

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

Form 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2025

or

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

Commission file number: 001-33156



First Solar

First Solar, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

20-4623678

(I.R.S. Employer Identification No.)

350 West Washington Street, Suite 600
Tempe, Arizona 85288

(Address of principal executive offices, including zip code)

(602) 414-9300

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, \$0.001 par value	FSLR	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Non-accelerated filer	<input type="checkbox"/>
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>		

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

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

As of July 25, 2025, 107,247,651 shares of the registrant's common stock, \$0.001 par value per share, were outstanding.

FIRST SOLAR, INC.

FORM 10-Q FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2025

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Throughout this Quarterly Report on Form 10-Q, we refer to First Solar, Inc. and its subsidiaries as “First Solar,” “the Company,” “we,” “us,” and “our.” Units of electricity are typically stated in gigawatts (“GW”).

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (Unaudited)

FIRST SOLAR, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Net sales	\$ 1,097,170	\$ 1,010,482	\$ 1,941,738	\$ 1,804,590
Cost of sales	597,320	511,593	1,097,485	959,698
Gross profit	499,850	498,889	844,253	844,892
Operating expenses:				
Selling, general and administrative	52,590	46,560	105,754	92,387
Research and development	54,487	51,937	106,876	94,679
Production start-up	31,166	27,451	48,772	42,859
Litigation loss	—	430	—	430
Total operating expenses	138,243	126,378	261,402	230,355
Gain on sales of businesses, net	—	—	—	1,115
Operating income	361,607	372,511	582,851	615,652
Foreign currency loss, net	(9,728)	(9,649)	(21,321)	(12,507)
Interest income	12,100	24,599	30,965	51,844
Interest expense, net	(9,184)	(9,765)	(18,709)	(18,975)
Other expense, net	(2,628)	(565)	(4,560)	(3,364)
Income before taxes	352,167	377,131	569,226	632,650
Income tax expense	(10,299)	(27,775)	(17,823)	(46,678)
Net income	\$ 341,868	\$ 349,356	\$ 551,403	\$ 585,972
Net income per share:				
Basic	\$ 3.19	\$ 3.26	\$ 5.14	\$ 5.48
Diluted	\$ 3.18	\$ 3.25	\$ 5.13	\$ 5.45
Weighted-average number of shares used in per share calculations:				
Basic	107,245	107,042	107,184	107,011
Diluted	107,518	107,525	107,468	107,502

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Net income	\$ 341,868	\$ 349,356	\$ 551,403	\$ 585,972
Other comprehensive income (loss):				
Foreign currency translation adjustments	9,475	(2,944)	16,755	(11,477)
Unrealized gain (loss) on marketable securities and restricted marketable securities, net of tax of \$(91), \$41, \$(422), and \$143	677	(1,197)	6,108	(3,200)
Unrealized (loss) gain on derivative instruments, net of tax of \$0, \$177, \$(87), and \$(131)	—	(571)	279	491
Other comprehensive income (loss)	10,152	(4,712)	23,142	(14,186)
Comprehensive income	<u>\$ 352,020</u>	<u>\$ 344,644</u>	<u>\$ 574,545</u>	<u>\$ 571,786</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)
(Unaudited)

	June 30, 2025	December 31, 2024
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,124,740	\$ 1,621,376
Marketable securities	29,098	171,583
Accounts receivable trade, net	1,730,972	1,261,049
Government grants receivable, net	482,546	403,759
Inventories	1,414,006	1,084,384
Other current assets	642,229	546,882
Total current assets	<u>5,423,591</u>	<u>5,089,033</u>
Property, plant and equipment, net	5,722,561	5,413,683
Deferred tax assets, net	204,671	208,808
Restricted marketable securities	213,737	199,136
Government grants receivable	238,850	157,570
Goodwill	30,555	28,335
Intangible assets, net	51,950	54,654
Inventories	269,852	275,372
Other assets	702,277	697,770
Total assets	<u>\$ 12,858,044</u>	<u>\$ 12,124,361</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 367,652	\$ 482,190
Income taxes payable	79,018	77,363
Accrued expenses	593,244	508,581
Current portion of debt	249,894	236,424
Deferred revenue	1,058,262	712,000
Other current liabilities	504,547	60,884
Total current liabilities	<u>2,852,617</u>	<u>2,077,442</u>
Accrued solar module collection and recycling liability	144,599	134,394
Long-term debt	327,972	373,354
Deferred revenue	764,819	1,327,825
Other liabilities	221,907	233,769
Total liabilities	<u>4,311,914</u>	<u>4,146,784</u>
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.001 par value per share; 500,000,000 shares authorized; 107,247,360 and 107,060,281 shares issued and outstanding at June 30, 2025 and December 31, 2024, respectively	107	107
Additional paid-in capital	2,892,426	2,898,418
Accumulated earnings	5,814,513	5,263,110
Accumulated other comprehensive loss	(160,916)	(184,058)
Total stockholders' equity	<u>8,546,130</u>	<u>7,977,577</u>
Total liabilities and stockholders' equity	<u>\$ 12,858,044</u>	<u>\$ 12,124,361</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Three Months Ended June 30, 2025					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at March 31, 2025	107,244	\$ 107	\$ 2,885,650	\$ 5,472,645	\$ (171,068)	\$ 8,187,334
Net income	—	—	—	341,868	—	341,868
Other comprehensive income	—	—	—	—	10,152	10,152
Common stock issued for share-based compensation	3	—	—	—	—	—
Tax withholding related to vesting of restricted stock	—	—	(15)	—	—	(15)
Share-based compensation expense	—	—	6,791	—	—	6,791
Balance at June 30, 2025	<u>107,247</u>	<u>\$ 107</u>	<u>\$ 2,892,426</u>	<u>\$ 5,814,513</u>	<u>\$ (160,916)</u>	<u>\$ 8,546,130</u>
	Three Months Ended June 30, 2024					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at March 31, 2024	107,041	\$ 107	\$ 2,878,330	\$ 4,207,682	\$ (183,605)	\$ 6,902,514
Net income	—	—	—	349,356	—	349,356
Other comprehensive loss	—	—	—	—	(4,712)	(4,712)
Common stock issued for share-based compensation	6	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(1)	—	(196)	—	—	(196)
Share-based compensation expense	—	—	8,435	—	—	8,435
Balance at June 30, 2024	<u>107,046</u>	<u>\$ 107</u>	<u>\$ 2,886,569</u>	<u>\$ 4,557,038</u>	<u>\$ (188,317)</u>	<u>\$ 7,255,397</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Six Months Ended June 30, 2025					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2024	107,060	\$ 107	\$ 2,898,418	\$ 5,263,110	\$ (184,058)	\$ 7,977,577
Net income	—	—	—	551,403	—	551,403
Other comprehensive income	—	—	—	—	23,142	23,142
Common stock issued for share-based compensation	287	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(100)	—	(15,436)	—	—	(15,436)
Share-based compensation expense	—	—	9,444	—	—	9,444
Balance at June 30, 2025	<u>107,247</u>	<u>\$ 107</u>	<u>\$ 2,892,426</u>	<u>\$ 5,814,513</u>	<u>\$ (160,916)</u>	<u>\$ 8,546,130</u>
	Six Months Ended June 30, 2024					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2023	106,847	\$ 107	\$ 2,890,427	\$ 3,971,066	\$ (174,131)	\$ 6,687,469
Net income	—	—	—	585,972	—	585,972
Other comprehensive loss	—	—	—	—	(14,186)	(14,186)
Common stock issued for share-based compensation	322	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(123)	—	(19,148)	—	—	(19,148)
Share-based compensation expense	—	—	15,290	—	—	15,290
Balance at June 30, 2024	<u>107,046</u>	<u>\$ 107</u>	<u>\$ 2,886,569</u>	<u>\$ 4,557,038</u>	<u>\$ (188,317)</u>	<u>\$ 7,255,397</u>

See accompanying notes to these condensed consolidated financial statements.

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

	Six Months Ended June 30,	
	2025	2024
Cash flows from operating activities:		
Net income	\$ 551,403	\$ 585,972
Adjustments to reconcile net income to cash (used in) provided by operating activities:		
Depreciation, amortization and accretion	250,523	187,921
Share-based compensation	9,394	15,191
Deferred income taxes	5,861	(58,399)
Gain on sales of businesses, net	—	(1,115)
Other, net	7,171	1,650
Changes in operating assets and liabilities:		
Accounts receivable, trade	(417,136)	29,613
Inventories	(323,781)	(215,493)
Government grants receivable	(177,419)	205,528
Other assets	(106,090)	(168,363)
Income tax receivable and payable	(39,698)	3,774
Accounts payable and accrued expenses	(85,119)	(113,255)
Deferred revenue	(186,652)	(12,499)
Other liabilities	53,138	212
Net cash (used in) provided by operating activities	(458,405)	460,737
Cash flows from investing activities:		
Purchases of property, plant and equipment	(494,100)	(778,618)
Purchases of marketable securities and restricted marketable securities	(930,807)	(1,113,826)
Proceeds from sales and maturities of marketable securities	1,067,702	1,224,167
Other investing activities	7,002	(7,697)
Net cash used in investing activities	(350,203)	(675,974)
Cash flows from financing activities:		
Proceeds from borrowings under debt arrangements, net of issuance costs	212,273	110,395
Repayment of debt	(244,022)	(111,375)
Proceeds from other borrowings	394,450	—
Payments of tax withholdings for restricted shares	(15,436)	(19,148)
Contingent consideration payment and other financing activities	(266)	(7,527)
Net cash provided by (used in) financing activities	346,999	(27,655)
Effect of exchange rate changes on cash, cash equivalents, restricted cash, and restricted cash equivalents	3,469	(5,600)
Net decrease in cash, cash equivalents, restricted cash, and restricted cash equivalents	(458,140)	(248,492)
Cash, cash equivalents, restricted cash, and restricted cash equivalents, beginning of the period	1,638,223	1,965,069
Cash, cash equivalents, restricted cash, and restricted cash equivalents, end of the period	\$ 1,180,083	\$ 1,716,577
Supplemental disclosure of noncash investing and financing activities:		
Property, plant and equipment acquisitions funded by liabilities	\$ 242,177	\$ 402,263
Proceeds to be received from asset-based government grants	\$ 155,336	\$ 158,908
Acquisitions funded by contingent consideration	\$ 3,600	\$ 11,000

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)****1. Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements of First Solar, Inc. and its subsidiaries in this Quarterly Report have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (the “SEC”). Accordingly, these interim financial statements do not include all of the information and footnotes required by U.S. GAAP for annual financial statements. In the opinion of First Solar management, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair statement have been included. Certain prior period disclosures have been recast to conform to the current period presentation.

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Despite our intention to establish accurate estimates and reasonable assumptions, actual results could differ materially from such estimates and assumptions. Operating results for the three and six months ended June 30, 2025 are not necessarily indicative of the results that may be expected for the year ending December 31, 2025 or for any other period. The condensed consolidated balance sheet at December 31, 2024 has been derived from the audited consolidated financial statements at that date, but does not include all of the information and footnotes required by U.S. GAAP for complete financial statements. These interim financial statements and notes should be read in conjunction with the audited financial statements and notes thereto for the year ended December 31, 2024 included in our Annual Report on Form 10-K, which has been filed with the SEC.

Unless expressly stated or the context otherwise requires, the term “condensed consolidated financial statements” refers to the accompanying unaudited condensed consolidated financial statements contained in this Quarterly Report.

2. Cash, Cash Equivalents, and Marketable Securities

Cash, cash equivalents, and marketable securities consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Cash and cash equivalents:		
Cash	\$ 1,085,499	\$ 1,094,796
Money market funds	39,241	526,580
Total cash and cash equivalents	<u>1,124,740</u>	<u>1,621,376</u>
Marketable securities:		
Time deposits	20,025	162,836
U.S. debt	9,073	8,747
Total marketable securities	<u>29,098</u>	<u>171,583</u>
Total cash, cash equivalents, and marketable securities	<u>\$ 1,153,838</u>	<u>\$ 1,792,959</u>

The following table provides a reconciliation of cash, cash equivalents, restricted cash, and restricted cash equivalents reported within our condensed consolidated balance sheets as of June 30, 2025 and December 31, 2024 to the total of such amounts as presented in the condensed consolidated statements of cash flows (in thousands):

	Balance Sheet Line Item	June 30, 2025	December 31, 2024
Cash and cash equivalents	Cash and cash equivalents	\$ 1,124,740	\$ 1,621,376
Restricted cash – current	Other current assets	48,257	8,262
Restricted cash – noncurrent	Other assets	3,606	3,613
Restricted cash equivalents – noncurrent	Other assets	3,480	4,972
Total cash, cash equivalents, restricted cash, and restricted cash equivalents		<u>\$ 1,180,083</u>	<u>\$ 1,638,223</u>

Restricted cash and restricted cash equivalents consist of deposits held by various banks to secure certain of our letters of credit, as well as deposits held in custodial accounts to fund the estimated future costs of our solar module collection and recycling obligations. Restricted cash also consists of collections from customers on behalf of factors that have purchased the related receivables.

During the three months ended June 30, 2024, we sold marketable securities for proceeds of \$67.5 million and realized a gain of less than \$0.1 million on such sales. See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the fair value of our marketable securities. The following tables summarize the unrealized gains and losses related to our available-for-sale marketable securities, by major security type, as of June 30, 2025 and December 31, 2024 (in thousands):

	As of June 30, 2025			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Time deposits	\$ 20,025	\$ —	\$ —	\$ 20,025
U.S. debt	10,000	—	927	9,073
Total	<u>\$ 30,025</u>	<u>\$ —</u>	<u>\$ 927</u>	<u>\$ 29,098</u>

	As of December 31, 2024			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Time deposits	\$ 162,836	\$ —	\$ —	\$ 162,836
U.S. debt	10,000	—	1,253	8,747
Total	<u>\$ 172,836</u>	<u>\$ —</u>	<u>\$ 1,253</u>	<u>\$ 171,583</u>

The contractual maturities of our marketable securities as of June 30, 2025 were as follows (in thousands):

	Fair Value
Within one year	\$ 24,893
After one year through five years	—
After five years through ten years	4,205
Total	<u>\$ 29,098</u>

3. Restricted Marketable Securities

Restricted marketable securities consisted of the following as of June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
U.S. debt	\$ 112,855	\$ 109,155
Foreign government obligations	53,942	49,024
Supranational debt	28,100	22,809
U.S. government obligations	18,840	18,148
Total restricted marketable securities	<u>\$ 213,737</u>	<u>\$ 199,136</u>

Our restricted marketable securities represent long-term investments to fund the estimated future cost of collecting and recycling modules covered under our solar module collection and recycling program. We have established a trust under which funds are put into custodial accounts with an established and reputable bank, for which First Solar, Inc.; First Solar Malaysia Sdn. Bhd.; and First Solar Manufacturing GmbH are grantors. As of June 30, 2025 and December 31, 2024, such custodial accounts also included noncurrent restricted cash and cash equivalents balances of \$3.5 million and \$5.0 million, respectively, which were reported within “Other assets.” Trust funds may be disbursed for qualified module collection and recycling costs (including capital and facility related recycling costs), payments to customers for assuming collection and recycling obligations, and reimbursements of any overfunded amounts. Investments in the trust must meet certain investment quality criteria comparable to highly rated government or agency bonds. As necessary, we fund any incremental amounts for our estimated collection and recycling obligations on an annual basis based on the estimated costs of collecting and recycling covered modules, estimated rates of return on our restricted marketable securities, and an estimated solar module life of 25 years, less amounts already funded in prior years. During the six months ended June 30, 2025 and June 30, 2024, we purchased \$5.0 million and \$7.9 million of restricted marketable securities, respectively, as part of our ongoing management of the custodial accounts.

See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the fair value of our restricted marketable securities. The following tables summarize the unrealized gains and losses related to our restricted marketable securities, by major security type, as of June 30, 2025 and December 31, 2024 (in thousands):

	As of June 30, 2025			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. debt	\$ 143,727	\$ —	\$ 30,872	\$ 112,855
Foreign government obligations	67,082	—	13,140	53,942
Supranational debt	30,232	—	2,132	28,100
U.S. government obligations	24,322	—	5,482	18,840
Total	<u>\$ 265,363</u>	<u>\$ —</u>	<u>\$ 51,626</u>	<u>\$ 213,737</u>

	As of December 31, 2024			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. debt	\$ 144,652	\$ —	\$ 35,497	\$ 109,155
Foreign government obligations	62,595	—	13,571	49,024
Supranational debt	25,351	—	2,542	22,809
U.S. government obligations	24,368	—	6,220	18,148
Total	<u>\$ 256,966</u>	<u>\$ —</u>	<u>\$ 57,830</u>	<u>\$ 199,136</u>

As of June 30, 2025, the contractual maturities of these securities were between 6 years and 14 years, and restricted marketable securities with unrealized losses had generally been in a loss position for a period of time greater than 12 months. The unrealized losses were primarily due to increases in interest rates relative to rates at the time of purchase, and, based on the underlying credit quality of the investments, we expect to hold such securities until we recover our cost basis.

4. Consolidated Balance Sheet Details

Accounts receivable trade, net

Accounts receivable trade, net consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Accounts receivable trade, gross	\$ 1,740,278	\$ 1,262,353
Allowance for credit losses	(9,306)	(1,304)
Accounts receivable trade, net	<u>\$ 1,730,972</u>	<u>\$ 1,261,049</u>

During 2024, we entered into various revolving factoring arrangements to sell certain trade receivables to unrelated financial institutions. Transfers under these arrangements, which retained servicing but were without recourse, qualified as true sales under Accounting Standards Codification (“ASC”) 860, and we derecognized the sold receivables when control transferred to the financial institutions. We factored \$245.7 million and \$126.0 million under these arrangements and recorded \$5.3 million and \$1.9 million of discounts on factored receivables in “Selling, general and administrative” expense during the six months ended June 30, 2025 and the year ended December 31, 2024, respectively. The trade receivables sold that remained outstanding as of June 30, 2025 and December 31, 2024 were \$227.3 million and \$126.0 million, respectively. Proceeds from the sale of receivables are classified as operating activities in our condensed consolidated statements of cash flows.

Inventories

Inventories consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Raw materials	\$ 474,954	\$ 489,524
Work in process	107,546	115,696
Finished goods	1,101,358	754,536
Inventories	<u>\$ 1,683,858</u>	<u>\$ 1,359,756</u>
Inventories – current	\$ 1,414,006	\$ 1,084,384
Inventories – noncurrent	\$ 269,852	\$ 275,372

Other current assets

Other current assets consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Spare maintenance materials and parts	\$ 252,128	\$ 214,189
Prepaid expenses	95,143	75,250
Indirect tax receivables	90,530	122,131
Operating supplies	58,785	49,906
Restricted cash	48,257	8,262
Prepaid income taxes	29,415	6,408
Insurance receivable for accrued litigation (1)	21,800	21,800
Derivative instruments (2)	2,904	13,452
Other	43,267	35,484
Other current assets	<u>\$ 642,229</u>	<u>\$ 546,882</u>

(1) See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for discussion of our legal proceedings.

(2) See Note 6. "Derivative Financial Instruments" to our condensed consolidated financial statements for discussion of our derivative instruments.

Property, plant and equipment, net

Property, plant and equipment, net consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Land	\$ 39,566	\$ 38,879
Buildings and improvements	1,615,841	1,584,981
Machinery and equipment	4,902,913	4,800,545
Office equipment and furniture	151,878	181,647
Leasehold improvements	40,778	40,300
Construction in progress	1,269,913	858,538
Property, plant and equipment, gross	<u>8,020,889</u>	<u>7,504,890</u>
Accumulated depreciation	<u>(2,298,328)</u>	<u>(2,091,207)</u>
Property, plant and equipment, net	<u>\$ 5,722,561</u>	<u>\$ 5,413,683</u>

We evaluate our property, plant, and equipment for impairment under a held-and-used impairment model whenever events or changes in business circumstances arise that may indicate that the carrying amount of the assets may not be recoverable. Such events and changes include, among other things, significant changes in the manner of use of the assets, expectations that the assets may be sold or otherwise disposed of before the end of their useful lives, and the expected operational status of our international manufacturing facilities. As of June 30, 2025, the recoverability of our property, plant, and equipment was based on certain expectations regarding the ongoing operation of our international manufacturing facilities. However, it is reasonably possible that the operational status of one or more of our international facilities may be adversely affected by geopolitical developments, including trade policies or tariffs, which may result in future decisions to reduce, pause, or cease operations at these facilities. Such decisions may result in certain property, plant, and equipment being sold or otherwise disposed of before the end of their previously estimated useful lives, which, in turn, could result in a decrease in the value, and possible impairment, of this property, plant, and equipment. Accordingly, any such changes to the operational status of our international

manufacturing facilities could be material to our condensed consolidated financial statements and have a significant adverse effect on our results of operations.

Depreciation of property, plant and equipment was \$122.1 million and \$244.4 million for the three and six months ended June 30, 2025, respectively, and \$93.4 million and \$180.1 million for the three and six months ended June 30, 2024, respectively.

Other assets

Other assets consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Advance payments for raw materials	\$ 332,681	\$ 249,218
Lease assets (1)	138,169	143,545
Income tax receivables	110,067	87,025
Project assets	27,776	25,455
Prepaid expenses	20,716	34,250
Restricted cash	3,606	3,613
Restricted cash equivalents	3,480	4,972
Accounts receivable, trade (2)	—	94,373
Other (3)	65,782	55,319
Other assets	<u>\$ 702,277</u>	<u>\$ 697,770</u>

(1) See Note 7. “Leases” to our condensed consolidated financial statements for discussion of our lease arrangements.

(2) In December 2024, we recognized \$94.4 million of noncurrent trade receivables attributable to extended payment terms with a customer. During the three months ended June 30, 2025, these trade receivables were sold under a factoring arrangement.

(3) During 2023, we entered into a power purchase agreement with Cleantech Solar (“Cleantech”), a leading provider of renewable energy solutions in India and Southeast Asia, and Cleantech committed to construct certain photovoltaic (“PV”) solar and wind power-generating assets to supply electricity to our manufacturing facility in India.

During 2024, we purchased ownership interests in two subsidiaries of Cleantech for \$7.9 million. These subsidiaries own certain of the power-generating assets that supply electricity to our facility, and we account for our investments in these subsidiaries using the equity method.

During the three and six months ended June 30, 2025, we purchased \$1.0 million and \$1.1 million, respectively, of electricity from these subsidiaries. During the six months ended June 30, 2024, we recognized \$19.0 million of revenue from module sales of 75 megawatts to one of these subsidiaries.

