sales for fiscal 2021 were not impacted by any hedging related gains or losses. Sales generated from processing of customer owned material totaled $1,357,891 for fiscal 2022 compared to $917,296 for fiscal 2021. Sales generated from coil segment inventory, excluding the impact of any hedging related gains or losses, totaled $257,521,918 for fiscal 2022 compared to $94,347,259 for fiscal 2021. The increase in coil segment sales was driven by both an increase in sales volume and an increase in the average selling price of tons shipped from inventory. Inventory tons sold increased from approximately 130,500 tons in fiscal 2021 to approximately 152,000 tons in fiscal 2022. The average per ton selling price related to these shipments increased from approximately $722 per ton in fiscal 2021 to approximately $1,693 per ton in fiscal 2022. Coil segment operations recorded operating profits of approximately $31,791,000 and $16,467,000 in fiscal 2022 and fiscal 2021, respectively. Operating profit for fiscal 2022 includes net recognized losses on hedging activities of $18,032,080 while fiscal 2021 operating profit included recognized gains on hedging activities of $5,500,000.

The Company’s coil segment purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company’s business.

Tubular Segment

Tubular product segment sales for fiscal 2022 totaled $54,796,603 compared to $30,837,978 for fiscal 2021. Sales increased due to both an increase in the volume sold and an increase in the average selling price per ton. For a more complete understanding of the average selling prices of goods sold, it is helpful to exclude any hedging related gains or losses that are captured in sales. Tubular segment sales for fiscal 2022 were reduced by $3,311,260 for the recognition of hedging related losses. Tubular segment sales for fiscal 2021 were not impacted by any hedging related gains or losses. Sales generated from tubular segment inventory, excluding the impact of any hedging related gains or losses, totaled $58,107,863 for fiscal 2022 compared to $30,837,978 for fiscal 2021. The average per ton selling price related to these shipments increased from approximately $730 per ton for fiscal 2021 to approximately $1,221 per ton for fiscal 2022. Tons sold increased from approximately 42,000 tons in fiscal 2021 to approximately 47,500 tons in fiscal 2022. Tubular segment operations recorded an operating profit of approximately $2,424,000 for fiscal 2022 compared to an operating profit of approximately $2,923,000 for fiscal 2021. Operating profit for fiscal 2022 includes net recognized losses on hedging activities of $3,087,940 while fiscal 2021 operating profit included recognized gains on hedging activities of $914,500.

The tubular segment purchases its inventory from a limited number of suppliers. Loss of any of these suppliers could have a material adverse effect on the Company’s business. In March 2020, U.S. Steel announced the idling of their Lone Star Tubular Operations which was our sole supplier of mill reject pipe. U.S. Steel's facility was idled as announced and the Company's receipts of mill reject pipe ceased in August 2020. At March 31, 2022, we had approximately 1,200 tons of mill reject inventory with substantially all of this material expected to sell in the following quarter. For the fiscal year ended March 31, 2022, sales of mill reject pipe totaled approximately $10,312,000 and accounted for approximately $3,824,000 of the tubular segment's operating profit for the period with approximately $1,280,000 of allocated operating, administrative and selling expenses included in the calculation of operating profit related to mill reject pipe. For the fiscal year ended March 31, 2021, sales of mill reject pipe totaled approximately $5,284,000 and accounted for approximately $1,313,000 of the tubular segment's operating profit for the period with approximately $802,000 of allocated operating, administrative and selling expenses included in the calculation of operating profit related to mill reject pipe. The Company is expanding its manufactured pipe sales to counteract the impact of mill reject sales ending in the near future.

General, Selling and Administrative Costs

During fiscal 2022, general, selling and administrative costs increased approximately $4,632,000 compared to fiscal 2021. This increase was related primarily to payroll and professional fees.

Other Income (Loss)

For fiscal 2022, the Company reported other loss of approximately $9,934,000. This loss consists primarily of a loss of approximately $11,636,000 on derivative instruments not designated for hedge accounting partially offset by a gain of approximately $1,707,000 associated with the forgiveness of the Company's Paycheck Protection Program loan. For fiscal 2021, the Company reported an other loss of approximately $503,500 which was the result of a loss of approximately $515,000 on derivative instruments not designated for hedge accounting partially offset by other income of approximately $11,500 for the increase in cash surrender value of life insurance policies the Company holds on its officers.

Income Taxes

Income taxes increased from a provision for fiscal 2021 of $3,797,498 to a provision for fiscal 2022 of $4,264,236. This increase was related primarily to the increased earnings before tax for fiscal 2022 compared to fiscal 2021.