Accrued expenses

Accrued expenses consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Accrued property, plant and equipment	\$ 176,475	\$ 136,176
Accrued freight	81,713	95,940
Accrued inventory	75,838	64,866
Product warranty liability (1)	60,165	62,139
Accrued compensation and benefits	45,363	30,612
Accrued other taxes	39,883	41,178
Other	113,807	77,670
Accrued expenses	<u>\$ 593,244</u>	<u>\$ 508,581</u>

(1) See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for discussion of our product warranties.

Other current liabilities

Other current liabilities consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Secured borrowings (1)	\$ 394,634	\$ —
Accrued litigation (2)	21,800	21,800
Derivative instruments (3)	16,740	18,619
Lease liabilities (4)	16,293	13,281
Other	55,080	7,184
Other current liabilities	<u>\$ 504,547</u>	<u>\$ 60,884</u>

(1) During the three months ended June 30, 2025, we transferred \$400.0 million of trade receivables to a financial institution under a factoring arrangement with recourse, while retaining servicing responsibilities. Transfers under this arrangement do not meet the criteria for a sale of receivables and are therefore accounted for as secured borrowings.

As of June 30, 2025, transferred trade receivables of \$400.0 million remained on our condensed consolidated balance sheets within "Accounts receivable trade, net," and a corresponding liability was recorded under "Other current liabilities." We record discounts on receivables factored with recourse as interest expense over the term of the respective receivables. Accordingly, during the three months ended June 30, 2025, we recorded \$0.2 million of interest expense associated with these arrangements.

(2) See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for discussion of our legal proceedings.

(3) See Note 6. "Derivative Financial Instruments" to our condensed consolidated financial statements for discussion of our derivative instruments.

(4) See Note 7. "Leases" to our condensed consolidated financial statements for discussion of our lease arrangements.

Other liabilities

Other liabilities consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	December 31, 2024
Lease liabilities (1)	\$ 78,277	\$ 95,743
Deferred tax liabilities, net	56,521	54,696
Other taxes payable	54,110	49,256
Product warranty liability (2)	15,663	14,296
Contingent consideration (2)	3,600	6,500
Other	13,736	13,278
Other liabilities	<u>\$ 221,907</u>	<u>\$ 233,769</u>

(1) See Note 7. “Leases” to our condensed consolidated financial statements for discussion of our lease arrangements.

(2) See Note 10. “Commitments and Contingencies” to our condensed consolidated financial statements for discussion of our product warranties and contingent consideration arrangements.

5. Government Grants

Government grants represent benefits provided by federal, state, or local governments that are not subject to the scope of ASC 740. We recognize a grant when we have reasonable assurance that we will comply with the grant’s conditions and that the grant will be received. Government grants whose primary condition is the purchase, construction, or acquisition of a long-lived asset are considered asset-based grants and are recognized as a reduction to such asset’s cost basis, which reduces future depreciation. Other government grants not related to long-lived assets are considered income-based grants and are recognized as a reduction to the related cost of activities that generated the benefit.

The following table presents the benefits recognized from asset-based government grants, net of depreciation and amortization, in our condensed consolidated balance sheets as of June 30, 2025 and December 31, 2024 (in thousands):

Balance Sheet Line Item	June 30, 2025	December 31, 2024
Property, plant and equipment, net	\$ 144,597	\$ 150,375
Other assets	5,476	5,625

In February 2021, the state government of Tamil Nadu, India granted First Solar certain incentives associated with the construction of our manufacturing facility in the state. Among other things, such incentives provide a 24% subsidy for eligible capital expenditures, contingent upon meeting certain minimum investment and employment commitments. We expect to receive the subsidy in six annual installments following the completion of the associated application and review process, which commenced earlier this year. Such incentives are reflected on our condensed consolidated balance sheets within “Government grants receivable, net” and “Government grants receivable” depending on the expected timing of cash receipts.

The following table presents the benefits recognized from income-based government grants in our condensed consolidated statements of operations for the three and six months ended June 30, 2025 and 2024 (in thousands):

Income Statement Line Item	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Cost of sales	\$ 377,041	\$ 258,580	\$ 678,861	\$ 453,007
Selling, general and administrative	15	—	48	—
Research and development	347	—	2,191	4,000

In August 2022, the previous U.S. President signed into law the Inflation Reduction Act of 2022 (“IRA”). Among other things, the IRA offers a tax credit, pursuant to Section 45X of the Internal Revenue Code (“IRC”), for solar modules and solar module components manufactured in the United States and sold to third parties. Such credit may be refundable by the Internal Revenue Service (“IRS”) or transferable to a third party and is available from 2023 to 2032, subject to phase down beginning in 2030. For eligible components, the credit is equal to (i) \$12 per square meter for a PV wafer, (ii) 4 cents multiplied by the capacity of a PV cell in watts, and (iii) 7 cents multiplied by the capacity of a PV module in watts. Based on the current form factor of our modules, we expect to qualify for a credit of approximately 17 cents per watt for each module produced in the United States and sold to a third party. We recognize such credit as a reduction to “Cost of sales” in the period the modules are sold to customers. Such credit is also reflected on our condensed consolidated balance sheets within “Government grants receivable, net” and “Government grants receivable” depending on the expected timing of cash receipts.

In December 2024, we entered into two agreements with a financial institution for the sale of \$857.2 million of Section 45X tax credits we generated during 2024 for aggregate cash proceeds of \$818.6 million. We received initial cash proceeds of \$616.0 million in December 2024 and received the remaining cash proceeds of \$202.6 million in February 2025.

In June 2025, we entered into an agreement with another financial institution for the sale of \$311.9 million of Section 45X tax credits we generated during 2025 for aggregate cash proceeds of \$296.3 million. We received the full cash proceeds in June 2025. In connection with this transaction, we recognized a loss of \$15.6 million during the three months ended June 30, 2025, which was reflected in “Cost of sales” in our condensed consolidated statements of operations.

6. Derivative Financial Instruments

As a global company, we are exposed in the normal course of business to various risks, including foreign currency and commodity price risks, that could affect our financial position, results of operations, and cash flows. We may use derivative instruments to hedge against these risks and do not hold such instruments for speculative or trading purposes.

Depending on the terms of the specific derivative instruments and market conditions, some of our derivative instruments may be assets and others liabilities at any particular balance sheet date. We report all of our derivative instruments at fair value and account for changes in the fair value of derivative instruments within “Accumulated other comprehensive loss” if the derivative instruments qualify for hedge accounting. For those derivative instruments that do not qualify for hedge accounting (i.e., “economic hedges”), we record the changes in fair value directly to earnings. See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the techniques we use to measure the fair value of our derivative instruments.

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The following tables present the fair values of derivative instruments included in our condensed consolidated balance sheets as of June 30, 2025 and December 31, 2024 (in thousands):

	June 30, 2025	
	Other Current Assets	Other Current Liabilities
Derivatives not designated as hedging instruments:		
Foreign exchange forward contracts	\$ 2,904	\$ 16,740
Total derivative instruments	<u>\$ 2,904</u>	<u>\$ 16,740</u>
	December 31, 2024	
	Other Current Assets	Other Current Liabilities
Derivatives designated as hedging instruments:		
Commodity swap contracts	\$ —	\$ 35
Derivatives not designated as hedging instruments:		
Foreign exchange forward contracts	13,452	18,584
Total derivative instruments	<u>\$ 13,452</u>	<u>\$ 18,619</u>

The following table presents the pretax amounts related to derivative instruments designated as cash flow hedges affecting accumulated other comprehensive income (loss) and our condensed consolidated statements of operations for the six months ended June 30, 2025 and 2024 (in thousands):

	Commodity Swap Contracts
Balance as of December 31, 2024	\$ (366)
Amount reclassified to cost of sales	366
Balance as of June 30, 2025	<u>\$ —</u>
Balance as of December 31, 2023	\$ (1,493)
Amounts recognized in other comprehensive income (loss)	(873)
Amount reclassified to cost of sales	1,495
Balance as of June 30, 2024	<u>\$ (871)</u>

The following table presents the effect of derivative instruments not designated as hedges on our condensed consolidated statements of operations for the three and six months ended June 30, 2025 and 2024 (in thousands):

	Income Statement Line Item	Amount of Gain (Loss) Recognized in Income Statement			
		Three Months Ended June 30,		Six Months Ended June 30,	
		2025	2024	2025	2024
Foreign exchange forward contracts	Foreign currency loss, net	\$ 8,061	\$ (6,859)	\$ 4,578	\$ (15,808)

Foreign Currency Risk

Transaction Exposure and Economic Hedging

Many of our subsidiaries have assets and liabilities (primarily cash, receivables, deferred taxes, payables, accrued expenses, lease liabilities, debt, and solar module collection and recycling liabilities) that are denominated in currencies other than the subsidiaries' functional currencies. Changes in the exchange rates between the functional currencies of our subsidiaries and the other currencies in which these assets and liabilities are denominated will create fluctuations in our reported condensed consolidated statements of operations. We may enter into foreign exchange forward contracts or other financial instruments to economically hedge assets and liabilities against the effects of currency exchange rate fluctuations. The gains and losses on such foreign exchange forward contracts will economically offset all or part of the transaction gains and losses that we recognize in earnings on the related foreign currency denominated assets and liabilities.

We also enter into foreign exchange forward contracts to economically hedge balance sheet and other exposures related to transactions between certain of our subsidiaries and transactions with third parties. Such contracts are considered economic hedges and do not qualify for hedge accounting. Accordingly, we recognize gains or losses from the fluctuations in foreign exchange rates and the fair value of these derivative contracts in "Foreign currency loss, net" on our condensed consolidated statements of operations.

As of June 30, 2025 and December 31, 2024, the U.S. Dollar equivalent notional values of our foreign exchange forward contracts that do not qualify for hedge accounting were \$532.8 million and \$603.4 million, respectively, including contracts in Indian Rupee, Euro, and Malaysian Ringgit, among other currencies.

Commodity Price Risk

From time to time, we use commodity swap contracts to mitigate our exposure to commodity price fluctuations for certain raw materials used in the production of our modules. During the year ended December 31, 2024, we entered into various commodity swap contracts to hedge a portion of our forecasted cash flows for purchases of steel between April 2024 and December 2024. Such swaps had an aggregate initial notional value based on short tons of forecasted steel purchases, equivalent to \$7.6 million, and entitled us to receive the price based on the U.S. Midwest Hot-Rolled Coil Steel Index while requiring us to pay certain fixed prices. The notional amount of the commodity swap contracts proportionately adjusted with forecasted purchases of steel.

These commodity swap contracts qualified for accounting as cash flow hedges in accordance with ASC 815, and we designated them as such. We reported unrealized gains or losses on such contracts in "Accumulated other comprehensive loss" and subsequently reclassified applicable amounts into earnings when the hedged transactions occurred and impacted earnings. We determined that these derivative financial instruments were highly effective as cash flow hedges as of December 31, 2024. As of June 30, 2025, we had no outstanding cash flow hedges.

7. Leases

Our lease arrangements include our corporate and administrative offices, certain warehouses, certain land for our manufacturing facilities, and certain of our manufacturing equipment. Such leases primarily relate to assets located in the United States, Malaysia, India, and Vietnam.

The following table presents certain quantitative information related to our lease arrangements for the three and six months ended June 30, 2025 and 2024, and as of June 30, 2025 and December 31, 2024 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Finance lease cost:				
Amortization of right-of-use assets	\$ 403	\$ 120	\$ 801	\$ 236
Interest on lease liabilities	536	254	1,068	484
Operating lease cost	4,198	3,228	8,313	6,449
Variable lease cost	822	723	1,717	1,432
Short-term lease cost	161	294	435	478
Total lease cost	\$ 6,120	\$ 4,619	\$ 12,334	\$ 9,079
Cash paid for amounts included in the measurement of:				
Operating lease liabilities			\$ 7,830	\$ 6,123
Finance lease liabilities			933	110
Lease assets obtained in exchange for:				
Operating lease liabilities			\$ 1,663	\$ 532
Finance lease liabilities			34	3,428

	June 30, 2025		December 31, 2024	
	Operating Leases	Finance Leases	Operating Leases	Finance Leases
Lease assets	\$ 109,684	\$ 28,485	\$ 114,283	\$ 29,262
Lease liabilities – current	14,345	1,948	11,799	1,482
Lease liabilities – noncurrent	49,043	29,234	66,211	29,532
Weighted-average remaining lease term	9 years	27 years	9 years	28 years
Weighted-average discount rate	5.2 %	6.6 %	5.5 %	6.6 %

As of June 30, 2025, the future payments associated with our lease liabilities were as follows (in thousands):

	Operating Leases	Finance Leases
Remainder of 2025	\$ 7,733	\$ 993
2026	15,183	2,797
2027	8,015	2,840
2028	7,363	2,893
2029	5,537	2,970
2030	3,769	3,004
Thereafter	35,254	52,246
Total future payments	82,854	67,743
Less: interest	(19,466)	(36,561)
Total lease liabilities	\$ 63,388	\$ 31,182

8. Fair Value Measurements

The following is a description of the valuation techniques that we use to measure the fair value of assets and liabilities that we measure and report at fair value on a recurring basis:

- *Cash Equivalents and Restricted Cash Equivalents.* At June 30, 2025 and December 31, 2024, our cash equivalents and restricted cash equivalents consisted of money market funds. We value our cash equivalents and restricted cash equivalents using observable inputs that reflect quoted prices for securities with identical characteristics and classify the valuation techniques that use these inputs as Level 1.
- *Marketable Securities and Restricted Marketable Securities.* At June 30, 2025 and December 31, 2024, our marketable securities consisted of time deposits and U.S. debt, and our restricted marketable securities consisted of U.S. debt, foreign and U.S. government obligations, and supranational debt. We value our marketable securities and restricted marketable securities using observable inputs that reflect quoted prices for securities with identical characteristics or quoted prices for securities with similar characteristics and other observable inputs (such as interest rates that are observable at commonly quoted intervals). Accordingly, we classify the valuation techniques that use these inputs as either Level 1 or Level 2 depending on the inputs used. We also consider the effect of our counterparties' credit standing in these fair value measurements.
- *Derivative Assets and Liabilities.* At June 30, 2025 and December 31, 2024, our derivative assets and liabilities consisted of foreign exchange forward contracts involving major currencies and commodity swap contracts involving major commodity prices. Since our derivative assets and liabilities are not traded on an exchange, we value them using standard industry valuation models. As applicable, these models project future cash flows and discount the amounts to a present value using market-based observable inputs, including credit risk, foreign exchange rates, forward and spot prices for currencies, and forward prices for commodities. These inputs are observable in active markets over the contract term of the derivative instruments we hold, and accordingly, we classify the valuation techniques as Level 2. In evaluating credit risk, we consider the effect of our counterparties' and our own credit standing in the fair value measurements of our derivative assets and liabilities, respectively.
- *Contingent Consideration.* At June 30, 2025 and December 31, 2024, our contingent consideration consisted of balances associated with a prior business acquisition. We project future cash outflows associated with certain payout outcomes and discount the amounts to a present value using significant unobservable inputs, including various probabilities and assumptions regarding the timing, nature, and extent of technical milestones achieved. We classify the valuation technique that uses these inputs as Level 3.

At June 30, 2025 and December 31, 2024, the fair value measurements of our assets and liabilities measured on a recurring basis were as follows (in thousands):

	Fair Value Measurements at Reporting Date Using			
	June 30, 2025	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents:				
Money market funds	\$ 39,241	\$ 39,241	\$ —	\$ —
Restricted cash equivalents:				
Money market funds	3,480	3,480	—	—
Marketable securities:				
Time deposits	20,025	20,025	—	—
U.S. debt	9,073	—	9,073	—
Restricted marketable securities	213,737	—	213,737	—
Derivative assets	2,904	—	2,904	—
Total assets	<u>\$ 288,460</u>	<u>\$ 62,746</u>	<u>\$ 225,714</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities	\$ 16,740	\$ —	\$ 16,740	\$ —
Contingent consideration	3,600	—	—	3,600
Total liabilities	<u>\$ 20,340</u>	<u>\$ —</u>	<u>\$ 16,740</u>	<u>\$ 3,600</u>

	Fair Value Measurements at Reporting Date Using			
	December 31, 2024	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents:				
Money market funds	\$ 526,580	\$ 526,580	\$ —	\$ —
Restricted cash equivalents:				
Money market funds	4,972	4,972	—	—
Marketable securities:				
Time deposits	162,836	162,836	—	—
U.S. debt	8,747	—	8,747	—
Restricted marketable securities	199,136	—	199,136	—
Derivative assets	13,452	—	13,452	—
Total assets	<u>\$ 915,723</u>	<u>\$ 694,388</u>	<u>\$ 221,335</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities	\$ 18,619	\$ —	\$ 18,619	\$ —
Contingent consideration	6,500	—	—	6,500
Total liabilities	<u>\$ 25,119</u>	<u>\$ —</u>	<u>\$ 18,619</u>	<u>\$ 6,500</u>

Fair Value of Financial Instruments

At June 30, 2025 and December 31, 2024, the carrying values and fair values of our financial instruments not measured at fair value were as follows (in thousands):

	June 30, 2025		December 31, 2024	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Assets:				
Government grants receivable – noncurrent	\$ 238,850	\$ 213,789	\$ 157,570	\$ 123,743
Liabilities:				
Long-term debt, including current maturities (1)	\$ 419,101	\$ 397,901	\$ 464,550	\$ 441,016

(1) Excludes unamortized issuance costs and debt arrangements with an original maturity of less than one year.

The carrying values in our condensed consolidated balance sheets of our trade accounts receivable, restricted cash, current government grants receivable, accounts payable, accrued expenses, and debt arrangements with an original maturity of less than one year approximated their fair values due to their nature and relatively short maturities; therefore, we excluded them from the foregoing table. The fair value measurements for our noncurrent government grants receivable and long-term debt are considered Level 2 measurements under the fair value hierarchy.

Credit Risk

We have certain financial instruments that subject us to credit risk. These consist primarily of cash, cash equivalents, marketable securities, accounts receivable, restricted cash, restricted cash equivalents, restricted marketable securities, foreign exchange forward contracts, and commodity swap contracts. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial instruments. We place these instruments with various high-quality financial institutions and limit the amount of credit risk from any one counterparty. We monitor the credit standing of our counterparty financial institutions. Our net sales are primarily concentrated among a limited number of customers. We monitor the financial condition of our customers and perform credit evaluations whenever considered necessary. We typically require some form of payment security from our customers, including, but not limited to, advance payments, parent guarantees, letters of credit, bank guarantees, or surety bonds.

9. Debt

Our debt arrangements consisted of the following at June 30, 2025 and December 31, 2024 (in thousands):

Loan Agreement	Currency	Balance (USD)	
		June 30, 2025	December 31, 2024
Revolving Credit Facility	USD	\$ —	\$ —
India Credit Facility	USD	419,101	464,550
India Citibank Working Capital Facility	INR	50,877	48,017
India JPM Working Capital Facility	INR	44,445	28,490
India Credit Agricole Working Capital Facility	INR	38,597	—
India HSBC Working Capital Facility	INR	25,146	69,097
Total debt principal		578,166	610,154
Less: unamortized issuance costs		(300)	(376)
Total debt		577,866	609,778
Less: current portion		(249,894)	(236,424)
Noncurrent portion		\$ 327,972	\$ 373,354

Revolving Credit Facility

In June 2023, we entered into a credit agreement with several financial institutions as lenders and JPMorgan Chase Bank, N.A. as administrative agent, which provides us with a senior secured credit facility (the “Revolving Credit Facility”) with an aggregate borrowing capacity of \$1.0 billion. Borrowing under the Revolving Credit Facility bears interest at a rate per annum equal to, at our option, (i) the Term Secured Overnight Financing Rate (“Term SOFR”), plus a credit spread of 0.10%, plus a margin that ranges from 1.25% to 2.25% or (ii) an alternate base rate as defined in the credit agreement, plus a margin that ranges from 0.25% to 1.25%. The margins under the Revolving Credit Facility are based on our net leverage ratio or, if we elect to switch to a credit ratings-based system after the investment grade ratings trigger date occurs (as defined in the credit agreement), on our public debt rating.

In addition to paying interest on outstanding principal under the Revolving Credit Facility, we are required to pay an unused commitment fee that ranges from 0.125% to 0.375% per annum based on the same factors discussed above and the daily unused commitments under the facility. We are also required to pay (i) a letter of credit fee based on the applicable margin for Term SOFR loans on the face amount of each letter of credit, (ii) a letter of credit fronting fee as agreed by us and such issuing lender, and (iii) other customary letter of credit fees. Our Revolving Credit Facility matures in June 2028. Loans and letters of credit issued under the Revolving Credit Facility are secured by liens on substantially all of our tangible and intangible assets.

As of June 30, 2025 and December 31, 2024, we had no outstanding debt or letters of credit under our Revolving Credit Facility.

India Credit Facility

In July 2022, FS India Solar Ventures Private Limited (“FSISV”), our indirect wholly-owned subsidiary, entered into a finance agreement (the “India Credit Facility”) with the U.S. International Development Finance Corporation for aggregate borrowing of up to \$500.0 million for the development and construction of a solar module manufacturing facility in India. Principal on the India Credit Facility is payable in scheduled semi-annual installments beginning in August 2024 through the facility’s expected maturity in August 2029. The India Credit Facility is guaranteed by First Solar, Inc.

India Citibank Working Capital Facility

In August 2024, FSISV entered into a working capital facility agreement (the “India Citibank Working Capital Facility”) with Citibank, N.A. In January 2025, the India Citibank Working Capital Facility was amended to provide certain working capital loans of up to INR 6.4 billion (\$74.9 million). The outstanding balance matures in the third and fourth quarters of 2025. The India Citibank Working Capital Facility is guaranteed by First Solar, Inc.

India JPM Working Capital Facility

In December 2022, FSISV entered into a working capital facility agreement (the “India JPM Working Capital Facility”) with JPMorgan Chase Bank, N.A. for the issuance of bank guarantees, bonds, and other similar forms of security. During 2023, the India JPM Working Capital Facility was amended to include certain working capital loans of up to INR 6.2 billion (\$72.8 million). The outstanding balance matures in the fourth quarter of 2025 and the second quarter of 2026. The India JPM Working Capital Facility is guaranteed by First Solar, Inc.

India Credit Agricole Working Capital Facility

In August 2022, FSISV entered into a working capital facility agreement (the “India Credit Agricole Working Capital Facility”) with Credit Agricole Corporate and Investment Bank, for the issuance of letters of credit, bank guarantees, and overdraft. During 2024, the India Credit Agricole Working Capital Facility was amended to include certain working capital loans of up to INR 4.0 billion (\$46.8 million). The outstanding balance matures in the third quarter of 2025. The India Credit Agricole Working Capital Facility is guaranteed by First Solar, Inc.

India HSBC Working Capital Facility

In February 2024, FSISV entered into a working capital facility agreement (the “India HSBC Working Capital Facility”) with the Hongkong and Shanghai Banking Corporation Limited, which provides certain working capital loans of up to INR 8.2 billion (\$95.9 million). The outstanding balance matures in the fourth quarter of 2025. The India HSBC Working Capital Facility is guaranteed by First Solar, Inc.

10. Commitments and Contingencies

Commercial Commitments

During the normal course of business, we enter into commercial commitments in the form of letters of credit and surety bonds to provide financial and performance assurance to third parties. As of June 30, 2025, the issued and outstanding amounts and available capacities under these commitments were as follows (in millions):

	Issued and Outstanding	Available Capacity
Revolving Credit Facility (1)	\$ —	\$ 250.0
Bilateral facilities (2)	231.6	94.8
Surety bonds	130.5	137.3

(1) Our Revolving Credit Facility provides us with a sub-limit of \$250.0 million to issue letters of credit, at a fee based on the applicable margin for Term SOFR loans, a fronting fee, and other customary letter of credit fees.

(2) Of the total letters of credit issued under the bilateral facilities, \$1.6 million was secured with cash.

Product Warranties

When we recognize revenue for sales of modules, we accrue liabilities for the estimated future costs of meeting our limited warranty obligations. We estimate our limited product warranty liability for power output and defects in materials and workmanship under normal use and service conditions based on return rates for each series of module technology and other factors. We make and revise these estimates based primarily on the number of solar modules under warranty installed at customer locations, our historical experience with and projections of warranty claims, and our estimated per-module replacement costs. We also monitor our expected future module performance through certain quality and reliability testing and actual performance in certain field installation sites. From time to time, we have taken remediation actions with respect to affected modules beyond our limited warranties and may elect to do so in the future, in which case we would incur additional expenses. Such potential voluntary future remediation actions beyond our limited warranty obligations may be material to our condensed consolidated statements of operations if we commit to any such remediation actions.

Product warranty activities during the three and six months ended June 30, 2025 and 2024 were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Product warranty liability, beginning of period	\$ 75,566	\$ 25,194	\$ 76,435	\$ 25,491
Accruals for new warranties issued	3,323	1,653	5,979	3,050
Settlements	(3,061)	(3,152)	(6,572)	(5,344)
Changes in estimate of product warranty liability	—	—	(14)	498
Product warranty liability, end of period	\$ 75,828	\$ 23,695	\$ 75,828	\$ 23,695
Current portion of warranty liability	\$ 60,165	\$ 5,684	\$ 60,165	\$ 5,684
Noncurrent portion of warranty liability	\$ 15,663	\$ 18,011	\$ 15,663	\$ 18,011

During the year ended December 31, 2024, we identified manufacturing issues affecting certain Series 7 modules manufactured in 2023 and 2024 that may cause the modules to experience premature power loss once installed in the field. The ultimate loss we will incur for these manufacturing issues will depend on the extent of the premature power loss that is experienced in relation to the obligations under our limited product warranties, as well as any potential additional commitments we may make to remediate the affected modules. Based on currently available information and certain assumptions and estimates, we believe a reasonable estimate of the aggregate losses related to these manufacturing issues will range from approximately \$56 million to \$100 million. No individual amount within that range is a better estimate than any other amount. Accordingly, we increased our product warranty liability by the low end of the range, which we recorded as a reduction to revenue during the year ended December 31, 2024. The estimated range set forth above was based on our evaluation of the currently available information, including select samples of module performance data from several locations, the estimated number of affected modules, and projections of probable costs to remediate the issues. As additional information becomes available to us, our estimate of the aggregate losses related to these manufacturing issues may change, and any change in estimate may also result in a change to our product warranty liability.

Indemnifications

In certain limited circumstances, we have provided indemnifications to customers or other parties under which we are contractually obligated to compensate such parties for losses they suffer resulting from a breach of a representation, warranty, or covenant; the resolution of specific matters associated with a solar project's development or construction; guarantees of a third party's payment or performance obligations; or any disallowance or lack of the right to claim all or any portion of certain tax credits. For contracts that have such indemnification provisions, we initially recognize a liability under ASC 460 for the estimated premium that would be required by a guarantor to issue the same indemnity in a standalone arm's-length transaction with an unrelated party. We may base these estimates on the cost of insurance or other instruments that cover the underlying risks being indemnified and may purchase such instruments to mitigate our exposure to potential indemnification payments. We subsequently measure such liabilities at the greater of the initially estimated premium or the contingent liability required to be recognized under ASC 450. We recognize any indemnification liabilities as a reduction of earnings associated with the related transaction.

After an indemnification liability is recorded, we derecognize such amount pursuant to ASC 460 depending on the nature of the indemnity, which derecognition typically occurs upon expiration or settlement of the arrangement, and any contingent aspects of the indemnity are accounted for in accordance with ASC 450. As of December 31, 2024, we accrued \$2.5 million of indemnification liabilities. As of June 30, 2025, we had no accrual for indemnification liabilities, and the maximum potential amount of future payments under our indemnifications was \$1.8 billion. Such potential payments primarily relate to a future retroactive event that affects an entity's ability to benefit from the transfer of Section 45X tax credits.

Contingent Consideration

As part of a business acquisition in May 2023, we agreed to pay additional consideration of up to \$42.5 million to the selling shareholders contingent upon the successful achievement of certain technical milestones. As of June 30, 2025, we reduced the associated long-term contingent consideration liability to \$3.6 million, based on certain revisions to the probability and timing of achieving the remaining milestones. Changes in the fair value of the contingent consideration arrangement are classified within “Research and development” expense in our condensed consolidated statements of operations. As of December 31, 2024, we recorded \$6.5 million of long-term liabilities for such contingent obligation, which was based on its estimated fair value at that time.

Solar Module Collection and Recycling Liability

We previously established a module collection and recycling program, which has since been discontinued, to collect and recycle modules sold and covered under such program once the modules reach the end of their service lives. For legacy customer sales contracts that are covered under this program, we agreed to pay the costs for the collection and recycling of qualifying solar modules, and the end-users agreed to notify us, disassemble their solar power systems, package the solar modules for shipment, and revert ownership rights over the modules back to us at the end of the modules’ service lives. Accordingly, we recorded any collection and recycling obligations within “Cost of sales” at the time of sale based on the estimated cost to collect and recycle the covered solar modules.

We estimate the cost of our collection and recycling obligations based on the present value of the expected future cost of collecting and recycling the solar modules, which includes estimates for the cost of packaging materials; the cost of freight from the solar module installation sites to a recycling center; material, labor, and capital costs; and by-product credits for certain materials recovered during the recycling process. We base these estimates on our experience collecting and recycling solar modules and on certain assumptions regarding costs at the time the solar modules will be collected and recycled. In the periods between the time of sale and the related settlement of the collection and recycling obligation, we accrete the carrying amount of the associated liability and classify the corresponding expense within “Selling, general and administrative” expense on our condensed consolidated statements of operations.

Our module collection and recycling liability was \$144.6 million and \$134.4 million as of June 30, 2025 and December 31, 2024, respectively. See Note 3. “Restricted Marketable Securities” to our condensed consolidated financial statements for more information about our arrangements for funding this liability.

Legal Proceedings

During the year ended December 31, 2022, we received several indemnification demands from certain customers, for whom we provided EPC services, regarding claims that such customers’ PV tracker systems infringe, in part, on patents owned by Rovshan Sade (“Plaintiff”), the owner of a company called Trabant Solar, Inc. In January 2023, we were notified by two of our customers that Plaintiff served them with patent infringement complaints, and we have assumed the defense of these claims. We have conducted due diligence on the patents and claims and believe that we will prevail in the actions. Since filing the action, Plaintiff has sought a series of stays of the proceedings, the last of which was lifted on July 14, 2025. Since the stays concluded, the parties have begun responding to their respective discovery demands. Because we have yet to fully evaluate these responses, at this time, we are not in a position to assess the likelihood of any potential loss or adverse effect on our financial condition or to estimate the amount or range of possible loss, if any, from these actions.

In April 2019, a subcontractor of First Solar sustained certain injuries while performing work at a former project site and, in May 2019, commenced legal action against a subsidiary of the Company. In June 2023, a jury awarded damages of approximately \$51.3 million to the plaintiff. On September 21, 2023, the Superior Court of California for Monterey County ruled, in response to a motion for remittitur filed by the Company, that the damages awarded to the plaintiff were excessive and reduced the award from \$51.3 million to \$21.8 million. The plaintiff and defendant have appealed and cross appealed varying aspects of the verdict and the remittitur. Accordingly, due to the uncertainty surrounding the multiple decisions and appeals, as of June 30, 2025, we recorded a \$21.8 million accrued litigation payable included in “Other current liabilities” in our condensed consolidated balance sheet. We believe the full amount of awarded damages will be covered by our various insurance policies. Accordingly, we also recorded a \$21.8 million receivable included in “Other current assets” in our condensed consolidated balance sheet as of June 30, 2025. The plaintiff did not accept the reduced award by the court ordered deadline of October 10, 2023. As a result, the \$21.8 million award has been vacated, and a new trial is expected to be scheduled. We, in conjunction with our insurance carriers, are challenging the initial verdict in an appellate court, and the plaintiff is cross appealing from the decision to reduce the award, among other issues, stemming from the trial. We filed our initial briefs with the court on December 20, 2024. The plaintiff submitted its briefs on April 23, 2025. First Solar’s reply briefings are due on August 6, 2025.

On September 29, 2023 and June 5, 2024, the Company received subpoenas from the Division of Enforcement of the SEC seeking documents and information relating to the Company’s operations in India, the Company’s entry into a PV module supply agreement with an India-based customer, and certain aspects of the Company’s technology roadmap, among other things. On May 7, 2025, we received a notice from the SEC stating that the SEC had concluded its investigation as to First Solar and noting that based on the information collected to date, the SEC staff did not intend to recommend an enforcement action against First Solar.

We are party to other legal matters and claims in the normal course of our operations. While we believe the ultimate outcome of these matters and claims will not have a material adverse effect on our financial position, results of operations, or cash flows, the outcome of such matters and claims is not determinable with certainty, and negative outcomes may adversely affect us.

11. Revenue from Contracts with Customers

We recognize revenue for module sales at a point in time following the transfer of control of the modules to the customer, which typically occurs upon delivery of the modules to the location specified in the terms of the underlying contract. Our customer contracts generally contain provisions that (i) require us to pay the customer liquidated damages if we fail to deliver modules by scheduled dates or if we fail to deliver modules that meet certain U.S. domestic content requirements and (ii) entitle us to a termination payment if the customer defaults on its contractual obligations and the contract is terminated. For sales of modules imported into the United States, our customer contracts generally include provisions that are intended to mitigate the adverse impact from changes in trade policy, such as tariffs. If a contract is terminated on the basis of these provisions, such contract would effectively be canceled without liability to either party, resulting in a corresponding reduction in future sales of solar modules related to such contract and the return of any customer deposit under the contract, if applicable.

The following table reflects the changes in our contract liabilities, which we classify as “Deferred revenue,” for the six months ended June 30, 2025 (in thousands):

	June 30, 2025	December 31, 2024	Six Month Change	
Deferred revenue	\$ 1,823,081	\$ 2,039,825	\$ (216,744)	(11)%

During the six months ended June 30, 2025, our contract liabilities decreased by \$216.7 million primarily due to (i) the recognition of revenue for sales of solar modules for which payment was received in prior years, (ii) the reversal of a \$63 million advance payment previously accrued due to our deferral of a customer's invoice due date, (iii) the restructuring of payment terms with a customer that resulted in the return of \$50 million of previously received advance payments in exchange for a letter of credit, and (iv) the recognition of revenue of \$42 million associated with certain customer contract terminations, partially offset by (v) advance payments received or accrued in the current period for future sales of solar modules. During the six months ended June 30, 2025 and 2024, we recognized revenue of \$236.1 million and \$221.3 million, respectively, that was included in the corresponding contract liability balance at the beginning of the periods.

As of June 30, 2025, we had entered into contracts with customers for the future sale of 61.9 GW of solar modules for an aggregate transaction price of \$18.5 billion, which we expect to recognize as revenue through 2030 as we transfer control of the modules to the customers. This volume and transaction price exclude contracts with customers in India for which payment has not been fully secured. This transaction price also excludes estimates of variable consideration associated with (i) future module technology improvements, including enhancements to certain energy related attributes, (ii) sales freight in excess of defined thresholds, (iii) changes to certain commodity prices, (iv) the module wattage committed for delivery, (v) the volume of modules sold that meet certain U.S. domestic content requirements, and (vi) changes to certain tariff structures within a defined threshold, among other things. As a result, the revenue recognized from such contracts may increase or decrease in future periods relative to the original transaction price or may otherwise be impacted if a contract is canceled. These contracts may also be subject to amendments as agreed to by the parties to the contract. These amendments may increase or decrease the volume of modules to be sold under the contract, change delivery schedules, or otherwise adjust the expected revenue under these contracts.

12. Share-Based Compensation

The following table presents share-based compensation expense recognized in our condensed consolidated statements of operations for the three and six months ended June 30, 2025 and 2024 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Cost of sales	\$ 962	\$ 1,388	\$ 1,306	\$ 2,415
Selling, general and administrative	4,815	6,005	6,700	10,874
Research and development	1,032	1,006	1,387	1,926
Production start-up	1	1	1	(24)
Total share-based compensation expense	\$ 6,810	\$ 8,400	\$ 9,394	\$ 15,191

As of June 30, 2025, we had \$35.1 million of unrecognized share-based compensation expense related to unvested restricted stock and performance units, which we expect to recognize over a weighted-average period of approximately 1.4 years.

In May 2021 and March 2022, the compensation committee of our board of directors approved grants of performance units for key executive officers to be earned over multi-year performance periods, which ended in December 2023 and December 2024, respectively. Vesting of the 2021 and 2022 grants of performance units was contingent upon the specific attainment targets of each grant, which targets included metrics such as contracted revenue, return on capital, cost per watt, incremental average selling price, and operating income metrics. In February 2024, the compensation committee certified the achievement of the vesting conditions applicable to the 2021 grants, which approximated the maximum level of performance. In February 2025, the compensation committee certified the achievement of the vesting conditions applicable to the 2022 grants, which approximated the maximum level of performance. Accordingly, each participant received one share of common stock for each vested performance unit granted, net of any tax withholdings.

In March 2023, March 2024, and May 2025, the compensation committee approved additional grants of performance units for key executive officers; such grants are expected to be earned over a multi-year performance period ending in December 2025, December 2026, and December 2027, respectively. Vesting of the 2023, 2024, and 2025 grants of performance units is contingent upon the specific attainment targets of each grant, which targets include metrics such as contracted revenue, production, incremental average selling price, operating margin, and technology development.

Vesting of performance units is also contingent upon the employment of program participants through the applicable vesting dates, with limited exceptions in case of death, disability, a qualifying retirement, or a change-in-control of First Solar. Outstanding performance units are included in the computation of diluted net income per share based on the number of shares that would be issuable if the end of the reporting period were the end of the contingency period.

13. Income Taxes

In July 2025, the U.S. President signed the budget reconciliation legislation (House of Representatives 1, or “H.R.1”) into law, commonly referred to as the “One Big Beautiful Bill.” H.R.1 includes significant provisions, such as (i) the permanent extension of certain expiring provisions of the Tax Cuts and Jobs Act, (ii) modifications to the international tax framework, and (iii) the restoration of favorable tax treatment for certain business provisions. H.R.1 has multiple effective dates, with certain provisions effective in 2025 and others implemented through 2027. We are currently evaluating the impact of H.R.1 on our consolidated financial statements.

In August 2022, the previous U.S. President signed into law the IRA, which revised U.S. tax law by, among other things, including a new corporate alternative minimum tax of 15% on certain large corporations, imposing a 1% excise tax on stock buybacks, and providing various incentives, including the introduction of the advanced manufacturing production credit under Section 45X of the IRC. The provisions of the IRA are generally effective for tax years beginning after 2022.

Our effective tax rate was 3.1% and 7.4% for the six months ended June 30, 2025 and 2024, respectively. The decrease in our effective tax rate was primarily driven by the relative amounts of advanced manufacturing production credits earned in each period, partially offset by lower relative amounts of income earned in foreign jurisdictions with lower tax rates. Our provision for income taxes differed from the amount computed by applying the U.S. statutory federal income tax rate of 21% primarily due to the effect of tax law associated with the IRA.

Our Malaysian subsidiary has been granted a long-term tax holiday that expires in 2027. The tax holiday, which generally provides for a full exemption from Malaysian income tax, is conditional upon our continued compliance with certain employment and investment thresholds. We are currently in compliance with such thresholds.

Our Vietnamese subsidiary has been granted a long-term tax incentive that generally provides a full exemption from Vietnamese income tax through 2023, followed by reduced annual tax rates of 5% through 2032 and 10% through 2036. Such long-term tax incentive is conditional upon our continued compliance with certain revenue and research and development (“R&D”) spending thresholds. We are currently in compliance with such thresholds.

We are subject to audit by federal, state, local, and foreign tax authorities. We are currently under examination in India, Chile, the United States, and the States of Georgia and Tennessee. We believe that adequate provisions have been made for any adjustments that may result from tax examinations. However, the outcome of tax examinations cannot be predicted with certainty. If any issues addressed by our tax examinations are not resolved in a manner consistent with our expectations, we could be required to adjust our provision for income taxes in the period such resolution occurs.

14. Net Income per Share

The calculation of basic and diluted net income per share for the three and six months ended June 30, 2025 and 2024 was as follows (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Basic net income per share				
Numerator:				
Net income	\$ 341,868	\$ 349,356	\$ 551,403	\$ 585,972
Denominator:				
Weighted-average common shares outstanding	107,245	107,042	107,184	107,011
Diluted net income per share				
Denominator:				
Weighted-average common shares outstanding	107,245	107,042	107,184	107,011
Effect of restricted stock and performance units	273	483	284	491
Weighted-average shares used in computing diluted net income per share	107,518	107,525	107,468	107,502
Net income per share:				
Basic	\$ 3.19	\$ 3.26	\$ 5.14	\$ 5.48
Diluted	\$ 3.18	\$ 3.25	\$ 5.13	\$ 5.45

The following table summarizes the potential shares of common stock that were excluded from the computation of diluted net income per share for the three and six months ended June 30, 2025 and 2024 as such shares would have had an anti-dilutive effect (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Anti-dilutive shares	1	—	1	—

15. Accumulated Other Comprehensive Loss

The following table presents the changes in accumulated other comprehensive loss, net of tax, for the six months ended June 30, 2025 (in thousands):

	Foreign Currency Translation Adjustment	Unrealized (Loss) Gain on Marketable Securities and Restricted Marketable Securities	Unrealized (Loss) Gain on Derivative Instruments	Total
Balance as of December 31, 2024	\$ (127,296)	\$ (56,483)	\$ (279)	\$ (184,058)
Other comprehensive income before reclassifications	16,432	6,530	—	22,962
Amounts reclassified from accumulated other comprehensive loss	323	—	366	689
Net tax effect	—	(422)	(87)	(509)
Net other comprehensive income	16,755	6,108	279	23,142
Balance as of June 30, 2025	\$ (110,541)	\$ (50,375)	\$ —	\$ (160,916)

The following table presents the pretax amounts reclassified from accumulated other comprehensive loss into our condensed consolidated statements of operations for the three and six months ended June 30, 2025 and 2024 (in thousands):

Comprehensive Income Components	Income Statement Line Item	Three Months Ended June 30,		Six Months Ended June 30,	
		2025	2024	2025	2024
Foreign currency translation adjustment	Other expense, net	\$ —	\$ —	\$ (323)	\$ —
Unrealized gain on marketable securities	Other expense, net	—	11	—	11
Unrealized loss on derivative instruments:					
Commodity swap contracts	Cost of sales	—	(346)	(366)	(1,495)
Total loss reclassified		\$ —	\$ (335)	\$ (689)	\$ (1,484)

16. Segment Reporting

First Solar operates as one business, which involves the design, manufacture, and sale of CdTe solar modules, which convert sunlight into electricity. As such, we operate as a single operating segment. Third-party customers of this segment include system developers, independent power producers, utilities, commercial and industrial companies, and other system owners and operators. Our business is managed by our Chief Executive Officer, who is also considered our chief operating decision maker (“CODM”).

Prior to 2025, we regularly provided our CODM with financial information that included certain legacy business activities. As such activities have continued to decline in size and importance, our CODM no longer receives detailed financial information at this disaggregated level. Therefore, we currently operate as a single operating segment, and our disclosures reflect this change.

Although our CODM regularly uses gross profit for key operating decisions about allocating resources and assessing performance, we have concluded that consolidated net income is also used and is the measure of profit or loss required to be disclosed under the provisions of ASC 280 for our single operating segment. Accordingly, we considered whether there were any significant expense categories to disclose and concluded that the condensed consolidated financial statements and accompanying notes thereto include the relevant categories regularly provided to our CODM. The measure of segment assets is reported in our condensed consolidated balance sheets as “Total assets.”

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Securities Act of 1933, as amended (the "Securities Act"), which are subject to risks, uncertainties, and assumptions that are difficult to predict. All statements in this Quarterly Report on Form 10-Q, other than statements of historical fact, are forward-looking statements. These forward-looking statements are made pursuant to safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements include statements, among other things, concerning: effects resulting from certain module manufacturing changes; our business strategy, including anticipated trends and developments in and management plans for our business and the markets in which we operate; future financial results, operating results, module volumes produced, module volumes sold, revenues, gross margin, operating expenses, products, projected costs (including estimated future module collection and recycling costs), warranties and anticipated claims thereunder, solar module technology and cost reduction roadmaps, product reliability, investments, and capital expenditures; our ability to continue to reduce the cost per watt of our solar modules; the impact of public policies, such as tariffs, export controls, or other trade remedies; the potential impact of legislation intended to encourage renewable energy investments through tax credits; our ability to expand manufacturing capacity worldwide, including the construction of new manufacturing facilities in the United States and related increases in manufacturing capacity; the impact of supply chain disruptions, which may affect the procurement of raw materials used in our manufacturing process and the distribution of our modules; R&D programs and our ability to improve the wattage of our solar modules; sales and marketing initiatives; our ability to enforce our intellectual property rights; and competition. In some cases, you can identify these statements by forward-looking words, such as "estimate," "expect," "anticipate," "project," "plan," "intend," "seek," "believe," "forecast," "foresee," "likely," "may," "should," "goal," "target," "might," "will," "could," "predict," "continue," "contingent," and the negative or plural of these words, and other comparable terminology.