FINANCIAL CONDITION, LIQUIDITY AND SOURCES OF CAPITAL

The Company's current ratio was 2.1 and 2.7 at March 31, 2022 and March 31, 2021, respectively. Working capital was $64,551,208 at March 31, 2022 and $48,462,364 at March 31, 2021.

During the year ended March 31, 2022, the Company maintained assets and liabilities at levels it believed were commensurate with operations. Changes in balance sheet amounts occurred in the ordinary course of business. Accounts receivable, inventories and accounts payable increased significantly due primarily to the significant increase in steel prices. Inventories and accounts payable also increased due to the Decatur facility's higher operating level post equipment replacement, the tubular segment's plans to expand manufactured pipe production and overall timing and volume of inventory shipments around fiscal year-end. The accounts payable balance also increased due to approximately $8,082,000 of accrued capital expenditures related to the Sinton facility construction. Cash decreased primarily from the Company's operating activities and from the purchase of property, plant and equipment partially offset by cash provided from the Company's credit facility. The Company expects to continue to monitor, evaluate and manage balance sheet components depending on changes in market conditions and the Company’s operations.

In June 2021, the Small Business Administration authorized full forgiveness of the Company's Paycheck Protection Program loan.

On March 8, 2021, the Company entered into a Credit Agreement providing for a $10 million revolving line of credit facility (the "Interim Credit Facility) with JPMorgan Chase Bank, N.A. (the "Bank"). The term of the Interim Credit Facility had an expiration date of July 15, 2021 because the Company was evaluating options for longer term credit arrangements. On April 12, 2021, the Company executed a first amendment to the Interim Credit Facility that increased the size of the facility from $10 million to $20 million. On May 19, 2021, the Company entered into an Amended and Restated Credit Agreement ("ABL Facility") with the Bank that amends and restates the Interim Credit Facility and provided for asset-based revolving loans in an aggregate principal amount up to $40 million. On March 11, 2022, the Company executed a first amendment to the ABL Facility which increased the size of the facility from $40 million to $75 million. On April 29, 2022, the Company executed a second amendment to the ABL Facility which increased the size of the facility from $75 million to $150 million. On July 6, 2022, the Company executed a third amendment to the ABL Facility in order to provide for the syndication of the asset-based revolving loans available thereunder with BMO Harris Bank, N.A. ("BMO") and also entered into a new Revolving Note payable to BMO in a principal amount of up to $50 million. The ABL Facility matures on May 19, 2026 and is secured by substantially all of the assets of the Company. The Company can elect borrowing on a floating rate basis or a term basis. Floating rate borrowings accrue interest at a rate equal to the prime rate minus 1% per annum. Term rate borrowings accrue interest at a rate equal to the SOFR rate applicable to the selected term plus 1.8% per annum. More details regarding the ABL Facility may be found in Note 15. As of the filing date of this Form 10-K, the Company had borrowings of approximately $75 million outstanding under the ABL Facility and the Company had full access to the ABL Facility.

The Company believes that its cash flows from operations and credit availability are adequate to fund its expected cash requirements for the next 12 months.

DERIVATIVE CONTRACTS

From time to time, the Company may use futures contracts to partially manage exposure to commodity price risk. The Company elects hedge accounting for some of its derivatives and classifies the transactions as either cash flow hedges or fair value hedges. The Company may also transact futures contracts where hedge accounting is not elected. For fiscal 2022, the Company recognized net losses of $21,120,020 related to derivatives designated for hedge accounting and classified as cash flow hedges and recognized losses of $11,636,120 related to derivatives not designated for hedge accounting. For fiscal 2021, the Company recognized gains of $6,414,500 related to derivatives designated for hedge accounting and classified as cash flow hedges and recognized losses of $515,160 related to derivatives not designated for hedge accounting. See Note 6 for further information related to the Company's derivative financial instruments.

OUTLOOK

On April 30, 2022, the Company acquired two coil processing facilities located in East Chicago, Indiana and Granite City, Illinois from Plateplus, Inc. ("Plateplus"). The facilities operate temper mills and cut-to-length lines and became part of the Company's coil segment. Additionally, the Company purchased all of the steel inventory from two other Plateplus locations in Loudon, Tennessee and Houston, Texas. Plateplus has provided us toll processing services of this inventory as we work to transition customer business that was typically handled in Loudon and Houston to our Decatur, Alabama and Sinton, Texas locations. We expect the transaction will be transformative for the future of the Company.