Forward-looking statements are only predictions based on our current expectations and our projections about future events. All forward-looking statements included in this Quarterly Report on Form 10-Q are based upon information available to us as of the filing date of the report and therefore speak only as of the filing date. You should not place undue reliance on these forward-looking statements. We undertake no obligation to update any of these forward-looking statements for any reason, whether as a result of new information, future developments, or otherwise. These forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, levels of activity, performance, or achievements to differ materially from those expressed or implied by these statements. These factors include, but are not limited to:

- structural imbalances in global supply and demand for PV solar modules;
- our competitive position and other key competitive factors;
- the modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications;
- the impact of public policies, such as tariffs, export controls, or other trade remedies imposed on solar cells and modules or related raw materials or equipment;
- the loss of any of our large customers, or the ability of our customers and counterparties to perform under their contracts with us;
- our ability to attract new customers and to develop and maintain existing customer and supplier relationships;
- interest rate fluctuations and our customers' ability to secure financing;

- our ability to execute on our long-term strategic plans, including our ability to secure financing and realize the potential benefits of strategic acquisitions and investments;
- our ability to execute on our solar module technology and cost reduction roadmaps;
- claims under our limited warranty obligations;
- our continued investment in R&D;
- our ability to incorporate technology improvements into our manufacturing process, including the implementation of our copper replacement (“CuRe”) program;
- our ability to improve the wattage of our solar modules;
- our ability to construct new production facilities to support new product lines;
- the supply and price of key raw materials (including CdTe, tellurium, and tellurium compounds), components, and manufacturing equipment;
- supply chain disruptions;
- our ability to avoid manufacturing interruptions, including during the ramp of our Series 7 modules manufacturing facilities;
- future collection and recycling costs for solar modules covered by our module collection and recycling program, or otherwise as required by external laws and regulations;
- our ability to protect or successfully commercialize our intellectual property;
- environmental responsibility, including with respect to CdTe and other semiconductor materials;
- changes in, or the failure to comply with, government regulations and environmental, health, and safety requirements;
- evolving corporate governance and public disclosure regulations and expectations, including with respect to environmental, social, and governance matters;
- effects arising from and results of pending litigation;
- general economic and business conditions, including those influenced by U.S., international, and geopolitical events and conflicts;
- our ability to prevent and/or minimize the impact of cybersecurity incidents or information or security breaches;
- the severity and duration of public health threats;
- our ability to attract, train, retain, and successfully integrate key talent into our team; and
- all other matters discussed in Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2024, elsewhere in this Quarterly Report on Form 10-Q, and our other reports filed with the SEC.

You should carefully consider the risks and uncertainties described in this section. The following discussion and analysis of our business, financial condition, and results of operations should be read in conjunction with our condensed consolidated financial statements and the related notes thereto included in this Quarterly Report on Form 10-Q.

Executive Overview

We are America's leading PV solar technology and manufacturing company. The only U.S.-headquartered company among the world's largest solar manufacturers, First Solar is focused on competitively and reliably enabling power generation needs with our advanced, thin film PV technology. Developed at R&D labs in California and Ohio, the Company's technology represents the next generation of solar power generation, providing a competitive, high-performance, and responsibly produced alternative to conventional crystalline silicon PV solar modules. Our PV solar modules are produced using a fully integrated, continuous process that does not rely on Chinese crystalline silicon supply chains.

We are the world's largest thin film PV solar module manufacturer and the largest PV solar module manufacturer in the Western Hemisphere. We recently commenced operations at our fourth manufacturing facility in the United States, completed the expansion of our manufacturing footprint at our existing facilities in Ohio, and expect to complete construction and commence operations at our fifth manufacturing facility in the United States in the third quarter of 2025. With a global footprint that spans the United States, India, Malaysia, and Vietnam, we expect to have an annual manufacturing capacity of over 25 GW by 2026.

Certain of our financial results and other key operational developments for the three months ended June 30, 2025 include the following:

- Net sales for the three months ended June 30, 2025 increased by 9% to \$1.1 billion compared to \$1.0 billion for the same period in 2024. The increase was primarily due to a 5.7% increase in the volume of modules sold to third parties and an increase of \$40.4 million in revenue associated with customer contract terminations.
- Gross profit as a percentage of net sales for the three months ended June 30, 2025 decreased 3.8 percentage points to 45.6% from 49.4% for the same period in 2024. The decrease was primarily due to higher detention and demurrage charges; higher costs related to a sales mix that included more U.S.-produced modules; higher module storage costs; and losses associated with sales of tax credits; partially offset by a higher sales mix of modules qualifying for the advanced manufacturing production credit under Section 45X of the IRC and higher contract termination revenue.
- The total installed nameplate production capacity across all our facilities is approximately 21 GW. During the three months ended June 30, 2025, we produced 4.2 GW and sold 3.6 GW of solar modules.
- In June 2025, we entered into an agreement with a financial institution for the sale of \$311.9 million of Section 45X tax credits we generated during 2025 for aggregate cash proceeds of \$296.3 million. We received the full cash proceeds in June 2025. In connection with this transaction, we recognized a loss of \$15.6 million during the three months ended June 30, 2025. During this same period, we also recognized a \$13.4 million reduction to the carrying value of the remaining Section 45X tax credits generated during 2025 based on expected transfers of such credits to third parties. These losses were recorded in "Cost of sales" in our condensed consolidated statements of operations.

Market Overview

Solar energy is one of the fastest growing forms of renewable energy with numerous benefits, including economic benefits and speed of deployment, which make it an attractive complement to or substitute for traditional forms of energy generation. In recent years, the cost of producing electricity from PV solar power systems has decreased to levels that are competitive with or below the wholesale price of electricity in many markets. Other technological developments in the renewable energy industry, such as the advancement of energy storage capabilities, have further enhanced the prospects of solar energy as an alternative to traditional forms of energy generation. As a result of these and other factors, worldwide solar markets continue to develop and expand.

Government incentive programs have contributed to this momentum by providing solar module manufacturers, project developers, and project owners with various incentives to accelerate the deployment of solar power generation. Although we compete in markets that do not require solar-specific government incentive programs, our net sales and profits remain subject to variability based on the availability and size of these programs, including tax and production incentives, renewable portfolio standards, and other incentive programs intended to stimulate economies, achieve decarbonization initiatives, and/or establish greater energy independence. Such programs continue to influence the demand for PV solar energy around the world.

Supply and Demand

As a result of the market opportunities described above, we recently commenced operations at our fourth manufacturing facility in the United States, completed the expansion of our manufacturing footprint at our existing facilities in Ohio, and expect to complete construction and commence operations at our fifth manufacturing facility in the United States in the third quarter of 2025. We believe manufacturers of solar cells and modules, particularly those in China, have significant installed production capacity, relative to global demand, and the ability for additional capacity expansion. Accordingly, we believe the solar industry may experience periods of structural imbalance between supply and demand, which could lead to periods of pricing volatility. Further, demand for solar energy in key markets, such as the United States and India, may be affected by the nature and extent of commitments to the renewable energy transition at the local and global levels. Notwithstanding these considerations, utility and corporate demand for clean energy and overall electric load growth, especially as a result of artificial intelligence-driven data center demand, continue to increase. Further, even on an unsubsidized basis, utility-scale PV solar is cost competitive with conventional forms of energy generation, including natural gas and nuclear, and is significantly faster to deploy than a five-year natural gas project development timeline or a much longer nuclear project timeline.

Internationally, given the combination of (i) a European Union market captured by Chinese solar modules, where pricing is at levels near or below manufacturing costs, (ii) an India market effectively closed to Southeast Asian products, (iii) a general supply and demand imbalance for Southeast Asian products, and (iv) actual and anticipated tariffs on modules imported into the United States, we have reduced and expect to continue to reduce production of Series 6 modules at our international manufacturing facilities. In light of such market realities, we continue to advocate for industrial policies that provide a level playing field for domestic manufacturers of solar cells and modules. We also continue to focus on our strategies and points of differentiation, which include our advanced module technology, our manufacturing process and distributed manufacturing presence, our R&D capabilities, our commitment to responsible solar, and our financial stability.

Pricing Competition

The solar industry continues to be characterized by intense pricing competition, both at the module and system levels. This competition may result in an environment in which pricing falls rapidly, which could potentially increase demand for solar energy solutions but constrain the ability for module manufacturers and project developers to sustain meaningful and consistent profitability. Our results of operations could be adversely affected if competitors reduce pricing below their costs, bid aggressively low prices for module sale agreements, or are able to operate at minimal or negative operating margins for sustained periods of time. For certain of our competitors, including many in China, these practices may be enabled by their direct or indirect access to sovereign capital or other forms of state support. Module average selling prices in many global markets have declined. However, recent module pricing in the United States, our primary market, has remained relatively stable due, in part, to the rising demand for domestically manufactured modules as a result of the IRA and actual and anticipated tariffs on modules imported into the United States.

Diverse Offerings

We face intense competition from manufacturers of crystalline silicon solar modules and other emerging technologies. Solar module manufacturers compete with one another on sales price per watt, which may be influenced by several module value attributes, including energy yield, wattage (through a larger form factor or an improved conversion efficiency), degradation, sustainability, and reliability. Sales price per watt may also be influenced by warranty terms, customer payment terms, and/or module attributes. We believe that utility-scale solar will continue to be a compelling offering and will continue to represent an increasing portion of the overall electricity generation mix. However, this focus on utility-scale module offerings exists within a current market environment that includes rooftop and distributed generation solar, which may influence our future offerings.

We continue to devote significant resources to support the implementation of our technology roadmap and improve the energy output of our modules. In the course of our R&D activities, we explore various technologies in our efforts to sustain competitive differentiation of our modules. Such technologies include the development of bifacial modules, the implementation of our CuRe program, and the ongoing research and development of a viable and commercially scalable perovskite product.

- *Bifacial.* While conventional solar modules are monofacial, meaning their ability to produce energy is a function of direct and diffuse irradiance on their front side, most module manufacturers offer bifacial modules that also capture diffuse irradiance on the back side of a module. Bifaciality compromises nameplate efficiency, but by converting both front and rear side irradiance, such technology may improve the overall energy production of a module relative to nameplate efficiency when applied in certain applications, which could lower the overall levelized cost of electricity (“LCOE”) of a system when compared to systems using monofacial solar modules. Our bifacial module features an innovative transparent back contact, which, in addition to converting both front and rear side irradiance, allows infrared light to pass through rather than be absorbed as heat. This design lowers the operational temperature of the module, resulting in a higher energy yield.

- *CuRe*. Our CuRe program is intended to improve our current semiconductor structure by replacing copper with certain other elements that are expected to enhance module performance by improving its bifaciality characteristics, improving its temperature coefficient, and improving its warranted degradation. As a result of these performance improvements, our PV solar modules are expected to produce more energy in real world operating conditions over their estimated useful lives than crystalline silicon modules with the same nameplate capacity. In May 2024, we achieved a new world record CdTe research cell conversion efficiency of 23.1%, which was based on our CuRe program and certified by the U.S. Department of Energy's National Renewable Energy Laboratory. In late 2024, we commenced a limited commercial production run of modules employing our CuRe technology, and during the first half of 2025, we sold our first CuRe modules to customers. Beginning in early 2026, we intend to initiate a phased replication of the technology across certain manufacturing facilities within our fleet.
- *Perovskite*. We continue to research and develop our thin-film semiconductor technology, with a focus on the use of perovskite thin films. Perovskites have the potential to significantly increase the efficiency and reduce the cost of PV solar modules either through single-junction or potentially multi-junction devices. Supported by the associates at our California and European Technology Centers, we continue to advance our work on improving both the efficiency and stability of this technology in developing a viable and commercially scalable perovskite product. Our investment in this technology also includes the construction of a dedicated perovskite development line at our Ohio facility.

Product Efficiencies

The efficiencies gained from the vertical integration of our manufacturing model and our cost management initiatives allow us to compete favorably in markets where pricing for modules and systems is highly competitive. Our cost competitiveness is based in large part on our advanced thin film semiconductor technology, module wattage, proprietary manufacturing process (which enables us to produce a CdTe module in a matter of hours using a continuous and highly automated industrial manufacturing process, as opposed to a batch process), and focus on operational excellence. In addition, our CdTe modules use approximately 2% to 3% of the amount of semiconductor material that is used to manufacture conventional crystalline silicon solar modules. The cost of polysilicon is a significant driver of the manufacturing cost of crystalline silicon solar modules, and the timing and rate of change in the cost of silicon feedstock and polysilicon could lead to changes in solar module pricing levels.

Energy Performance

In many climates, our solar modules provide certain energy production advantages relative to competing crystalline silicon solar modules. As a result, our solar modules can produce more energy in real-world operating conditions than conventional crystalline silicon modules with the same nameplate capacity. Additionally, we warrant that our solar modules will produce at least 98% of their labeled power output rating during the first year, with the warranty coverage reducing by a degradation factor that is generally between 0.3% and 0.5%, depending on the module series, every year thereafter throughout the limited power output warranty period of up to 30 years.

While our modules are generally competitive in cost, reliability, and performance attributes, there can be no guarantee such competitiveness will continue to exist in the future to the same extent, or at all. Any declines in the competitiveness of our products could result in further declines in the average selling prices of our modules and additional margin compression. Accordingly, we continue to focus on enhancing the competitiveness of our solar modules through our module technology and cost reduction roadmaps.

Certain Trends and Uncertainties

We believe that our business, financial condition, and results of operations may be favorably or unfavorably impacted by the following trends and uncertainties. See Part II. “Other Information” Item 1A. “Risk Factors” for discussion of other risks (the “Risk Factors”) that may affect us.

Our business is evolving worldwide and is shaped by the varying ways in which our offerings can be compelling and economically viable solutions to energy needs in our key markets. In addressing electricity demands, we are focused on providing utility-scale module offerings in markets that we believe have a significant need for mass-scale PV solar electricity, including markets primarily in the United States and India. We closely evaluate and monitor the appropriate level of resources required to support such markets and their associated sales opportunities. When deployed in utility-scale applications, our modules provide energy at a lower LCOE compared to traditional forms of energy generation, making them an attractive alternative to or replacement for aging fossil fuel-based generation resources. Accordingly, future retirements of aging energy generation resources represent a significant increase in the potential market for solar energy.

Demand for our PV solar module offerings depends, in part, on certain factors outside our control. For example, many governments have proposed or enacted policies or incentive programs intended to encourage renewable energy investments to achieve decarbonization objectives and/or establish greater energy independence. While we compete in markets that do not require solar-specific government subsidies or incentive programs, our net sales and profits remain subject to variability based on the availability and size of government subsidies and economic incentives. Adverse changes in these factors could increase the cost of utility-scale systems, which could reduce demand for our solar modules. Recent developments to government incentive programs include the following:

- *United States.* In August 2022, the previous U.S. President signed the IRA into law, which was intended to accelerate the country’s ongoing transition to clean energy. Among other things, the financial incentives provided by the IRA have significantly increased demand for modules manufactured in the United States. We expect to qualify for the advanced manufacturing production credit under Section 45X of the IRC, which provides certain specified benefits for solar modules and solar module components manufactured in the United States and sold to third parties. However, the current U.S. presidential administration and control of the U.S. Congress present uncertainty as to the continued availability of certain benefits. For example, on January 20, 2025, the U.S. President issued the executive order entitled, “Unleashing American Energy,” which, among other things, indicated a lack of support for federal funding of certain solar and solar-related projects. Further, on July 4, 2025, the U.S. President signed H.R.1 into law, commonly referred to as the “One Big Beautiful Bill,” which significantly curtails the availability of clean energy tax credits. H.R.1 includes accelerating the termination of the clean electricity Investment Tax Credit (“ITC”) and Production Tax Credit (“PTC”) in relation to solar and restricting tax credits if a taxpayer employs certain products and components produced by a supplier with ties to a foreign entity of concern (“FEOC”). H.R.1 also severely limits Section 45X tax credit eligibility for products manufactured by, or with material assistance from, a FEOC.

- *India.* In March 2023, the government of India allocated financial incentives under the Production Linked Incentive (“PLI”) scheme to certain PV module manufacturers, including First Solar. The PLI scheme is expected to provide aggregate funding of INR 185 billion (\$2.2 billion) to certain PV module manufacturers, of which INR 11.8 billion (\$138 million) was allocated to First Solar, to promote the manufacturing of high efficiency solar modules in India and to reduce India’s dependency on foreign imports of solar modules. Under the PLI scheme, manufacturers were selected through a competitive bid process and may be entitled to receive certain cash incentives over a five-year period following the commissioning of their manufacturing facilities. Among other things, such incentives are subject to attaining certain minimum thresholds for module efficiency and temperature coefficient and require that a certain proportion of raw materials be sourced from the domestic market. Such conditions will be evaluated on a quarterly basis from 2026 through 2031. At this time, it is uncertain to what extent we may qualify for such incentives.

Demand for our solar energy solutions also depends on domestic or international trade policies and government regulations, which may be proposed, revised, and/or enacted across short- and long-term time horizons with varying degrees of impact to our net sales, profit, and manufacturing operations. Changes in these policies and regulations could adversely impact the competitive landscape of solar markets, which could reduce demand for our solar modules. Recent revisions or proposed changes to trade policy and government regulations include the following:

- *United States.* In April 2025, the U.S. President imposed a 10% “baseline” reciprocal tariff on nearly all U.S. trading partners, and additional, higher reciprocal tariffs on certain countries including Vietnam (46%), India (26%), and Malaysia (24%). Soon thereafter, the U.S. President paused the additional, higher tariffs on most countries, including Vietnam, India, and Malaysia, for 90 days. Effective May 14, 2025, the United States entered into an agreement with China to lower the reciprocal tariff rate to 10% for 90 days (i.e., until August 12, 2025). On July 2, 2025, the U.S. President announced that the United States and Vietnam had reached a preliminary trade agreement, which purportedly places a 20% tariff on all products of Vietnam and a 40% tariff on all “transshipped” goods. On July 7, 2025, the U.S. President paused the additional, higher tariffs on most countries until August 1, 2025, at which time certain revised, final reciprocal tariffs are expected to be effective. For more information about this development, see Part II. “Other Information” Item 1A. “Risk Factors – The modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or the impact of other public policies, such as tariffs or other trade remedies imposed on solar cells and modules or related raw materials or equipment, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.”
- *United States.* Effective June 4, 2025, the U.S. President increased tariffs on imported aluminum and steel articles under Section 232 of the Trade Expansion Act of 1962 from 25% to 50%. Further, on April 22, 2025, the U.S. Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of processed critical minerals, as well as their derivative products, under Section 232 of the Trade Expansion Act of 1962; on July 1, 2025, the U.S. Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of polysilicon and its derivatives under the same law. On February 25, 2025, the U.S. President announced a similar Section 232 investigation to determine the effects on national security of imports of copper in all forms; the U.S. president later announced a 50% tariff on copper, effective on August 1, 2025. For more information about the context of these developments, see Part II. “Other Information” Item 1A. “Risk Factors – The modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or the impact of other public policies, such as tariffs or other trade remedies imposed on solar cells and modules or related raw materials or equipment, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.”

- *China.* In February 2025, China announced that it would tighten export controls for five key minerals, including products containing tellurium, which is one of the main components of our CdTe modules. Although tellurium and products containing tellurium are sourced globally, China is a major global producer of tellurium and products containing tellurium. Exporters of tellurium and related products are generally required to obtain a license from the Chinese Ministry of Commerce. Since these export controls came into effect, we have assembled a cross-functional team to interpret the export controls and analyze how they may impact materials required for our module production. We have applied for and intend to continue applying for export licenses where appropriate, as well as continuing to implement other strategic alternatives such as sourcing from other suppliers to mitigate potential adverse impacts from these export controls.
- *United States.* In April 2024, the American Alliance for Solar Manufacturing Trade Committee, which includes First Solar, filed a set of antidumping and countervailing duty (“AD/CVD”) petitions with the U.S. Department of Commerce (“USDOC”) and the U.S. International Trade Commission (“USITC”) to impose duties on certain unfairly traded solar products from Cambodia, Malaysia, Thailand, and Vietnam. Following final affirmative determinations by the USDOC and USITC that identified final subsidy rates of 534.67% to 3,403.96% for Cambodia, 14.64% to 168.8% for Malaysia, 263.74% to 799.55% for Thailand, and 68.15% to 542.64% for Vietnam, AD/CVD orders, including the assessment of countervailing duties and suspension of liquidation of such products, were issued on June 9, 2025. On July 17, 2025, the Alliance for American Solar Manufacturing and Trade filed another set of AD/CVD petitions with the USDOC and the USITC to impose duties on unfairly traded crystalline silicon solar products from India, Indonesia, and Laos. In addition to a range of alleged illegal subsidies, the petitioners identified dumping margins of 213.96% for India, 89.65% for Indonesia, and 245.79 to 249.09% for Laos. For more information about this development, see Part II. “Other Information” Item 1A. “Risk Factors – The modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or the impact of other public policies, such as tariffs or other trade remedies imposed on solar cells and modules or related raw materials or equipment, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.”
- *India.* The Approved List of Models and Manufacturers (“ALMM”) was introduced in 2021 as a non-tariff barrier to incentivize domestic manufacturing of PV modules by approving the list of models and manufacturers who can participate in certain solar development projects. The ALMM is approved by the Ministry of New and Renewable Energy (“MNRE”), and any modifications to the ALMM and its application may affect future investments in solar module manufacturing in India. For example, in December 2024, the ALMM was amended to require nearly all solar development projects to use PV modules that contain domestically manufactured solar cells, which is expected to be effective for such projects completed on or after June 2026. For more information about the ALMM, see Part II. “Other Information” Item 1A. “Risk Factors – The modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or the impact of other public policies, such as tariffs or other trade remedies imposed on solar cells and modules or related raw materials or equipment, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.”

Our ability to provide solar modules on economically attractive terms is also affected by the availability and cost of logistics services associated with the procurement of raw materials or equipment used in our manufacturing process and the shipping, handling, storage, and distribution of our modules. To mitigate certain logistics costs, we employ commercial contract structures that provide additional consideration to us if the cost of logistics services, excluding demurrage and detention, exceeds defined thresholds. We may also adjust our shipping plans to include additional lead times for module deliveries and/or utilize our network of U.S. distribution centers to mitigate logistics costs. Additionally, our manufacturing capacity expansions are expected to bring production activities closer to customer demand, further mitigating our exposure to the cost of ocean freight.