At the end of fiscal 2022 steel prices started increasing considerably after the Russian invasion of Ukraine. The increase in steel prices resulted in improved margins for the first quarter of fiscal 2023 compared to the fourth quarter of fiscal 2022. The Company expects the June 30, 2022 quarter to be one of the most profitable quarters in Company history due to the margin improvement and a substantial increase in sales volume after the Plateplus transaction. Sales volume for the first quarter of fiscal 2023 was approximately 104,500 tons compared to approximately 52,000 tons for the fourth quarter of fiscal 2022, a 100% increase.

As disclosed in Note 6, the estimated amount of hedging related losses recognized in accumulated other comprehensive income ("AOCI") and expected to be reclassified into net earnings within the succeeding twelve months was approximately $13.5 million at March 31, 2022. This amount consisted of approximately $5.5 million in realized losses associated with closed hedges and approximately $8 million associated with open hedges that was computed using the fair value of the hedge as of March 31, 2022 and subject to change before actual reclassification into earnings due to the positions being open. All of the open positions in AOCI at March 31, 2022 were short positions. During February 2022 and March 2022, hot-rolled coil futures traded up in a historic fashion in response to the Russian invasion of Ukraine resulting in the significant loss position on open hedges at March 31, 2022. Subsequent to March 2022, hot-rolled futures have traded down significantly resulting in substantial improvement to the fair value positions related to these open hedges. The $5.5 million realized loss is expected to be recognized as a $700,000 loss in the June 30, 2022 quarter, a $1.4 million loss in the September 30, 2022 quarter, a $2.3 million loss in the December 31, 2022 quarter and a $1.1 million loss in the March 31, 2023 quarter. The expectation for the June 30, 2022 quarter to be one of the most profitable quarters in Company history includes the anticipated hedging related impact for the quarter.

OFF-BALANCE SHEET ARRANGEMENTS

The Company has no off-balance sheet arrangements.

INFLATION

During fiscal 2022 and fiscal 2021, the Company believes that the general level of inflation did not have a material effect on the Company's operations.

CRITICAL ACCOUNTING ESTIMATES

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. The more significant estimates and judgements include forecasted purchases of hot-rolled coil and forecasted sales of prime coil inventory and manufactured pipe inventory in relation to hedging activities and the fair value of the pipe finishing facility, when impaired. From time to time, the Company hedges forecasted purchases and sales and may designate those transactions for hedge accounting. If the original forecasts are subsequently reduced, it could result in the Company’s hedged positions exceeding revised forecasts, thus warranting immediate recognition in earnings of previously deferred hedge income or losses associated with excess hedges. A pattern of missed forecasts could call into question the Company’s ability to accurately predict forecasted transactions and the propriety of using hedge accounting in the future for similar forecasted transactions. To mitigate against the negative consequences of missing forecasts we have set an internal policy to designate hedging instruments for accounting purposes only up to 75% of forecasted sales or purchases. Determination of forecasted purchases of hot-rolled coil and forecasted sales of prime coil inventory and manufactured pipe inventory require the Company to make assumptions related to customer demand and the volume and timing of inventory purchases. If impairment indicators are present, the pipe-finishing facility impairment analysis requires assumptions related to future operations of the facility and estimates related to the replacement cost and value in exchange for the assets. Actual results could differ from these estimates.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

From time to time, the Company may make certain statements that contain forward-looking information (as defined in the Private Securities Litigation Reform Act of 1996, as amended) and that involve risk and uncertainty. Such statements may include those risks disclosed in the Management’s Discussion and Analysis of Financial Condition and Results of Operations section of this report. These forward-looking statements may include, but are not limited to, future changes in the Company’s financial condition or results of operations, future production capacity, product quality and proposed expansion plans. Forward-looking statements may be made by management orally or in writing including, but not limited to, this Management’s Discussion and Analysis of Financial Condition and Results of Operations and other sections of the Company’s filings with the U.S. Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including the Company’s Annual Report on Form 10-K and its other Quarterly Reports on Form 10-Q. Forward-looking statements include those preceded by, followed by or including the words “will,” “expect,” “intended,” “anticipated,” “believe,” “project,” “forecast,” “propose,” “plan,” “estimate,” “enable,” and similar expressions, including, for example, statements about our business strategy, our industry, our future profitability, growth in the industry sectors we serve, our expectations, beliefs, plans, strategies, objectives, prospects and assumptions, and estimates and projections of future activity and trends in the oil and natural gas industry. These forward-looking statements are not guarantees of future performance. These statements are based on management’s expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. Although forward-looking statements reflect our current beliefs, reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements. Actual results and trends in the future may differ materially depending on a variety of factors including, but not limited to, changes in the demand for and prices of the Company’s products, changes in government policy regarding steel, changes in the demand for steel and steel products in general and the Company’s success in executing its internal operating plans, changes in and availability of raw materials, unplanned shutdowns of our production facilities due to equipment failures or other issues, increased competition from alternative materials and risks concerning innovation, new technologies, products and increasing customer requirements. Accordingly, undue reliance should not be placed on our forward-looking statements. We undertake no obligation to

publicly update or revise any forward-looking statement, whether as a result of new information, future events, changed circumstances or otherwise, except to the extent law requires.