We generally price and sell our solar modules on a per watt basis. As of June 30, 2025, we had entered into contracts with customers for the future sale of 61.9 GW of solar modules for an aggregate transaction price of \$18.5 billion, which we expect to recognize as revenue through 2030 as we transfer control of the modules to our customers. This volume and transaction price exclude contracts with customers in India for which payment has not been fully secured. This volume includes contracts for the sale of 31.1 GW of solar modules with anticipated price adjustments for future module technology improvements, including enhancements to certain energy related attributes. Based on these potential improvements, the contracted module volume as of June 30, 2025, the expected timing of such improvements being incorporated into our manufacturing process, and the expected timing of module deliveries, such adjustments, if realized, could result in additional revenue of up to \$0.6 billion, the majority of which would be recognized between 2026 and 2028. In addition to these price adjustments, certain of our contracts with customers may include favorable price adjustments associated with sales freight in excess of defined thresholds and/or favorable or unfavorable price adjustments associated with changes to (i) certain commodity prices, (ii) the module wattage committed for delivery, (iii) the volume of modules sold that meet certain U.S. domestic content requirements, and (iv) certain tariff structures within a defined threshold. As a result, the revenue recognized from such contracts may increase or decrease in future periods relative to the original transaction price.

We monitor our modules' expected performance through quality and reliability testing, as well as actual performance in certain field installation sites. Any declines in the expected performance attributes of our modules could adversely impact our financial results due to declines in the average selling prices of our modules and additional margin compression. For example, the recently identified manufacturing issues affecting certain Series 7 modules may adversely impact the average selling prices of our modules or the carrying value of our inventories. These manufacturing issues may also increase product warranty claims by our customers to resolve the premature power loss in affected modules. The remediation of any identified issues in our manufacturing process may result in increased costs as we resolve the identified issues. Any future manufacturing issues, including any additional commitment made by us to remediate the affected modules beyond our limited warranty, could also adversely impact our reputation, financial position, operating results, and cash flows. We may also be subject to certain other risks and uncertainties surrounding module performance as described in Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2024.

We continue to increase the nameplate production capacity of our existing manufacturing facilities by improving our production throughput, increasing module wattage, and reducing manufacturing yield losses. Additionally, we are in the process of expanding our manufacturing capacity by approximately 4 GW, including the construction of our fifth manufacturing facility in the United States, as well as capacity expansion at our existing facilities. This additional capacity, and any other potential investments to add to or otherwise modify our existing manufacturing capacity in response to market demand and competition, may require significant internal and possibly external sources of capital, and may be subject to certain risks and uncertainties described in Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2024.

Results of Operations

The following table sets forth our condensed consolidated statements of operations as a percentage of net sales for the three and six months ended June 30, 2025 and 2024:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales	54.4 %	50.6 %	56.5 %	53.2 %
Gross profit	45.6 %	49.4 %	43.5 %	46.8 %
Selling, general and administrative	4.8 %	4.6 %	5.4 %	5.1 %
Research and development	5.0 %	5.1 %	5.5 %	5.2 %
Production start-up	2.8 %	2.7 %	2.5 %	2.4 %
Litigation loss	— %	— %	— %	— %
Gain on sales of businesses, net	— %	— %	— %	0.1 %
Operating income	33.0 %	36.9 %	30.0 %	34.1 %
Foreign currency loss, net	(0.9)%	(1.0)%	(1.1)%	(0.7)%
Interest income	1.1 %	2.4 %	1.6 %	2.9 %
Interest expense, net	(0.8)%	(1.0)%	(1.0)%	(1.1)%
Other expense, net	(0.2)%	(0.1)%	(0.2)%	(0.2)%
Income tax expense	(0.9)%	(2.7)%	(0.9)%	(2.6)%
Net income	31.2 %	34.6 %	28.4 %	32.5 %

Segment Overview

First Solar operates as one business, which involves the design, manufacture, and sale of CdTe solar modules, which convert sunlight into electricity. As such, we operate as a single operating segment. Third-party customers of this segment include system developers, independent power producers, utilities, commercial and industrial companies, and other system owners and operators.

Net Sales

During the three and six months ended June 30, 2025, we sold the majority of our solar modules to developers and operators of systems in the United States, and substantially all of our module sales were denominated in U.S. dollars. We recognize revenue for module sales at a point in time following the transfer of control of the modules to the customer, which typically occurs upon delivery of the modules to the location specified in the terms of the underlying contract.

The following table shows net sales for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Net sales	\$ 1,097,170	\$ 1,010,482	\$ 86,688	8.6 %	\$ 1,941,738	\$ 1,804,590	\$ 137,148	7.6 %

Net sales increased \$86.7 million for the three months ended June 30, 2025 compared to the three months ended June 30, 2024 primarily due to a 5.7% increase in the volume of modules sold to third parties and an increase of \$40.4 million in revenue associated with customer contract terminations.

Net sales increased \$137.1 million for the six months ended June 30, 2025 compared to the six months ended June 30, 2024 primarily due to a 6.6% increase in the volume of modules sold to third parties and the customer contract terminations described above.

Cost of Sales

Our cost of sales includes the cost of raw materials and components for manufacturing solar modules, such as glass, transparent conductive coatings, CdTe and other thin film semiconductors, laminate materials, connector assemblies, edge seal materials, and frames or back rails. In addition, our cost of sales includes direct labor for the manufacturing of solar modules and manufacturing overhead, such as engineering, equipment maintenance, quality and production control, and information technology. Our cost of sales also includes depreciation of manufacturing plant and equipment, facility-related expenses, environmental health and safety costs, and costs associated with shipping, logistics, warranties, and solar module collection and recycling (excluding accretion).

The following table shows cost of sales for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Cost of sales	\$ 597,320	\$ 511,593	\$ 85,727	16.8 %	\$ 1,097,485	\$ 959,698	\$ 137,787	14.4 %
% of net sales	54.4 %	50.6 %			56.5 %	53.2 %		

Cost of sales increased \$85.7 million, or 16.8%, and increased 3.8 percentage points as a percent of net sales for the three months ended June 30, 2025 compared to the three months ended June 30, 2024. The increase in cost of sales was primarily driven by (i) higher sales freight, demurrage, and detention charges of \$75.0 million; (ii) higher costs of \$36.9 million due to an increase in the volume of modules sold; (iii) higher production costs of \$36.5 million, largely due to a higher sales mix of U.S.-produced modules; (iv) higher module storage costs of \$32.9 million; and (v) higher underutilization charges of \$9.3 million associated with lower throughput at certain international manufacturing facilities. These increases were partially offset by (vi) a higher sales mix of modules qualifying for the advanced manufacturing production credit under Section 45X of the IRC, which decreased cost of sales by \$118.5 million.

Cost of sales increased \$137.8 million, or 14.4%, and increased 3.3 percentage points as a percent of net sales for the six months ended June 30, 2025 compared to the six months ended June 30, 2024. The increase in cost of sales was primarily driven by (i) higher sales freight, demurrage, and detention charges of \$127.0 million; (ii) higher costs of \$77.5 million due to an increase in the volume of modules sold; (iii) higher production costs of \$75.7 million, largely due to a higher sales mix of U.S.-produced modules ; (iv) higher module storage costs of \$55.2 million; and (v) higher period charges of \$16.7 million primarily associated with underutilization charges at certain international manufacturing facilities and our fourth manufacturing facility in the United States. These increases were partially offset by (vi) a higher sales mix of modules qualifying for the advanced manufacturing production credit under Section 45X of the IRC, which decreased cost of sales by \$225.3 million.

Gross Profit

Gross profit may be affected by various factors, including the selling prices of our modules, our manufacturing costs, the capacity utilization of our manufacturing facilities, and foreign exchange rates.

The following table shows gross profit for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Gross profit	\$ 499,850	\$ 498,889	\$ 961	0.2 %	\$ 844,253	\$ 844,892	\$ (639)	(0.1)%
% of net sales	45.6 %	49.4 %			43.5 %	46.8 %		

Gross profit as a percentage of net sales decreased 3.8 percentage points to 45.6% during the three months ended June 30, 2025 from 49.4% during the three months ended June 30, 2024 and decreased 3.3 percentage points to 43.5% during the six months ended June 30, 2025 from 46.8% during the six months ended June 30, 2024. The decrease in each period was primarily due to the same factors, which included (i) higher detention and demurrage charges; (ii) higher costs related to a sales mix that included more U.S.-produced modules; (iii) higher module storage costs; and (iv) losses associated with the sale and expected sales of certain of our tax credits. As a percentage of net sales, these decreases in gross profit were partially offset by (v) the recognition of the higher advanced manufacturing production credits and (vi) higher contract termination revenue, both described above.

Selling, General and Administrative

Selling, general and administrative expense consists primarily of salaries and other personnel-related costs, professional fees, insurance costs, and other business development and selling expenses.

The following table shows selling, general and administrative expense for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Selling, general and administrative	\$ 52,590	\$ 46,560	\$ 6,030	13.0 %	\$ 105,754	\$ 92,387	\$ 13,367	14.5 %
% of net sales	4.8 %	4.6 %			5.4 %	5.1 %		

Selling, general and administrative expense for the three and six months ended June 30, 2025 increased compared to the three and six months ended June 30, 2024 primarily due to (i) higher expected credit losses from an increase in accounts receivable and (ii) higher costs for certain legal matters.

Research and Development

Research and development expense consists primarily of salaries and other personnel-related costs; the cost of products, materials, and outside services used in our R&D activities; and depreciation and amortization expense associated with R&D specific facilities and equipment. We maintain a number of programs and activities to improve our technology and processes in order to enhance the performance and reduce the costs of our solar modules.

The following table shows research and development expense for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Research and development	\$ 54,487	\$ 51,937	\$ 2,550	4.9 %	\$ 106,876	\$ 94,679	\$ 12,197	12.9 %
% of net sales	5.0 %	5.1 %			5.5 %	5.2 %		

Research and development expense for the three months ended June 30, 2025 increased compared to the three months ended June 30, 2024 primarily due to higher depreciation expense resulting from our significant investments in R&D facilities and equipment, partially offset by a reduction in testing expenses related to our Series 6 modules.

Research and development expense for the six months ended June 30, 2025 increased compared to the six months ended June 30, 2024 primarily due to higher depreciation expense resulting from our investments in R&D facilities and equipment and higher employee compensation expense resulting from an increase in headcount, partially offset by the same reduction in testing expenses discussed above.

Production Start-Up

Production start-up expense consists of costs associated with operating a production line before it is qualified for commercial production, including the cost of raw materials for solar modules run through the production line during the qualification phase, employee compensation for individuals supporting production start-up activities, and applicable facility-related costs. Production start-up expense also includes costs related to the selection of a new site and implementation costs for manufacturing process improvements to the extent we cannot capitalize these expenditures.

The following table shows production start-up expense for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Production start-up	\$ 31,166	\$ 27,451	\$ 3,715	13.5 %	\$ 48,772	\$ 42,859	\$ 5,913	13.8 %
% of net sales	2.8 %	2.7 %			2.5 %	2.4 %		

During the three and six months ended June 30, 2025, we incurred production start-up expense primarily for our fifth manufacturing facility in the United States. During the three and six months ended June 30, 2024, we incurred production start-up expense primarily for our fourth manufacturing facility in the United States.

Foreign Currency Loss, Net

Foreign currency loss, net consists of the net effect of gains and losses resulting from holding assets and liabilities and conducting transactions denominated in currencies other than our subsidiaries' functional currencies.

The following table shows foreign currency loss, net for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Foreign currency loss, net	\$ (9,728)	\$ (9,649)	\$ (79)	0.8 %	\$ (21,321)	\$ (12,507)	\$ (8,814)	70.5 %

Foreign currency loss, net for the three and six months ended June 30, 2025 increased compared to the three and six months ended June 30, 2024 largely due to higher costs associated with hedging activities related to our subsidiaries in India.

Interest Income

Interest income is earned on our cash, cash equivalents, marketable securities, restricted cash, restricted cash equivalents, and restricted marketable securities. Interest income also includes interest earned from late customer payments.

The following table shows interest income for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Interest income	\$ 12,100	\$ 24,599	\$ (12,499)	(50.8)%	\$ 30,965	\$ 51,844	\$ (20,879)	(40.3)%

Interest income for the three and six months ended June 30, 2025 decreased compared to the three and six months ended June 30, 2024 due to lower balances of marketable securities and holdings of cash. These decreases were partially offset by higher interest earned on customer late payments.

Interest Expense, Net

Interest expense, net primarily comprises interest incurred on debt. We may capitalize interest expense to our property, plant and equipment when such costs qualify for interest capitalization, which reduces the amount of net interest expense reported in any given period.

The following table shows interest expense, net for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Interest expense, net	\$ (9,184)	\$ (9,765)	\$ 581	(5.9)%	\$ (18,709)	\$ (18,975)	\$ 266	(1.4)%

Interest expense, net for the three and six months ended June 30, 2025 was consistent with the three and six months ended June 30, 2024.

Other Expense, Net

Other expense, net primarily comprises miscellaneous items and financing fees.

The following table shows other expense, net for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Other expense, net	\$ (2,628)	\$ (565)	\$ (2,063)	365.1 %	\$ (4,560)	\$ (3,364)	\$ (1,196)	35.6 %

Other expense, net for the three and six months ended June 30, 2025 was consistent with the three and six months ended June 30, 2024.

Income Tax Expense

Income tax expense or benefit, deferred tax assets and liabilities, and liabilities for unrecognized tax benefits reflect our best estimate of current and future taxes to be paid. We are subject to income taxes in both the United States and numerous foreign jurisdictions in which we operate, principally Singapore, Malaysia, Vietnam, and India. Significant judgments and estimates are required to determine our consolidated income tax expense. The statutory federal corporate income tax rate in the United States is 21%, and the tax rates in Singapore, Malaysia, Vietnam, and India are 17%, 24%, 20%, and 17%, respectively. In Malaysia, we have been granted a long-term tax holiday, scheduled to expire in 2027, pursuant to which substantially all of our income earned in Malaysia is exempt from income tax, conditional upon our continued compliance with certain employment and investment thresholds. In Vietnam, we have been granted a long-term tax incentive, scheduled to expire at the end of 2036, pursuant to which income earned in Vietnam is subject to reduced annual tax rates, conditional upon our continued compliance with certain revenue and R&D spending thresholds.

The following table shows income tax expense for the three and six months ended June 30, 2025 and 2024:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2025	2024		2025	2024			
Income tax expense	\$ (10,299)	\$ (27,775)	\$ 17,476	(62.9)%	\$ (17,823)	\$ (46,678)	\$ 28,855	(61.8)%
Effective tax rate	2.9 %	7.4 %			3.1 %	7.4 %		

Our tax rate is affected by the advanced manufacturing production credit under Section 45X and recurring items such as tax rates in foreign jurisdictions and the relative amounts of income we earn in those jurisdictions. The rate is also affected by discrete items that may occur in any given period but are not consistent from period to period. During the six months ended June 30, 2024, we reversed our position to indefinitely reinvest the accumulated earnings of a foreign subsidiary and recorded discrete tax expense of approximately \$6 million.

Income tax expense for the three and six months ended June 30, 2025 decreased compared to the three and six months ended June 30, 2024 primarily due to the relative amounts of advanced manufacturing production credits earned in each period, lower pretax income, and the prior year discrete tax expense associated with the reversal of our indefinite reinvestment assertion described above.

Critical Accounting Policies and Estimates

In preparing our condensed consolidated financial statements in conformity with U.S. GAAP, we make estimates and assumptions that affect the amounts of reported assets, liabilities, revenues, and expenses, as well as the disclosure of contingent liabilities. Some of our accounting policies require the application of significant judgment in the selection of the appropriate assumptions for making these estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. We base our judgments and estimates on our historical experience, our forecasts, and other available information, as appropriate. We believe the judgments and estimates involved in accrued solar module collection and recycling, product warranties, and government grants have the greatest potential impact on our condensed consolidated financial statements. The actual results experienced by us may differ materially and adversely from our estimates. To the extent there are material differences between our estimates and the actual results, our future results of operations will be affected. For a description of the accounting policies that require the most significant judgment and estimates in the preparation of our condensed consolidated financial statements, refer to our Annual Report on Form 10-K for the year ended December 31, 2024. There have been no material changes to our accounting policies during the six months ended June 30, 2025.

Recent Accounting Pronouncements

In December 2023, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires greater disaggregation of an entity’s income tax disclosures. Among other things, ASU 2023-09 requires entities to disclose (i) specific categories in the effective tax rate reconciliation; (ii) pretax income or loss from continuing operations, separated between domestic and foreign jurisdictions; (iii) income tax expense or benefit from continuing operations, separated by federal, state, and foreign jurisdictions; and (iv) income taxes paid to federal, state, and foreign jurisdictions. ASU 2023-09 is effective for public companies for annual periods beginning after December 15, 2024. We plan to present the expanded income tax disclosures in our consolidated financial statements for the year ending December 31, 2025.

In November 2024, the FASB issued ASU 2024-03, *Income Statement — Reporting Comprehensive Income — Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses*, which requires additional disclosure of specific types of expenses included in the expense captions presented on the face of the income statement. ASU 2024-03 is effective for public companies for annual reporting periods beginning after December 15, 2026 and interim reporting periods beginning after December 15, 2027. Early adoption is permitted. The disclosure requirements will be applied on a prospective basis, with the option to apply retrospectively. We are currently evaluating the impact ASU 2024-03 will have on our associated disclosures.

Liquidity and Capital Resources

As of June 30, 2025, we believe that our cash, cash equivalents, marketable securities, cash flows from operating activities, and contracts with customers for the future sale of solar modules will be sufficient to meet our working capital and capital expenditure needs for at least the next 12 months. In addition, we have availability under our Revolving Credit Facility, which remains unused as of June 30, 2025, as well as various trade receivables factoring arrangements with financial institutions. To the extent we offer extended payment terms to customers, fail to collect trade receivables in a timely manner, or face other challenges in managing our working capital, we may be required to use our Revolving Credit Facility or other temporary sources of funding. As necessary, we also believe we will have adequate access to the capital markets. We monitor our working capital to ensure we have adequate liquidity, both domestically and internationally. We intend to maintain appropriate debt levels based upon cash flow expectations, our overall cost of capital, and expected cash requirements for operations, including near-term construction activities and purchases of manufacturing equipment for our newest manufacturing facilities in the United States. However, our ability to raise capital on terms commercially acceptable to us could be constrained if there is insufficient lender or investor interest due to company-specific, industry-wide, or broader market concerns. Any incremental debt financing could result in increased debt service expenses and/or restrictive covenants, which could limit our ability to pursue our strategic plans.

As of June 30, 2025, we had \$1.2 billion in cash, cash equivalents, and marketable securities compared to \$1.8 billion as of December 31, 2024. This decrease was primarily driven by (i) lower cash receipts from module sales, (ii) increases in payments made to suppliers, (iii) purchases of property, plant and equipment for our U.S. facilities, (iv) various operating expenditures, and (v) certain advance payments for raw materials, partially offset by (vi) receipts from factoring of receivables and (vii) proceeds from the sale of Section 45X tax credits. As of June 30, 2025 and December 31, 2024, \$265.9 million and \$694.0 million of our cash, cash equivalents, and marketable securities, respectively, were held by our foreign subsidiaries and were primarily based in U.S. dollar denominated holdings. Our investment policy seeks to preserve our investment principal and maintain adequate liquidity to meet our cash flow requirements, while at the same time optimizing the return on our investments. Such policy applies to all invested funds, whether managed internally or externally. Pursuant to such policy, we place our investments with a diversified group of high-quality financial institutions and limit the concentration of such investments with any one counterparty. We place significant emphasis on the creditworthiness of financial institutions and assess the credit ratings and financial health of our counterparty financial institutions when making investment decisions.

We use a variety of tax planning and financing strategies in an effort to ensure that our worldwide cash is available in the locations in which it is needed. If certain international funds were needed for our operations in the United States, we may be required to accrue and pay certain U.S. and foreign taxes to repatriate such funds. We maintain the intent and ability to permanently reinvest our accumulated earnings outside the United States, with the exception of certain subsidiaries for which applicable income taxes have been recorded as of June 30, 2025, but we may choose to reevaluate this intent in one or more jurisdictions in the future. In addition, changes to foreign government banking regulations may restrict our ability to move funds among various jurisdictions under certain circumstances, which could negatively impact our access to capital, resulting in an adverse effect on our liquidity and capital resources.

Although we compete in markets that do not require solar-specific government subsidies or incentive programs, such incentives continue to influence the demand for PV solar energy around the world. Further, our net sales and profits remain subject to variability based on the availability and size of government subsidies and economic incentives. For example, the financial incentives provided by the IRA have significantly increased demand for modules manufactured in the United States, and we expect the benefits made available to us by the IRA to favorably impact our liquidity and capital resources in future periods. For example, we expect to qualify for the advanced manufacturing production credit under Section 45X of the IRC, which provides certain specified benefits for solar modules and solar module components manufactured in the United States and sold to third parties. Such credit may be refundable by the IRS or transferable to a third party and is available from 2023 to 2032, subject to phase down beginning in 2030. Based on the current form factor of our modules, we expect to qualify for a credit of approximately 17 cents per watt for each module produced in the United States and sold to a third party. Accordingly, we expect the advanced manufacturing production credit will provide us with a significant source of funding throughout its remaining period. In December 2024, we entered into two agreements with a financial institution for the sale of \$857.2 million of Section 45X tax credits we generated during 2024 for aggregate cash proceeds of \$818.6 million. We received initial cash proceeds of \$616.0 million in December 2024 and received the remaining cash proceeds of \$202.6 million in February 2025. In June 2025, we entered into an agreement with another financial institution for the sale of \$311.9 million of Section 45X tax credits we generated during 2025 for aggregate cash proceeds of \$296.3 million. We received the full cash proceeds in June 2025. For more information about certain risks associated with the benefits available to us under the IRA, see Part II. “Other Information” Item 1A. “Risk Factors.” See Note 5. “Government Grants” to our condensed consolidated financial statements for further information about government grants.

As a result of various market opportunities and increased domestic demand for our products, we recently commenced operations at our fourth manufacturing facility in the United States, completed the expansion of our manufacturing footprint at our existing facilities in Ohio, and expect to complete construction and commence operations at our fifth manufacturing facility in the United States in the third quarter of 2025. We anticipate our remaining investment in this U.S. facility to be approximately \$0.4 billion, which is expected to be paid in 2025 and 2026. The capital expenditures necessary to expand our capacity may be financed, in part, by cash on hand, advance payments from customers for module sales in future periods, the advanced manufacturing production credit described above, and/or near-term bridge financing instruments.

In addition to the expansion described above, we intend to increase the nameplate production capacity of our existing manufacturing facilities by improving our production throughput, increasing module wattage, and reducing manufacturing yield losses. During 2025, we expect to spend between \$1.0 billion and \$1.5 billion for capital expenditures, including the new facility mentioned above, investments in various R&D initiatives, and upgrades to machinery and equipment that we believe will further increase our module wattage and expand capacity and throughput at our facilities. These capital investments, and any other potential investments to implement our technology roadmap, may require significant internal and possibly external sources of capital, and may be subject to certain risks and uncertainties described in Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2024.

We have committed and expect to continue to commit significant working capital to purchase various raw materials used in our module manufacturing process. Our failure to obtain raw materials and components that meet our quality, quantity, and cost requirements in a timely manner could increase our manufacturing costs or interrupt or impair our ability to manufacture our solar modules. Accordingly, we may enter into long-term supply agreements to mitigate potential risks related to the procurement of key raw materials and components, and such agreements may be noncancelable or cancelable with a significant penalty. For example, we have entered into long-term supply agreements for the purchase of certain specified minimum volumes of substrate glass for our PV solar modules. We have the right to terminate certain of these agreements upon payment of specified termination penalties (which, in aggregate, are up to \$331.7 million as of June 30, 2025 and decline over the remaining supply periods). Additionally, for certain strategic suppliers, we have made, and may in the future be required to make, certain advance payments to secure the raw materials necessary for our module manufacturing.

We have also committed certain financial resources to fulfill our solar module collection and recycling obligations and have established a trust under which these funds are put into custodial accounts with an established and reputable bank. As of June 30, 2025, such funds were comprised of restricted marketable securities of \$213.7 million and associated restricted cash and cash equivalents of \$3.5 million. As of June 30, 2025, our module collection and recycling liability was \$144.6 million. Trust funds may be disbursed for qualified module collection and recycling costs (including capital and facility related recycling costs), payments to customers for assuming collection and recycling obligations, and reimbursements of any overfunded amounts. Investments in the trust must meet certain investment quality criteria comparable to highly rated government or agency bonds. As necessary, we adjust the funded amounts for our estimated collection and recycling obligations based on the estimated costs of collecting and recycling covered modules, estimated rates of return on our restricted marketable securities, and an estimated solar module life of 25 years, less amounts already funded in prior years.

As of June 30, 2025, we had no off-balance sheet debt or similar obligations, other than financial assurance related instruments, which are not classified as debt. We do not guarantee any third-party debt. See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for further information about our financial assurance related instruments.

Cash Flows

The following table summarizes key cash flow activity for the six months ended June 30, 2025 and 2024 (in thousands):

	Six Months Ended June 30,	
	2025	2024
Net cash (used in) provided by operating activities	\$ (458,405)	\$ 460,737
Net cash used in investing activities	(350,203)	(675,974)
Net cash provided by (used in) financing activities	346,999	(27,655)
Effect of exchange rate changes on cash, cash equivalents, restricted cash, and restricted cash equivalents	3,469	(5,600)
Net decrease in cash, cash equivalents, restricted cash, and restricted cash equivalents	<u>\$ (458,140)</u>	<u>\$ (248,492)</u>

Operating Activities

The increase in net cash used in operating activities was primarily driven by lower cash receipts from module sales, higher payments made to suppliers, and lower proceeds from the sales of tax credits, partially offset by receipts from factoring trade receivables.

Investing Activities

The decrease in net cash used in investing activities was primarily due to lower purchases of property, plant and equipment for our manufacturing facilities in the United States and India and higher net proceeds from sales and maturities of marketable securities.

Financing Activities

The increase in net cash provided by financing activities was primarily due to proceeds from secured borrowings from trade receivables factoring with recourse and other borrowings under various debt agreements in the current period, partially offset by repayment of debt in the current period.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk*

There have been no material changes to the information previously provided under Item 7A. of our Annual Report on Form 10-K for the year ended December 31, 2024.

Item 4. *Controls and Procedures*

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our “disclosure controls and procedures” as defined in Exchange Act Rule 13a-15(e) and 15d-15(e). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of June 30, 2025 our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

We also carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of our “internal control over financial reporting” as defined in Exchange Act Rule 13a-15(f) and 15d-15(f) to determine whether any changes in our internal control over financial reporting occurred during the three months ended June 30, 2025 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Based on that evaluation, there were no such changes in our internal control over financial reporting that occurred during the three months ended June 30, 2025.

CEO and CFO Certifications

We have attached as exhibits to this Quarterly Report on Form 10-Q the certifications of our Chief Executive Officer and Chief Financial Officer, which are required in accordance with the Exchange Act. We recommend that this Item 4. be read in conjunction with those certifications for a more complete understanding of the subject matter presented.

Limitations on the Effectiveness of Controls

Control systems, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control systems’ objectives are being met. Further, the design of any system of controls must reflect the fact that there are resource constraints, and the benefits of all controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of error or mistake. Control systems can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

On February 25, 2025, First Solar filed suit in the district court for the District of Delaware asserting that JinkoSolar Holding Co., Ltd.; Jinko Solar Co., Ltd.; Jinko Solar (Vietnam) Industries Co. Ltd.; Jinko Solar Technology Sdn. Bhd.; Zhejiang Jinko Solar Co., Ltd.; JinkoSolar (U.S.) Holding Inc.; JinkoSolar (U.S.) Inc.; Jinko Solar (U.S.) Manufacturing Inc.; and Jinko Solar (U.S.) Industries Inc. (collectively, “JinkoSolar”) directly and indirectly infringe a First Solar patent through JinkoSolar’s manufacture, import, use, sale, and offering for sale of certain tunnel oxide passivated contact (“TOPCon”) solar products. First Solar alleges that the JinkoSolar TOPCon products contain solar cells manufactured using a method claimed in the patent. First Solar seeks both monetary damages and injunctive relief. On June 27, 2025, JinkoSolar filed an answer to the complaint and counterclaims asserting that the patent-in-suit is not valid and that it is not infringed by JinkoSolar. On July 18, 2025, First Solar filed an answer to the counterclaims.

On April 15, 2025, Mundra Solar PV Limited (“Mundra”) filed suit in the district court of the District of Delaware seeking declaratory judgment that it does not infringe two of First Solar’s patents through its manufacture, import, use, sale, and offering for sale of certain TOPCon solar products.

On May 9, 2025, First Solar filed suit in the district court for the District of Delaware asserting that Canadian Solar Inc.; CSI Solar Co., Ltd.; Canadian Solar Manufacturing (Thailand) Co., Ltd.; Canadian Solar International Limited; Canadian Solar (USA) Inc.; and Canadian Solar US Module Manufacturing Corporation (collectively, “Canadian Solar”) directly and indirectly infringe a First Solar patent through Canadian Solar’s manufacture, import, use, sale, and offering for sale of certain TOPCon solar products. First Solar alleges that the Canadian Solar TOPCon products contain solar cells manufactured using a method claimed in the patent. First Solar seeks both monetary damages and injunctive relief.

See Note 10. “Commitments and Contingencies” under the heading “Legal Proceedings” of our condensed consolidated financial statements for other legal proceedings and related matters.

Item 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2024, which could materially affect our business, financial condition, results of operations, and cash flows. The risks described in our Annual Report on Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently consider immaterial may also materially adversely affect our business, financial condition, results of operations, and cash flows. Except for the risk factors set forth below, there have been no material changes in the risk factors contained in our Annual Report on Form 10-K.

The modification, reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or the impact of other public policies, such as tariffs or other trade remedies imposed on solar cells and modules or related raw materials or equipment, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.

Although we believe that solar energy will experience widespread adoption in those applications where it competes economically with traditional forms of energy without any incentive programs, in certain markets our net sales and profits remain subject to variability based on the availability and size of government subsidies and economic incentives. Federal, state, and local governmental bodies in many countries have provided subsidies in the form of feed-in-tariff structures, rebates, tax incentives, and other incentives to end users, distributors, system integrators,

and manufacturers of PV solar products. Many of these incentive programs expire, phase down over time, require renewal by the applicable authority, or may be amended. To the extent government incentive programs are reduced earlier than previously expected, are changed retroactively, or are not renewed, such changes have and could negatively impact demand and/or price levels for our solar modules, lead to a reduction in our net sales, and adversely impact our operating results.

Current regulatory policies, or any future changes or threatened changes to such policies, including those changes as a result of the U.S. presidential administration and control of the U.S. Congress, may subject us to significant risks, including the following:

- a reduction or removal of clean energy programs and initiatives and the incentives they provide may diminish the market for future solar energy off-take agreements, slow the retirement of aging fossil fuel plants, including the retirements of coal generation plants, and reduce the ability for solar project developers to compete for off-take agreements, which may reduce PV solar module sales;
- any limitations on the value or availability to manufacturers or potential investors of tax incentives that benefit solar energy production, sales, or projects, such as the Section 45X advanced manufacturing production credit, ITC, and PTC, as seen in the accelerated termination of certain clean energy tax credits under the “One Big Beautiful Bill” the U.S. President signed into law on July 4, 2025, could result in reducing such manufacturers’ or investors’ economic returns and could cause a reduction in the availability of financing, thereby reducing demand for PV solar modules;
- any incentives contingent upon domestic production of modules, such as tax incentives set forth under the IRA, could limit our ability to sell modules manufactured in certain foreign jurisdictions, which may adversely impact our module average selling prices and could require us to record significant charges to earnings should we determine that the manufacturing facilities and equipment in such foreign jurisdictions are impaired; and
- any effort to overturn federal and state laws, regulations, or policies that are supportive of solar energy generation or that remove costs or other limitations on other types of electricity generation that compete with solar energy projects could negatively impact our ability to compete with traditional forms of electricity generation and materially and adversely affect our business.

Application of trade laws may also adversely impact, either directly or indirectly, our operating results; for example, by impacting our customers’ project costs, profitability, and their demand for our modules; or by impacting our own costs or disrupting our manufacturing or supply chains, and consequently negatively impacting demand and/or price levels for our solar modules, reducing our net sales, or affecting potential profitability of fulfilling customer contracts. We are therefore potentially subject to various risks, which include the following:

- any tariffs that reduce the profitability of contracts, whereby the cost of tariffs exceeds the amount able to be, or willing to be, absorbed by either us or the customer under the provisions of the contract and may lead to us or the customer cancelling such contract, potentially resulting in the reduction of future revenue, the loss of the contractual right to a termination payment from the customer, and potentially the required return of a previously received customer down payment;
- any reciprocal or other tariffs may place burdens on our customers’ supply chains exclusive of module import costs, including through increased costs of trackers, inverters, transformers, and other imported equipment, which are often heavily dependent on Chinese supply chains. These and other costs could result in an inability for certain projects to generate profitable returns, and may lead to the delay or abandonment of such projects, thereby reducing or removing demand for currently contracted PV module sales; and

- any reduction in our ability to profitably import modules from our international manufacturing locations as a result of tariffs or other trade laws could lead to us significantly reducing capacity utilization at certain international manufacturing facilities. Such underutilization may lead to potential impairment of certain international equipment and facilities and may also increase our selling costs and reduce our competitiveness in the market, thereby reducing demand for our modules.

In some instances, the application of trade laws is currently beneficial to us, and changes in their application could have an adverse impact. The overall impact of trade laws on our business depends on multiple factors, including their duration, their scope and potential expansion thereof, enforcement, retaliatory measures by impacted exporting countries, inflationary effects and broader macroeconomic responses, changes to consumer purchasing behavior, and the effectiveness of our responses in managing these impacts. Recent developments include the following:

- *United States — Reciprocal Tariffs.* On April 2, 2025, the U.S. President announced a 10% “baseline” reciprocal tariff on nearly all U.S. trading partners, effective April 5, 2025, and additional, higher reciprocal tariffs on specific countries, effective April 9, 2025. On April 9, 2025, the U.S. President paused the additional, higher tariffs on most countries for 90 days. Effective May 14, 2025, the United States entered into an agreement with China to lower the reciprocal tariff rate to 10% for 90 days (i.e., until August 12, 2025). As of April 16, 2025, the 10% “baseline” reciprocal tariff applies to all countries other than Canada, Mexico, and countries listed under “Column 2” of the Harmonized Tariff Schedule of the United States, such as Russia and North Korea. As it pertains to the countries where we manufacture solar modules, the additional, country-specific tariffs would have applied to Vietnam, India, and Malaysia. On July 2, 2025, the U.S. President announced that the United States and Vietnam had reached a preliminary trade agreement, which purportedly places a 20% tariff on all products of Vietnam and a 40% tariff on all “transshipped” goods. On July 7, 2025, the U.S. President paused the additional, higher tariffs on most countries until August 1, 2025, at which time certain revised, final reciprocal tariffs are expected to be effective. If the additional, higher tariffs on imports from these countries go into effect, it would increase the costs of our solar modules manufactured in these countries with respect to our U.S. market. Further, such circumstances may impact our ability to sell certain modules into the United States and therefore may also impact the operational status of certain of our international manufacturing facilities. As a result, our operating results could be adversely impacted if these tariffs are imposed.
- *United States — Tariffs on Certain Imported Crystalline Silicon PV Cells and Modules.* The United States currently imposes different types of tariffs and/or other trade remedies on certain imported crystalline silicon PV cells and modules from various countries. In February 2022, the previous U.S. President proclaimed a four-year extension of a global safeguard measure imposed pursuant to Section 201 of the Trade Act of 1974 that provides for tariffs on imported crystalline silicon solar modules and a tariff-rate quota on imported crystalline silicon solar cells. Thin film solar cell products, such as our CdTe technology, are specifically excluded from the tariffs. The extension measure’s tariff rate was originally set at 14.75%, with annual reductions of 0.25 percentage points over the remainder of its four-year term. The current rate is 14%. The extension measure also provides an annual tariff-rate quota, whereby tariffs apply to imported crystalline silicon solar cells above the first 5.0 GW of imports. In August 2024, the previous U.S. President increased the tariff-rate quota from 5.0 GW to 12.5 GW.

- *United States — Additional Tariffs on Certain Chinese Imports.* The United States currently imposes tariffs on various articles imported from China, including tariffs of 50% on crystalline silicon solar cells and tariffs of 25% on modules, based on an investigation under Section 301 of the Trade Act of 1974. In February 2025, the U.S. President announced an additional 10% tariff on all imports from China, which is related to the national security threat posed by China's trade in fentanyl and other illegal narcotics. This 10% tariff was subsequently doubled to 20% in March 2025 and applies in addition to the 25% tariffs under Section 301 and ordinary customs duties and AD/CVDs. Further, as discussed above, in April 2025, the United States imposed an additional reciprocal tariff on China. Effective May 14, 2025, the United States agreed to lower this additional reciprocal tariff rate to 10% for 90 days (i.e., until August 12, 2025). Our operating results could be adversely impacted if these tariffs were to be terminated or reduced.
- *United States — Port Fees on Certain Chinese Vessel Operators and Chinese Vessel Owners.* On April 17, 2025, the Office of the U.S. Trade Representative published a notice of final action based on an investigation under Section 301 of the Trade Act of 1974 into China's targeting of the maritime, logistics, and shipbuilding sectors for dominance. The action imposes new port fees on Chinese vessel operators and/or Chinese vessel owners as well as on non-Chinese operators of Chinese-origin vessels beginning on October 14, 2025. The level of fees is on a sliding scale per net ton or, in the case of non-Chinese operators, the higher of a net ton or container-based fee. Such fees may impact our logistics services and consequently impact our profitability and results of operations.
- *United States — Tariffs on Certain Foreign-imported Aluminum and Steel.* Effective June 4, 2025, the U.S. President increased tariffs on imported aluminum and steel articles under Section 232 of the Trade Expansion Act of 1962 from 25% to 50%. Such tariffs and policies, or any other U.S. or global trade remedies or other trade barriers, may directly or indirectly affect U.S. or global markets for solar energy and our business, financial condition, and results of operations.
- *United States — Potential Tariffs on Processed Critical Minerals and Derivative Products.* On April 22, 2025, the U.S. Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of processed critical minerals, as well as their derivative products, under Section 232 of the Trade Expansion Act of 1962; on July 1, 2025, the U.S. Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of polysilicon and its derivatives under the same law. The scope of the investigation includes tellurium and other critical minerals used in solar module manufacturing. In addition, the definition of derivative products covered by the investigation is potentially broad. If this investigation results in the imposition of tariffs or import restrictions on critical minerals and/or derivative products, it could negatively impact demand and/or price levels for our solar modules and limit our growth, lead to a reduction in our net sales, or increase our costs, thereby adversely impacting our operating results.
- *United States — Antidumping and Countervailing Duties on Certain Imported Crystalline Silicon PV Cells and Modules.* The United States currently imposes AD/CVDs on certain imported crystalline silicon PV cells and modules from China and Taiwan. Such AD/CVDs can change over time pursuant to annual administrative reviews conducted by the USDOC, and a decline in duty rates or USDOC failure to fully enforce U.S. AD/CVD laws could have an adverse impact on our operating results. In August 2023, the USDOC issued final affirmative circumvention rulings, finding that solar modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in China circumvent the pre-existing AD/CVD orders on China. Such duties apply to circumventing imports on or after June 6, 2024, as well as any circumventing imports prior to that date that were not used or installed on or before December 3, 2024. Our operating results could be adversely impacted if the USDOC and other U.S. government agencies do not enforce the affirmative circumvention rulings as expected or if pending litigation challenges result in a modification of the rulings. Conversely, effective enforcement could positively impact our operating results.

- *United States — Antidumping and Countervailing Duties on Certain Traded Solar Products.* In April 2024, the American Alliance for Solar Manufacturing Trade Committee, which includes First Solar, filed a set of AD/CVD petitions with the USDOC and the USITC to impose duties on certain unfairly traded solar products from Cambodia, Malaysia, Thailand, and Vietnam. On April 21, 2025, the USDOC announced final determinations in the AD/CVD investigations. Final AD/CVD rates ranged from de minimis to over 3,400%, depending on the particular foreign producer. On June 9, 2025, the USITC notified USDOC of its final affirmative determinations in the AD/CVD investigations. AD/CVD orders, including the assessment of AD/CVDs and suspension of liquidation of such products, were issued on June 9, 2025. On July 17, 2025, the Alliance for American Solar Manufacturing and Trade filed another set of AD/CVD petitions with the USDOC and the USITC to impose duties on unfairly traded crystalline silicon solar products from India, Indonesia, and Laos. The USITC is expected to issue its preliminary determination in September 2025. The USDOC is expected to issue its preliminary countervailing duty determinations in December 2025 and preliminary antidumping duty determinations in February 2026.
- *India — Domestic and Foreign Imports.* The ALMM was introduced in 2021 as a non-tariff barrier to incentivize domestic manufacturing of PV modules by approving the list of models and manufacturers who can participate in certain solar development projects. The ALMM is approved by the MNRE, and any modifications to the ALMM and its application may affect future investments in solar module manufacturing in India. In April 2024, the government of India reimposed the ALMM, thereby requiring solar project developers to procure qualifying modules from companies on the list, which includes our Indian manufacturing facility. Also in April 2024, the ALMM was amended to include specific minimum conversion efficiency thresholds for CdTe solar technologies starting at 18% for solar lighting, 18.5% for rooftop applications, and 19% for utility-scale applications. In December 2024, the ALMM was amended to require nearly all solar development projects to use PV modules that contain domestically manufactured solar cells, which is expected to be effective for such projects completed on or after June 2026. In May 2025, the ALMM was amended to lower the minimum efficiency thresholds for PV modules used in off-grid applications. Our operating results could be adversely impacted if the ALMM requirements are significantly relaxed to allow modules, solar cells, or certain other key module components to be imported from other countries.
- *India — Import Duty Tariffs.* In April 2022, the Indian government began imposing import duty tariffs of 40% on solar modules and 25% on solar cells. In connection with such April 2022 tariffs, the Indian government also implemented a regulation mandating that any solar project with federal utility, state utility, or commercial and industrial off-takers that interconnects through government owned transmission lines only use solar modules from manufacturers included in the ALMM, and a requirement that all federal procurement of solar modules be only from cells and modules produced domestically. However, in February 2025, the Indian government began imposing import duty tariffs of 20% each on solar modules and cells and levied additional tax on certain commercial agricultural production, which tax included 20% on solar modules and 7.5% on solar cells. Therefore, the aggregate impact on the import of solar modules and cells is 40% and 27.5%, respectively.

These examples show that established markets for PV solar development face uncertainties arising from policy, regulatory, and governmental actions. While the expected potential of the markets we are targeting is significant, policy promulgation and market development are especially vulnerable to governmental inertia, political instability, changing government policy and priorities, the imposition or lowering of trade remedies and other trade barriers, geopolitical risk, fossil fuel subsidization, potentially stringent localization requirements, and limited available infrastructure. Any negative impacts from changes in policy, regulatory, and governmental actions could negatively affect our business, reduce our net sales, profitability and/or market share, and consequently adversely affect our results of operations, prospects, and financial condition.

Our failure to protect or successfully commercialize our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights or defend against third-party allegations of infringement may be costly.

Protection of our proprietary processes, methods, and other technology is critical to our business. Failure to protect and monitor the use of our existing intellectual property rights or to successfully commercialize future intellectual property rights could result in the loss of valuable technologies. We rely primarily on patents, trademarks, trade secrets, copyrights, and contractual restrictions to protect our intellectual property. We regularly file patent applications to protect certain inventions arising from our R&D and are currently pursuing such patent applications in various countries in accordance with our strategy for intellectual property in that jurisdiction. Our existing patents and future patents could be challenged, invalidated, circumvented, or rendered unenforceable. Our pending patent applications may not result in issued patents, or if patents are issued to us, such patents may not be sufficient to provide meaningful protection against competitors or against competitive technologies.

We also rely on unpatented proprietary manufacturing expertise, continuing technological innovation, and other trade secrets to develop and maintain our competitive position. Although we generally enter into confidentiality agreements with our associates and third parties to protect our intellectual property, such confidentiality agreements are limited in duration and could be breached and may not provide meaningful protection for our trade secrets or proprietary manufacturing expertise. Adequate remedies may not be available in the event of unauthorized use or disclosure of our trade secrets and manufacturing expertise. In addition, others may obtain knowledge of our trade secrets through independent development or legal means. The failure of our patents or confidentiality agreements to protect our processes, equipment, technology, trade secrets, and proprietary manufacturing expertise, methods, and compounds could have a material adverse effect on our business. In addition, effective patent, trademark, copyright, and trade secret protection may be unavailable or limited in some foreign countries, especially any developing countries into which we may expand our operations. In some countries, we have not applied for patent, trademark, or copyright protection.

Third parties may infringe or misappropriate our proprietary technologies or other intellectual property rights, which could have a material adverse effect on our business, financial condition, and operating results. Policing unauthorized use of proprietary technology can be difficult and expensive. Additionally, litigation may be necessary to enforce our intellectual property rights, protect our trade secrets, or determine the validity and scope of the proprietary rights of others. For example, on February 25, 2025, we filed a lawsuit in the United States District Court for the District of Delaware against JinkoSolar and its related entities alleging infringement of certain of our U.S. TOPCon patents. On April 15, 2025, Mundra, whose parent corporation is Adani Green Technology Limited, filed a lawsuit in the United States District Court for the District of Delaware seeking a judgment declaring that it has not infringed two of our U.S. TOPCon patents. Further, on May 9, 2025, we filed a lawsuit in the United States District Court for the District of Delaware against Canadian Solar and its related entities alleging infringement of certain of our U.S. TOPCon patents. We cannot ensure that the outcome of such litigation will be in our favor, and such litigation may be costly and may divert management attention and other resources away from our business. An adverse determination in any such litigation may impair our intellectual property rights and may harm our business, prospects, and reputation. In addition, we have no insurance coverage against such litigation costs and would have to bear all costs arising from such litigation to the extent we are unable to recover them from other parties.