TEN YEAR FINANCIAL SUMMARY (Unaudited)

	Year Ended March 31									
	2022	2021	2020	2019	2018 As Adjusted	2017*	2016*	2015*	2014*	2013*
Net sales	$ **285,234,752**	$ 126,102,533	$ 142,102,324	$ 187,154,493	$ 121,157,278	$ 77,756,055	$ 81,631,382	$ 108,322,780	$ 116,149,022	$ 136,448,786
Net earnings (loss)	$ **14,066,322**	$ 11,424,475	$ (5,249,210)	$ 5,099,924	$ 3,934,101	$ (2,678,684)	$ 294,000	$ 382,330	$ 1,712,926	$ 6,135,812
Current assets	$ **125,361,815**	$ 77,534,635	$ 65,211,517	$ 74,456,207	$ 67,269,406	$ 45,432,836	$ 49,701,656	$ 50,117,355	$ 59,846,668	$ 64,283,557
Current liabilities	$ **60,810,607**	$ 29,072,271	$ 9,645,359	$ 12,364,902	$ 11,030,635	$ 2,356,590	$ 2,865,750	$ 2,651,111	$ 7,770,689	$ 12,312,082
Working capital	$ **64,551,208**	$ 48,462,364	$ 55,566,158	$ 62,091,305	$ 56,238,771	$ 43,076,246	$ 46,835,906	$ 47,466,244	$ 52,075,979	$ 51,971,475
Total assets	$ **159,275,070**	$ 95,008,809	$ 77,344,088	$ 86,601,982	$ 81,653,307	$ 63,263,297	$ 66,890,397	$ 66,958,024	$ 72,284,399	$ 76,575,129
Stockholders' equity	$ **79,686,648**	$ 65,339,976	$ 66,865,367	$ 72,481,577	$ 68,575,450	$ 60,356,425	$ 63,239,047	$ 63,217,025	$ 63,310,656	$ 62,957,619
Net earnings (loss) as a percentage of Net sales	**4.9**	9.1	(3.7)	2.7	3.2	(3.4)	0.4	0.4	1.5	4.5
Weighted average number of common shares outstanding:										
Basic	**6,623,769**	6,703,654	7,000,403	7,010,266	7,009,444	6,851,944	6,799,444	6,799,444	6,799,444	6,799,444
Net earnings (loss) per share:										
Basic	$ **2.04**	$ 1.63	$ (0.75)	$ 0.73	$ 0.56	$ (0.39)	$ 0.04	$ 0.06	$ 0.25	$ 0.90
Cash dividends per common share	$ **0.08**	$ 0.08	$ 0.10	$ 0.19	$ 0.05	$ 0.04	$ 0.04	$ 0.07	$ 0.20	$ 0.97

* The figures for fiscal years 2013 to 2017 have not been adjusted for a change in accounting principle where the Company changed its valuation method for prime coil inventory from the LIFO method to the average cost method. The change in accounting principle was effective for fiscal 2019 and fiscal 2018 figures were adjusted to meet comparative financial statement reporting requirements. The impact of the change in accounting principle on fiscal years 2013 to 2017 has not been quantified by the Company and could be material, therefore, the figures may not be comparable to fiscal years 2018 to 2022.

EXHIBIT 14.1

FRIEDMAN INDUSTRIES, INCORPORATED
CODE OF CONDUCT AND ETHICS

It is the policy of Friedman Industries, Incorporated (the "Company") to endeavor to conduct business with the highest standards of honesty and integrity and in compliance with all applicable laws. In view thereof, the Company's Board of Directors has adopted this Code of Conduct and Ethics (the "Code").