We have received and expect to continue to receive certain financial benefits as a result of tax incentives provided by the Inflation Reduction Act of 2022. If these financial benefits vary significantly from our assumptions, our business, financial condition, and results of operations could be adversely affected.

In August 2022, the previous U.S. President signed the IRA into law, which was intended to accelerate the country's ongoing transition to clean energy. The provisions of the IRA are generally effective for tax years beginning after 2022. We expect to qualify for the advanced manufacturing production credit under Section 45X of the IRC, which provides certain specified benefits for solar modules and solar module components manufactured in the United States and sold to third parties. For eligible components, the credit is equal to (i) \$12 per square meter for a PV wafer, (ii) 4 cents multiplied by the capacity of a PV cell in watts, and (iii) 7 cents multiplied by the capacity of a PV module in watts. Based on the current form factor of our modules, we expect to qualify for a credit of approximately 17 cents per watt for each module produced in the United States and sold to a third party.

Such credit may be refundable by the IRS or transferable to a third party and is available from 2023 to 2032, subject to phase down beginning in 2030. For example, in June 2025, December 2024, and December 2023, we entered into various agreements for the sales of Section 45X tax credits generated in 2025, 2024, and 2023, respectively. For further information, see Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources." However, there is no assurance that future sales of tax credits will be available to us on similar or alternative terms or at all. In connection with the sale of Section 45X tax credits, we agree to indemnify the purchasers for certain losses they may suffer, including as a result of any inability to claim all or any portion of the Section 45X tax credits sold, subject to certain exceptions and limitations. If we are required to make an indemnification payment to a purchaser of a tax credit it may have a material impact on our results of operations and financial condition. Furthermore, the current U.S. presidential administration and control of the U.S. Congress present uncertainty as to the continued availability of certain benefits. For example, on January 20, 2025, the U.S. President issued the executive order entitled, "Unleashing American Energy," which, among other things, indicated a lack of support for federal funding of certain solar and solar-related projects. Further, on July 4, 2025, the U.S. President signed H.R.1 into law, commonly referred to as the "One Big Beautiful Bill," which significantly curtails the availability of clean energy tax credits.

Certain developments to technical guidance and regulations include the following:

- In March 2024, the U.S. Treasury Department and the IRS issued final regulations on the direct payment election under Section 6417 of the IRC. The final regulations apply to tax years ending on or after March 11, 2024, but taxpayers may choose to apply the rules in the final regulations in taxable years ending before March 11, 2024, provided the final regulations are applied in their entirety and in a consistent manner. The final regulations mostly adopted and confirmed the proposed regulations previously issued in June 2023.
- In April 2024, the U.S. Treasury Department and the IRS issued final regulations on the elective transfer provisions under Section 6418 of the IRC. The final regulations apply to taxable years ending on or after April 30, 2024, but taxpayers may choose to apply the rules in the final regulations in taxable years ending before April 30, 2024, provided the final regulations are applied in their entirety and in a consistent manner. The final regulations mostly adopted and confirmed the proposed regulations previously issued in June 2023.
- In October 2024, the U.S. Treasury Department and the IRS issued final regulations on the Section 45X credit confirming key aspects of the credit, including (i) that a vertically-integrated solar module manufacturer is entitled to the sum of the credit amounts for each eligible component that is integrated into the solar module, (ii) the determination of the credit amounts based on standard test conditions, and (iii) the definition of a Section 45X manufacturing facility.

Any modifications to the law or its effects arising, for example, through (i) technical guidance and regulations from the IRS and U.S. Treasury Department, including the certain aspects disclosed above, (ii) subsequent amendments to or interpretations of the law by the IRS, the U.S. Treasury Department, or the courts, (iii) future laws or regulations rendering certain provisions of the IRA less effective or ineffective, in whole or in part, and/or (iv) changes to U.S. government priorities, policies, and/or initiatives as a result of the current U.S. presidential administration and control of the U.S. Congress, could result in changes to the expected and/or actual benefits in the future, which could have a material adverse effect on demand and/or price levels for our solar modules, our net sales, and future expansion plans within the United States, and/or otherwise adversely impact our business, financial condition, and results of operations.

Item 5. Other Information

From time to time, our directors and officers may adopt plans for the purchase or sale of our securities. Such plans may be designed to satisfy the affirmative defense conditions of Rule 10b5-1 under the Exchange Act or may constitute non-Rule 10b5-1 trading arrangements (as defined in Item 408(c) of Regulation S-K). During the three months ended June 30, 2025, none of our officers or directors terminated Rule 10b5-1 trading arrangements or adopted or terminated non-Rule 10b5-1 trading arrangements. However, certain of our officers adopted Rule 10b5-1 trading plans for the sale of our securities. The following table provides certain terms of such plans:

Name	Position	Action	Adoption Date	Expiration Date	Aggregate Number of Securities to be Sold (1)
Mark R. Widmar	Chief Executive Officer	Adoption	May 13, 2025	October 31, 2025	30,029
Nathan Theurer	Chief Accounting Officer	Adoption	May 15, 2025	May 8, 2026	1,483
Jason Dymbort	General Counsel & Secretary	Adoption	May 20, 2025	April 30, 2026	3,077

- (1) Represents the gross number of shares subject to the Rule 10b5-1(c) plan, excluding the potential effect of shares withheld for taxes. Amounts related to performance units are presented at their target amounts. The actual number of performance units that vest following the end of the applicable performance period, if any, will depend on the relative attainment of the performance metrics.

Item 6. Exhibits

The following exhibits are filed with this Quarterly Report on Form 10-Q:

Exhibit Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation of First Solar, Inc. (incorporated by reference to Exhibit 3.1 to First Solar, Inc.'s Registration Statement on Form S-1 filed on October 25, 2006)
3.2	Amended and Restated Bylaws of First Solar, Inc. (incorporated by reference to Exhibit 3.1 to First Solar, Inc.'s Form 8-K filed on May 9, 2024)
10.1*	Form of Grant Notice for 2025-2027 Executive Performance Equity Plan
10.2	Revolving Credit and Guaranty Agreement, dated as of June 30, 2023, among First Solar, Inc., the guarantors from time to time party thereto, the several banks and other financial institutions or entities from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (incorporated by reference to Exhibit 10.1 to First Solar, Inc.'s Form 8-K filed on July 6, 2023)
10.3*	First Amendment to Revolving Credit and Guaranty Agreement, dated as of February 16, 2024, among First Solar, Inc., the guarantors from time to time party thereto, the several banks and other financial institutions or entities from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent
10.4+*	Second Amendment to Revolving Credit and Guaranty Agreement, dated as of May 27, 2025, among First Solar, Inc., the guarantors from time to time party thereto, the several banks and other financial institutions or entities from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent
31.1*	Certification of Chief Executive Officer pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1†	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document – the instance document does not appear in the Interactive Data file because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover page formatted as Inline XBRL and contained in Exhibit 101

* Filed herewith.

+ Certain portions of this exhibit have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K. We have agreed to furnish supplementally an unredacted copy of the exhibit to the SEC upon its request.

† Furnished herewith. This exhibit shall not be deemed “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

SIGNATURE

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

FIRST SOLAR, INC.

Date: July 31, 2025

By: /s/ NATHAN THEURER
Name: Nathan Theurer
Title: Chief Accounting Officer

**Executive Performance Equity Plan
GRANT NOTICE**

This Grant Notice sets forth the economic terms of a Performance Unit Award granted under the First Solar, Inc. 2020 Omnibus Incentive Compensation Plan (the “Plan”). This Grant Notice, together with the Performance Unit Award Agreement Form Perf Unit-017 (“Performance Unit Award Agreement”) (the terms of which are incorporated into this Grant Notice by reference), constitute the Award Agreement for this Performance Unit Award under the Executive Performance Equity Plan. Capitalized terms used in this Grant Notice that are not defined in this Grant Notice have the meanings as used or defined in the Performance Unit Award Agreement, or if not defined therein, the Plan. Additionally, the 2020 Omnibus Plan Prospectus is available for viewing on the First Solar POWER site.

Participant: [•]

Target #
Performance Units: [•]

Grant Date: [•]

Performance
Period: [Start Date] – [End Date]

Vesting Conditions: The number of Performance Units that vests is subject to the level of achievement of the following performance goals during the Performance Period (the “Performance-Vesting Conditions”):

Performance Level	Threshold (50%)	Target (100%)	Maximum (200%)	Weighting
[•]	[•]	[•]	[•]	[•]%
[•]	[•]	[•]	[•]	[•]%
[•]	[•]	[•]	[•]	[•]%
[•]	[•]	[•]	[•]	[•]%
[•]	[•]	[•]	[•]	[•]%
[•]	[•]	[•]	[•]	[•]%

The final number of Performance Units actually awarded following the end of the Performance Period, if any, shall be based on the weighted attainment of specified levels of the Performance-Vesting Conditions, and may range between 0% and 200% of the number of target Performance Units. More specifically, 0% of the target Performance Units shall be earned upon less than threshold performance achievement; 50% of the target Performance Units shall be earned upon threshold performance achievement, 100% of target Performance Units shall be earned upon target performance achievement and 200% of target Performance Units shall be earned upon maximum performance achievement

(with linear interpolation between threshold and target performance achievement and between target and maximum performance achievement). Each Performance Unit represents the right to receive one share of the Company's common stock, no par value per share ("Share").

In determining achievement of the Performance-Vesting Conditions, the Committee may make such adjustments as it deems appropriate, including adjustments to performance metrics for events or circumstances as determined by the Committee. Further, the Committee may, in its sole discretion, reduce the number of Performance Units actually delivered hereunder even if the Performance-Vesting Conditions are achieved.

This Award shall not vest unless the Participant is continuously employed by the Company or an Affiliate through the settlement date following the end of the Performance Period, unless the Participant is eligible for a pro rata settlement as provided for in the Forfeiture section below.

Vesting
Acceleration upon a Change
in Control:

Award is Assumed or Substituted: Upon the occurrence of a Change in Control (as defined in the Change of Control Severance Agreement between the Participant and the Company ("CIC Agreement")) that occurs during the Performance Period in which the acquirer assumes or substitutes the Performance Units, the Performance Units shall remain eligible to vest in accordance with the vesting provisions described above (including the Performance-Vesting Conditions, subject to adjustments as permitted under Section 4(b) of the Plan or Section 10 of the Performance Unit Award Agreement); provided, however, if, within the 24-month period following such Change in Control, the Participant's employment with the Company and its Affiliates is terminated (1) by the Company or one of its Affiliates without Cause (as defined in the CIC Agreement) or (2) by the Participant for Good Reason (as defined in the CIC Agreement), then the number of Performance Units determined based on the greater of (x) target or (y) actual achievement of the applicable Performance-Vesting Conditions as of the last day of the quarter preceding the date of termination shall become vested as of the date of such termination of employment, and promptly settled within 60 days following such date. This Award shall expire and be forfeited with respect to the unvested portion thereof if the applicable Performance-Vesting Conditions are not satisfied as of such date of termination.

Award is Not Assumed or Substituted: Upon the occurrence of a Change in Control in which the acquirer does not assume or substitute the Performance Units, the Performance Units shall be deemed immediately vested at the greater of (x) target or (y) actual achievement of the applicable Performance-Vesting Conditions as of the last day of the quarter preceding the Change in Control, and shall be promptly settled within 60 days following the Change in Control.

Coordination with CIC Agreement: For the avoidance of doubt, the provisions of Section 3 "Impact of a Change in Control on Equity Compensation Awards" in the CIC Agreement shall not apply to this Award.

Forfeiture:

This Award shall be forfeited, with no consideration, upon termination of the Participant's employment provided, however that if such termination of employment occurs (x) on account of the Participant's death, (y) by the Company due to Disability (defined below), or (z) by the Participant due to a Retirement (defined below) occurring following the end of the first calendar year of the Performance Period, then the Participant shall be eligible for a pro rata settlement as described in the Settlement section below.

For this purpose, "Disability" shall have the meaning ascribed to such term (or term of similar import) in the employment agreement between the Participant and the Company, as in effect at the relevant time. "Retirement" shall mean the Participant's voluntary termination of employment provided that the Participant has (i) attained age fifty-five (55) or older as of the date of such termination and (ii) completed a minimum of ten (10) years of service as of the date of such termination. Notwithstanding anything to the contrary herein, if the Participant's employment is terminated due to a Retirement occurring following the end of the first calendar year of the Performance Period, the Participant shall be eligible for a *pro rata* settlement only if the Participant complies with the restrictive covenants set forth in the Non-Solicitation and Non-Competition Agreement by and between the Company and the Participant, as in effect on the date of such termination of employment through the settlement date of this Award.

Further, this Award shall expire and be forfeited with respect to the unvested portion thereof if the threshold Performance-Vesting Condition is not satisfied with respect to the Performance Period. For greater clarity, notwithstanding anything to the contrary herein, in the Performance Unit Award Agreement, or in any employment or other agreement between the Participant and the Company, no portion of this Award shall accelerate upon termination of the Participant's employment other than as expressly provided in this Grant Notice.

Settlement of Award:

Full Settlement: Where the Participant is eligible for *full* settlement of this Award or any portion thereof, as soon as administratively practicable following the vesting of this Award but in any event on or prior to March 15th of the calendar year following the end of the Performance Period, the Participant shall receive one fully vested Share for each vested Performance Unit.

Pro Rata Settlement: Where the Participant is eligible for a *pro rata* settlement of this Award or any portion thereof because the Participant experienced a termination of employment described above prior to the settlement date, such *pro rata* portion shall be determined by multiplying (i) the number of Performance Units that would have vested based on actual achievement of the Performance-Vesting Conditions had the Participant remained employed until the settlement date by (ii) a fraction, (a) the numerator of which is the number of days the Participant was employed by the Company during the Performance Period up to the date of termination, and (b) the denominator of which is the number of days from and after the first day of the Performance Period through the end of the Performance Period, *rounding up* to the next whole Performance Unit. Such *pro rata* portion of the Performance Units shall be settled in Shares,

on a one-for-one basis, as soon as administratively practicable following the vesting of this Award but in any event on or prior to March 15th of the calendar year following the end of the Performance Period. If the Participant becomes eligible for a *pro rata* settlement of this Award, then upon *pro rata* settlement the remainder of this Award shall be forfeited.

Settlement of
Taxes:

Vesting and settlement of the Performance Units shall be subject to the Participant satisfying any applicable federal, state and local tax withholding obligations and non-U.S. tax withholding obligations. The amount of any withholding taxes in respect of the Performance Units shall be satisfied by having the Company withhold from the number of Performance Units payable to the Participant under this Award a number of Shares having a fair market value equal to such required tax withholding obligations. If, for any reason, the Shares that would otherwise be deliverable to the Participant upon settlement of the Performance Units would be insufficient to satisfy the tax withholding obligations, the Company and any of its Subsidiaries are authorized to withhold an amount from the Participant's wages or other compensation sufficient to fully satisfy the tax withholding obligations.

Clawback:

Pursuant to Section 9(s) of the Plan, this Award is subject to potential forfeiture or clawback to the fullest extent called for by Company policy or applicable law. By accepting this Award, the Participant agrees to be bound by, and to comply with, the terms of any such forfeiture or clawback provisions, including but not limited to, the terms of the First Solar, Inc. Clawback Policy, or any successor thereto.

Signature

Date

FIRST AMENDMENT

FIRST AMENDMENT, dated as of February 16, 2024 (this "Amendment"), to the Revolving Credit and Guaranty Agreement, dated as of June 30, 2023 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement"), among (i) FIRST SOLAR, INC., a Delaware corporation (the "Borrower"), (ii) the Guarantors from time to time party thereto, (iii) the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders"), and (iv) JPMORGAN CHASE BANK, N.A., as Administrative Agent for the Lenders thereunder (in such capacity, the "Administrative Agent").

WITNESSETH:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has requested that the Lenders amend the Credit Agreement as set forth herein; and

WHEREAS, the Lenders party hereto, constituting the Required Lenders, and the Administrative Agent are willing to agree to such amendments to the Credit Agreement, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Borrower, the Lenders party hereto and the Administrative Agent hereby agree as follows:

SECTION 1. Defined Terms. Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

SECTION 2. Amendments to the Credit Agreement. Effective as of the First Amendment Effective Date (as defined below):

(a) A new Section 1.09 is added to the Credit Agreement, as follows:

"Section 1.09 *Foreign Currency Calculations*. For purposes of any determination under Sections 6.02, 6.03, 6.05, 6.06, 6.07 and 6.08, all amounts in a currency other than Dollars shall be translated into Dollars at the exchange rates in effect on the relevant date of such determination (determined by the Borrower in good faith by reference to customary indices), provided that no Default or Event of Default shall arise as a result of any limitation set forth in Dollars in such Sections being exceeded solely as a result of changes in currency exchange rates from those rates applicable at the time the relevant Indebtedness, Liens or other action were initially consummated in reliance on the exceptions under those Sections."

(b) Section 6.02 of the Credit Agreement is hereby amended by:

(i) Deleting the word "and" at the end of clause (n);

(ii) Replacing the period at the end of clause (o) with the words "; and";

(iii) Adding a new clause (p) at the end thereof, reading as follows:

“(p) other Indebtedness of the Borrower or any Subsidiary in respect of working capital facilities, line of credit facilities or similar operating facilities (including letter of credit facilities, short-term loan facilities, trade payable facilities, trade finance, trade receivable facilities, export credit facilities, factoring facilities and buyer’s or supplier’s credit financing) in an aggregate principal amount at any time outstanding not exceeding an amount equal to \$250,000,000, provided that (i) after giving effect to such incurrence on a Pro Forma Basis the Borrower is in compliance with the Net Leverage Ratio set forth in Section 6.01(a) (giving effect to any Leverage Ratio Increase Election then in effect or to occur in the case of an incurrence to fund a Material Acquisition) and (ii) both immediately prior to and after giving effect on a Pro Forma Basis, no Default or Event of Default shall exist or would result therefrom (it being understood and agreed that Indebtedness of FS India Solar Ventures Private Limited that was incurred prior to the First Amendment Effective Date under Section 6.02(k) and that is set forth on Schedule 6.02P shall be deemed to be incurred and outstanding under this clause (p) from and after the First Amendment Effective Date).”

(c) A new Schedule 6.02P is added to the Credit Agreement in the form attached hereto as Exhibit A.

SECTION 3. Representation and Warranties. To induce the Administrative Agent to enter into this Amendment, the Borrower hereby represents and warrants to the Administrative Agent and the Lenders on the First Amendment Effective Date that:

(a) Corporate Power; Authorization; Enforceable Obligations.

(i) The Borrower has the corporate power and authority, and the legal right, to make and deliver this Amendment and to perform the Credit Agreement, as amended by this Amendment and each other Loan Document to which the Borrower is party, and has taken all necessary corporate action to authorize the execution, delivery and performance of this Amendment and the performance of the Credit Agreement, as so amended, and each other Loan Document to which it is a party.

(ii) No consent or authorization of, filing with, or notice to or other act by or in respect of, any Governmental Authority or any other Person is required with respect to the Borrower or any of its Subsidiaries in connection with the execution and delivery of this Amendment or with the performance, validity or enforceability of the Credit Agreement, as amended by this Amendment, and each other Loan Document to which the Borrower is party.

(iii) This Amendment has been duly executed and delivered on behalf of the Borrower.

(iv) The Credit Agreement, as amended by this Amendment, and each other Loan Document to which the Borrower is a party, constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, subject to the effects of bankruptcy, examination, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(b) Representations and Warranties. The representations and warranties made by the Borrower in or pursuant to the Loan Documents (including this Amendment) are true and correct in all material respects (except for representations and warranties qualified as to “materiality” and “Material Adverse Effect”, which shall be true and correct in all respects) as if made on and as of such date (it being understood and agreed that any such representation or warranty (i) that relates solely to an earlier date is true and correct as of such earlier date and (ii) is true and correct in all respects if it is qualified by a materiality standard), and no Default or Event of Default has occurred and is continuing.

SECTION 4. Conditions to Effectiveness . This Amendment shall become effective on the date (the “First Amendment Effective Date”) on which (a) the Borrower, the Administrative Agent and the Required Lenders shall have executed and delivered to the Administrative Agent this Amendment and (b) all fees and expenses payable to the Administrative Agent and the Lenders on or prior to the First Amendment Effective Date shall have been paid.

SECTION 5. Acknowledgments and Confirmations; Liens Unimpaired.

(a) The Borrower hereby expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof, (i) the covenants and agreements contained in the Credit Agreement and each other Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to the First Amendment Effective Date and the transactions contemplated hereby and (ii) its prior grant of Liens on the Collateral to secure the Obligations owed or otherwise guaranteed by it pursuant to the Collateral Documents, with all such Liens continuing in full force and effect after giving effect to this Amendment;

(b) The Borrower confirms that (i) its obligations under the Credit Agreement to which it is a party are not discharged or otherwise affected by this Amendment and shall accordingly, subject to any limitations set forth in the Credit Agreement, continue in full force and effect and (ii) its obligations under, and the Liens granted by it in and pursuant to, the Collateral Documents are not discharged or otherwise affected by this Amendment and shall accordingly remain in full force and effect.

(c) After giving effect to the provisions of this Amendment, neither this Amendment or the modification of the Credit Agreement effected pursuant to this Amendment, nor the execution, delivery, performance or effectiveness of this Amendment:

(i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Collateral Document, and such Liens continue unimpaired with the same priority applicable to such Liens immediately prior to giving effect to the transactions contemplated by this Amendment to secure repayment of all Obligations, whether heretofore or hereafter incurred; or

(ii) requires that any new filings required to be made under any Loan Document be made or other action required to be taken under any Loan Document be taken to perfect or to maintain the perfection of such Liens.

SECTION 6. Payment of Expenses. Subject to Section 10.03 of the Credit Agreement, the Borrower agrees to pay and reimburse the Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the preparation and delivery of this Amendment, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

SECTION 7. No Other Amendments; Confirmation . Except as expressly amended, modified and supplemented hereby, the provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect.

SECTION 8. Governing Law; Counterparts.

(a) This Amendment and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York. The provisions of Sections 10.09 and 10.10 of the Credit Agreement are incorporated herein, *mutatis mutandis*.