In addition to other Company policies, all Company employees, directors and officers are expected to:

- Carry out their duties honestly and with the highest degree of integrity.
- Avoid actual or apparent conflicts of interest between personal and professional relationships.
- Report promptly any transaction or relationship that could compromise one's ability to (i) adhere fully to the Code, other Company policies or applicable laws or (ii) make business decisions without regard to personal gain or benefit.
- Seek, at all times, to provide information to Company officials and its outside professionals (e.g. accountants, counsel, insurance providers, etc.) that is accurate, relevant, complete, objective, timely and understandable, and encourage others within the Company to do the same.
- Use reasonable efforts to assure full, fair, accurate, timely and understandable disclosure of information related to the Company's business and financial operations in Company reports and documents filed with the U.S. Securities and Exchange Commission (the "SEC") or the NYSE – American or in other public communications made by the Company.
- Use reasonable efforts to cause the Company to comply fully with the letter and spirit of all laws, rules and regulations applicable to the Company or its business.
- Promptly report to the Audit Committee of the Board of Directors (the "Audit Committee") (i) any weakness or deficiency in the design or operation of the Company's internal controls or (ii) any fraud involving Company management or other employees having significant roles in the Company's operations, financial reporting, disclosures or internal controls.

The Board of Directors is responsible for applying and interpreting the Code. Any questions relating to how the Code should be interpreted or applied should be addressed to a supervisor, the Chief Executive Officer, the President or the Chief Financial Officer. Any employee, officer or director who becomes aware of any existing or potential violation of laws, rules, regulations or the Code should promptly notify the Chief Executive Officer, the President, the Chief Financial Officer or the Chairman of the Audit Committee. Reports may be made orally or in writing and may be made anonymously and will be kept confidential to the extent permitted. Written reports should be sent to the attention of the Chief Executive Officer, the President or the Chief Financial Officer, at P.O. Box 2192, Longview, Texas 75606. In addition, reports may be made to the Chairman of the Audit Committee by calling (713) 622-7000 or sent to Three Greenway Plaza, Suite 1700, Houston, Texas 77046.

Failure to notify the Chief Executive Officer, the President, the Chief Financial Officer or the Chairman of the Audit Committee of any violation or potential violation is in itself a violation of the Code. To encourage employees to report any violations, the Company will not allow retaliation for reports made hereunder in good faith. In addition, the Company may not retaliate against any employee for providing information or assisting in the investigation of any law enforcement agency, regulatory agency or other governmental body relating to the Company.

Observance of the provisions of the Code is of extreme importance to the Company. A violation of the Code will be regarded as a serious offense and may constitute grounds for disciplinary action, including, but not limited to, demotion, suspension (with or without pay), discharge, or, in the case of directors, removal from the Board of Directors and legal proceedings.

From time to time, the Company may waive some provisions of the Code. Any employee, officer or director who believes that a waiver may be called for should contact the Chief Financial Officer. Any waiver of the Code for directors and executive officers of the Company must be approved by the Company's Board of Directors and will be promptly reported in such manner as may be required by the SEC or NYSE - American.

EXHIBIT 21.1

SUBSIDIARIES

FRIEDMAN/DECATUR, L.L.C.	Alabama Limited Liability Company	100% owned

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-215223) of Friedman Industries, Incorporated (the "Company"), of our reports dated August 2, 2022, relating to the consolidated financial statements and schedule of the Company and the effectiveness of internal control over financial reporting of the Company (which report expresses an adverse opinion due to material weaknesses), appearing in this Annual Report on Form 10-K of the Company for the year ended March 31, 2022.

/s/ MOSS ADAMS LLP

Houston, Texas
August 2, 2022

EXHIBIT 31.1

I, Michael J. Taylor, certify that:

1. I have reviewed this report on Form 10-K of Friedman Industries, Incorporated;

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(s) 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(s) 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 the 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.

Dated: August 2, 2022

/S/ MICHAEL J. TAYLOR
President and Chief Executive Officer

EXHIBIT 31.2

I, Alex LaRue, certify that:

1. I have reviewed this report on Form 10-K of Friedman Industries, Incorporated;

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(s) 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(s) 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 the 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.

Dated: August 2, 2022

/S/ ALEX LARUE
Chief Financial Officer — Secretary and Treasurer

EXHIBIT 32.1

Certification Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to Section 906
of The Sarbanes-Oxley Act of 2002

Not Filed Pursuant to the Securities Exchange Act of 1934

In connection with the Annual Report of Friedman Industries, Incorporated (the "Company") on Form 10-K for the fiscal year ended March 31, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Michael J. Taylor, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /S/ MICHAEL J. TAYLOR
President and Chief Executive Officer

Dated: August 2, 2022

EXHIBIT 32.2

Certification Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to Section 906
of The Sarbanes-Oxley Act of 2002

Not Filed Pursuant to the Securities Exchange Act of 1934

In connection with the Annual Report of Friedman Industries, Incorporated (the "Company") on Form 10-K for the fiscal year ended March 31, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Alex LaRue, Chief Financial Officer — Secretary & Treasurer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /S/ ALEX LARUE
Chief Financial Officer — Secretary and Treasurer

Dated: August 2, 2022