(b) This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by facsimile transmission or in electronic (i.e., “pdf” or “tif”) format), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words “delivery”, “execute,” “execution,” “signed,” “signature,” and words of like import in this Amendment and any document executed in connection herewith shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterparts.

SECTION 9. Miscellaneous.

(a) Upon and after the First Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified hereby. This Amendment shall constitute a Loan Document.

(b) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor, except as expressly provided herein, constitute a waiver or amendment of any provision of any of the Loan Documents. It is the intent of the parties hereto, and the parties hereto agree, that this Amendment shall not constitute a novation of the Credit Agreement, any other Loan Document or any of the rights, obligations or liabilities thereunder.

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

FIRST SOLAR, INC.

By: /s/ Richard Romero Name: Richard Romero
Title: Vice President, Treasury & Project Finance

Signature Page to Amendment to Credit Agreement

JPMORGAN CHASE BANK, N.A., as Administrative Agent and individually as a Lender

By: /s/ Michael A. Harvey Name: Michael A. Harvey
Title: Authorized Officer

Signature Page to Amendment to Credit Agreement

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

By: /s/ Victor F. Cruz Name: Victor F. Cruz
Title: Director

Signature Page to Amendment to Credit Agreement

CITIBANK N.A.,
as a Lender

By: /s/ Derrick Lenz Name: Derrick Lenz
Title: Director

Signature Page to Amendment to Credit Agreement

Credit Agricole Corporate and Investment Bank
as a Lender

By: /s/ Andrew Sidford Name: Andrew Sidford
Title: Managing Director

By: /s/ Gordon Yip Name: Gordon Yip
Title: Director

Signature Page to Amendment to Credit Agreement

PNC BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Garrett Galt Name: Garrett Galt
Title: Vice President

Signature Page to Amendment to Credit Agreement

HSBC Bank USA, N.A. ,
as a Lender

By: /s/ Jessica Smith Name: Jessica Smith
Title: Director

Signature Page to Amendment to Credit Agreement

Goldman Sachs Bank USA
as a Lender

By: /s/ Dan Martis Name: Dan Martis
Title: Authorized Signatory

Signature Page to Amendment to Credit Agreement

MUFG Bank, Ltd.
as a Lender

By: /s/ Meng Zhang Name: Meng Zhang
Title: Vice President

Signature Page to Amendment to Credit Agreement

BNP Paribas, as a Lender

By: /s/ Denis O Meara Name: Denis O Meara
Title: Managing Director

By: /s/ Miko McGuire Name: Miko McGuire
Title: Vice President

Signature Page to Amendment to Credit Agreement

Standard Chartered Bank
as a Lender

By: /s/ Kristopher Tracy Name: Kristopher Tracy
Title: Director, Financing Solutions

Signature Page to Amendment to Credit Agreement

TRUIST BANK, as a Lender

By: /s/ Troy R. Weaver Name: Troy R. Weaver
Title: Managing Director

Signature Page to Amendment to Credit Agreement

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. [REDACTED] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Execution Version

SECOND AMENDMENT

SECOND AMENDMENT, dated as of May 27, 2025 (this "Amendment"), to the Revolving Credit and Guaranty Agreement, dated as of June 30, 2023 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement"), among (i) FIRST SOLAR, INC., a Delaware corporation (the "Borrower"), (ii) the Guarantors from time to time party thereto, (iii) the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders"), and (iv) JPMORGAN CHASE BANK, N.A., as Administrative Agent for the Lenders thereunder (in such capacity, the "Administrative Agent").

WITNESSETH:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has requested that the Lenders amend the Credit Agreement as set forth herein; and

WHEREAS, the Lenders party hereto, constituting the Required Lenders, and the Administrative Agent are willing to agree to such amendments to the Credit Agreement, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Borrower, the Lenders party hereto and the Administrative Agent hereby agree as follows:

SECTION 1. Defined Terms. Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

SECTION 2. Amendments to the Credit Agreement. Effective as of the Second Amendment Effective Date (as defined below), the Credit Agreement is hereby amended and restated as set forth in Exhibit A attached hereto.

SECTION 3. Representation and Warranties. To induce the Administrative Agent to enter into this Amendment, the Borrower hereby represents and warrants to the Administrative Agent and the Lenders on the Second Amendment Effective Date that:

(a) Corporate Power; Authorization; Enforceable Obligations.

(i) The Borrower has the corporate power and authority, and the legal right, to make and deliver this Amendment and to perform the Credit Agreement, as amended by this Amendment and each other Loan Document to which the Borrower is party, and has taken all necessary corporate action to authorize the execution, delivery and performance of this Amendment

and the performance of the Credit Agreement, as so amended, and each other Loan Document to which it is a party.

(ii) No consent or authorization of, filing with, or notice to or other act by or in respect of, any Governmental Authority or any other Person is required with respect to the Borrower or any of its Subsidiaries in connection with the execution and delivery of this Amendment or with the performance, validity or enforceability of the Credit Agreement, as amended by this Amendment, and each other Loan Document to which the Borrower is party.

(iii) This Amendment has been duly executed and delivered on behalf of the Borrower.

(iv) The Credit Agreement, as amended by this Amendment, and each other Loan Document to which the Borrower is a party, constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, subject to the effects of bankruptcy, examination, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(b) Representations and Warranties. The representations and warranties made by the Borrower in or pursuant to the Loan Documents (including this Amendment) are true and correct in all material respects (except for representations and warranties qualified as to "materiality" and "Material Adverse Effect", which shall be true and correct in all respects) as if made on and as of such date (it being understood and agreed that any such representation or warranty (i) that relates solely to an earlier date is true and correct as of such earlier date and (ii) is true and correct in all respects if it is qualified by a materiality standard), and no Default or Event of Default has occurred and is continuing.

SECTION 4. Conditions to Effectiveness. This Amendment shall become effective on the date (the "Second Amendment Effective Date") on which (a) the Borrower, the Administrative Agent and the Required Lenders shall have executed and delivered to the Administrative Agent this Amendment and (b) all fees and expenses payable to the Administrative Agent and the Lenders on or prior to the Second Amendment Effective Date shall have been paid.

SECTION 5. Acknowledgments and Confirmations; Liens Unimpaired.

(a) The Borrower hereby expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof, (i) the covenants and agreements contained in the Credit Agreement and each other Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to the Second Amendment Effective Date and the transactions contemplated hereby and (ii) its prior grant of Liens on the Collateral to secure the Obligations owed or otherwise guaranteed by it pursuant to the Collateral Documents, with all such Liens continuing in full force and effect after giving effect to this Amendment.

(b) The Borrower confirms that (i) its obligations under the Credit Agreement to which it is a party are not discharged or otherwise affected by this Amendment and shall accordingly, subject to any limitations set forth in the Credit Agreement, continue in full force and effect and (ii) its obligations under, and the Liens granted by it in and pursuant to, the Collateral Documents are not discharged or otherwise affected by this Amendment and shall accordingly remain in full force and effect.

(c) After giving effect to the provisions of this Amendment, neither this Amendment or the modification of the Credit Agreement effected pursuant to this Amendment, nor the execution, delivery, performance or effectiveness of this Amendment:

(i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Collateral Document, and such Liens continue unimpaired with the same priority applicable to such Liens immediately prior to giving effect to the transactions contemplated by this Amendment to secure repayment of all Obligations, whether heretofore or hereafter incurred; or

(ii) requires that any new filings required to be made under any Loan Document be made or other action required to be taken under any Loan Document be taken to perfect or to maintain the perfection of such Liens.

SECTION 6. Payment of Expenses. Subject to Section 10.03 of the Credit Agreement, the Borrower agrees to pay and reimburse the Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the preparation and delivery of this Amendment, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

SECTION 7. No Other Amendments; Confirmation. Except as expressly amended, modified and supplemented hereby, the provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect.

SECTION 8. Governing Law; Counterparts.

(a) This Amendment and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York. The provisions of Sections 10.09 and 10.10 of the Credit Agreement are incorporated herein, *mutatis mutandis*.

(b) This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by facsimile transmission or in electronic (i.e., “pdf” or “tif”) format), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words “delivery”, “execute,” “execution,” “signed,” “signature,” and words of like import in this Amendment and any document executed in connection herewith shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterparts.

SECTION 9. Miscellaneous.

(a) Upon and after the Second Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”,

“thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified hereby. This Amendment shall constitute a Loan Document.

(b) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor, except as expressly provided herein, constitute a waiver or amendment of any provision of any of the Loan Documents. It is the intent of the parties hereto, and the parties hereto agree, that this Amendment shall not constitute a novation of the Credit Agreement, any other Loan Document or any of the rights, obligations or liabilities thereunder.

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

FIRST SOLAR, INC.

By: /s/ Byron Jeffers

Name: Byron Jeffers

Title: V.P. Finance, Treasurer, Investor Relations

Signature Page to Second Amendment to Credit Agreement

JPMORGAN CHASE BANK, N.A. ,

as Administrative Agent and individually as a Lender

By: /s/ Alana Cain

Name: Alana Cain

Title: Vice President

Signature Page to Second Amendment to Credit Agreement

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

By: /s/ Victor F. Cruz
Name: Victor F. Cruz
Title: Managing Director

Signature Page to Second Amendment to Credit Agreement

CITIBANK N.A. As a Lender,

By: /s/ Cathy Shepherd

Name: Cathy Shepherd

Title: Vice President / Managing Director

Signature Page to Second Amendment to Credit Agreement

CREDIT AGRICOLE CORPORATE AND
INVESTMENT BANK, as a Lender

By: /s/ Andrew Sidford
Name: Andrew Sidford
Title: Managing Director

By: /s/ Gordon Yip
Name: Gordon Yip
Title: Director

PNC BANK, NATIONAL ASSOCIATION,
as a Lender,

By: /s/ Garrett Galt
Name: Garrett Galt
Title: Vice President

Signature Page to Second Amendment to Credit Agreement

BNP PARIBAS, As a Lender

By: /s/ Delphine Gaudiot

Name: Delphine Gaudiot

Title: Managing Director

By: /s/ Andrey Pimenov

Name: Andrey Pimenov

Title: Vice President

Signature Page to Second Amendment to Credit Agreement

Goldman Sachs Bank USA ,
As a Lender

By: /s/ Priyankush Goswami
Name: Priyankush Goswami
Title: Authorized Signatory

Signature Page to Second Amendment to Credit Agreement

HSBC Bank USA, N.A., as Lender,

/s/ Jessica Smith
Name: Jessica Smith
Title: Director

Signature Page to Second Amendment to Credit Agreement

MUFG Bank, Ltd. ,
As a Lender

By: /s/ Deborah White
Name: Deborah White
Title: Director

Signature Page to Second Amendment to Credit Agreement

Standard Chartered Bank ,
As a Lender

By/s/ Brendan Heneghan

Name: Brendan Heneghan
Title: Executive Director, Financing Solutions

Signature Page to Second Amendment to Credit Agreement

TRUIST BANK,
As a Lender

By: /s/ Vicount P. Cornwall
Name: Vicount P. Cornwall
Title: Director

Signature Page to Second Amendment to Credit Agreement

Exhibit A

Conformed Credit Agreement

J.P.Morgan

REVOLVING CREDIT AND GUARANTY AGREEMENT

dated as of

June 30, 2023

as amended by the First Amendment, dated as of February 16, 2024 and
as further amended by the Second Amendment, dated as of May 27, 2025

among

FIRST SOLAR, INC.

The Guarantors Party hereto

The Lenders Party Hereto

and

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

JPMORGAN CHASE BANK, N.A., BOFA SECURITIES, INC., CITIBANK, N.A., CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, PNC
CAPITAL MARKETS LLC

as Joint Bookrunners, Joint Lead Arrangers, and Documentation Agents

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Exhibit G-4 – U.S. Tax Certificate (For Foreign Lenders that are Partnerships for U.S. Federal Income Tax Purposes)

REVOLVING CREDIT AND GUARANTY AGREEMENT dated as of June 30, 2023 (this “*Agreement*”), among FIRST SOLAR, INC., a Delaware corporation (the “*Borrower*”), the Guarantors from time to time party hereto, the several banks and other financial institutions or entities from time to time parties to this Agreement (the “*Lenders*”), and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

WHEREAS, the Borrower has requested that the Lenders provide a revolving credit facility to the Borrower on and after the Effective Date in an aggregate principal amount of \$1,000,000,000, and the Lenders are willing to do so on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE 1
Definitions

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

“*ABR*”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“*Acquisition*” as to any Person, any acquisition by such Person (i) of a majority or controlling interest in the Equity Interests of any other Person, (ii) of all or substantially all of the assets of any Person or (iii) of all or substantially all of the assets constituting a division, business unit or line of business of any other 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 Rate 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 the 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 Person specified.

“**Agent-Related Person**” has the meaning assigned to it in Section 10.03(d).

“**Agreement**” has the meaning specified in the introductory paragraph hereof.

“**Alternate Base Rate**” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1%, such rate shall be deemed to be 1% for purposes of this Agreement.

“**Ancillary Document**” has the meaning assigned to it in Section 10.06(b).

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption (including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder and the UK Bribery Act).

“**Applicable Anniversary**” has the meaning assigned to it in Section 2.21(a).

“**Applicable Party**” has the meaning assigned to it in Section 9.03(c).

“**Applicable Percentage**” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment; provided that, in the case of Section 2.20 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“**Applicable Rate**” means, for any day, with respect to any ABR Loan, Term Benchmark Loan, RFR Loan or with respect to the commitment fees payable pursuant to Section 2.12(a), as the case may be, (x) initially, from the Effective Date until, but excluding, the first Business Day that immediately follows the date on which the Borrower delivers to the Administrative Agent both

(i) the financial statements required to be delivered pursuant to Section 5.01(a) or (b), as applicable, and (ii) the Compliance Certificate, in each case in respect of the first full fiscal quarter of the Borrower ending after the Effective Date, 1.750% per annum in the case of any Term Benchmark Loan, 0.750% per annum in the case of any ABR Loan and 0.225% in the case of commitment fees and (y) thereafter, the applicable rate *per annum* set forth below under the caption “ABR Spread”, “Term Benchmark Spread”, “RFR Spread” or “Commitment Fee Rate”, as the case may be, determined by reference to the Net Leverage Ratio set forth in the most recently delivered Compliance Certificate:

Category Levels	Net Leverage Ratio:	ABR Spread	Term Benchmark Spread	RFR Spread	Commitment Fee Rate
Category 1	≤ 1.00	0.750%	1.750%	1.750%	0.225%
Category 2	> 1.00 but ≤ 2.00	0.875%	1.875%	1.875%	0.275%
Category 3	> 2.00 but ≤ 3.00	1.000%	2.000%	2.000%	0.325%
Category 4	> 3.00	1.250%	2.250%	2.250%	0.375%

Any increase or decrease in the Applicable Rate resulting from a change in the Net Leverage Ratio shall become effective as of the first Business Day immediately following the date on which the Borrower delivers the applicable Compliance Certificate that sets forth a Net Leverage Ratio requiring a change to the Applicable Rate then in effect; *provided*, however, that the Applicable Rate corresponding to Category Level 4 shall apply without regard to the Net Leverage Ratio (x) at any time after the date on which any annual or quarterly financial statement was required to have been delivered pursuant to Section 5.01(a) or (b) but was not (or the Compliance Certificate related to such financial statements was required to have been delivered pursuant to Section 5.01(c) but was not) delivered, commencing with the first Business Day immediately following such date and continuing until the first Business Day immediately following the date on which such financial statement (or, if later, the Compliance Certificate related to such financial statement) is delivered, or (y) at all times if an Event of Default shall have occurred and be continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Net Leverage Ratio would have resulted in a higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable Issuing Bank, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, automatically and without further action by the Administrative Agent, any Lender or any Issuing Bank), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period.

Notwithstanding anything to the contrary, on and after the Investment Grade Ratings Trigger Date (and after the period described in clause (x) of the first sentence of this definition), the Borrower may elect, by delivery of a notice to the Administrative Agent (the “*Ratings-Based Pricing Notice*”), to switch to a ratings-based pricing grid (the “*Ratings-Based Grid*”) based upon the Public Debt Rating (in lieu of the Net Leverage Ratio-based grid set forth above), as provided below:

Category Levels:	Public Debt Ratings:	ABR Spread	Term Benchmark Spread	RFR Spread	Commitment Fee Rate
Category 1	Baa1/BBB+	0.250%	1.250%	1.250%	0.125%
Category 2	Baa2/BBB	0.375%	1.375%	1.375%	0.175%
Category 3	Baa3/BBB-	0.625%	1.625%	1.625%	0.225%
Category 4	Ba1/BB+	0.875%	1.875%	1.875%	0.275%
Category 5	Ba2/BB	1.125%	2.125%	2.125%	0.325%

The election by the Borrower to switch to the Ratings-Based Grid shall be irrevocable and shall become effective three (3) Business Day immediately following the delivery of the Ratings-Based Pricing Notice to the Administrative Agent.

For purposes of the foregoing, (i) if the ratings established by two or more Rating Agencies for the Public Debt Rating shall fall within the same Category, the Applicable Rate shall be determined by reference to such Category; (ii) if none of Moody’s, S&P and Fitch shall have a Public Debt Rating in effect (other than by reason of the circumstances referred to in the last sentence of this definition), then such Rating Agency shall be deemed to have established a rating in Category 5; (iii) if only one Rating Agency shall have in effect a Public Debt Rating, the Applicable Rate shall be determined by reference to the Category in which such rating falls; (iv) if the Public Debt Rating established or deemed to have been established by Moody’s, S&P and Fitch shall each fall within different Categories from each other, the Applicable Rate shall be based on the highest of the three ratings unless at least one of the three ratings is two or more Categories lower than one or more of the others, in which case the Applicable Rate shall be determined by reference to the Category next below that of the highest of the three ratings; (v) if only two of S&P, Moody’s and Fitch shall have in effect a Public Debt Rating and such ratings shall fall within different Categories, the Applicable Rate shall be based on the higher of the two ratings unless one of the two ratings is two or more Categories lower than the other, in which case the Applicable Rate shall be determined by reference to the Category next below that of the higher of the two ratings; and (vi) if the Public Debt Rating established or deemed to have been established by Moody’s, S&P and Fitch shall be changed (other than as a result of a change in the rating system of Moody’s, S&P or Fitch), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent and the Lenders pursuant to Section 5.01 or otherwise. The Applicable Rate shall be determined in accordance with the

Ratings-Based Grid (and this paragraph) commencing on the date of delivery of the Ratings-Based Pricing Notice. Thereafter, each change in the Applicable Rate determined by reference to the Ratings-Based Grid (and this paragraph) shall apply during the period commencing on the effective date of any such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody's, S&P or Fitch shall change, or if any such Rating Agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such Rating Agency and, pending the effectiveness of any such amendment, the Applicable Rate shall be determined by reference to the rating most recently in effect prior to such change or cessation.

"Approved Electronic Platform" has the meaning assigned to it in Section 9.03(a).

"Approved Fund" has the meaning assigned to it in Section 10.04(b).

"Arranger" means JPMorgan Chase Bank, N.A., BofA Securities, Inc., Citibank, N.A., Credit Agricole Corporate and Investment Bank, and PNC Capital Markets LLC, each as joint bookrunner and joint lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), 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.

"Augmenting Lender" has the meaning assigned to it in Section 2.22.

"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 Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated 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 (e) 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 provided to any Loan Party or any Subsidiary: (a) credit cards for commercial customers (including, without limitation, commercial credit cards, employee credit cards and purchasing cards), (b) stored value cards, (c) merchant processing services, (d) treasury management services (including, without limitation, cash sweeps, cash pooling, netting, check drawing, controlled disbursement, automated clearinghouse transactions, automated payment, return items, temporary advances, any direct debit scheme or arrangement, overdrafts and interstate depository network services), (e) supply chain financings, (f) bill of exchange financings, (g) inventory financings and (h) any other arrangements or services similar to any of the foregoing.

“Banking Services Agreement” means any agreement entered into by any Loan Party or any Subsidiary in connection with Banking Services.

“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, 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 United States 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 (i) RFR Loan, the Daily Simple SOFR or (ii) 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, as applicable, 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 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 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 Revolving Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” 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, in consultation with the Borrower, reasonably decides 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 reasonably decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent reasonably determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, 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 (c) and even if any

Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, 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 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 future date will no longer be, representative.

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

“**Benchmark Unavailability Period**” means, 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.

“Beneficiary” means each Agent, Issuing Bank and each Lender Counterparty.

“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.

“Borrower” has the meaning specified in introductory paragraph hereof.

“Borrowing” means a Revolving Borrowing.

“Borrowing Request” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03, which shall be substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

“Business Day” means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City; provided that, in addition to the foregoing, a Business Day shall be (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

“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.

“Cash Equivalents” means (a) Permitted Investments and (b) all other cash equivalents approved by Administrative Agent in its sole discretion.

“CFC” means a “controlled foreign corporation” within the meaning of section 957(a) of the Code.

“**CFC Holding Company**” means any Domestic Subsidiary substantially all of the assets of which are one or more CFCs, either directly or indirectly through other entities that are disregarded entities or partnerships for U.S. federal income tax purposes.

“**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) of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) directors of the Borrower on the date hereof, (ii) nominated, appointed or approved by the board of directors of the Borrower nor (iii) appointed by directors who were directors on the date hereof or were so nominated, appointed or approved as provided in subclause (ii).

“**Change in Law**” means the occurrence after the date of this Agreement of (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 Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted, issued or implemented.

“**Charges**” has the meaning assigned to it in Section 10.14.

“**Class**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are (i) Revolving Loans or (ii) any other separate class of loans established hereunder after the Effective Date pursuant to the terms of this Agreement.

“**CME Term SOFR Administrator**” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

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

“**Collateral**” means any and all property owned, leased or operated by a Loan Party that is subject to a Lien securing the Obligations pursuant to the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject to a Lien securing the Obligations pursuant to the Collateral Documents.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements and all other agreements, instruments and documents that are intended to create, perfect or evidence Liens on Collateral to secure the Obligations executed in connection with this Agreement by the Borrower or any other Loan Party and delivered to the Administrative Agent for the benefit of the Secured Parties.

“**Commitment**” means, with respect to each Lender, the amount set forth on Schedule 2.01A opposite such Lender’s name, or in the Assignment and Assumption or other documentation or record as provided in Section 10.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Commitment, as applicable, and giving effect to (a) any reduction in such amount from time to time pursuant to Section 2.09, (b) any increase from time to time pursuant to Section 2.22, and (c) any reduction or increase in such amount from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04; *provided, that* at no time shall the Revolving Credit Exposure of any Lender exceed its Commitment. The initial aggregate amount of the Lenders’ Commitments is \$ 1,000,000,000.

“**Communications**” has the meaning assigned to it in Section 9.03(c).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit E.

“**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.

“**Consolidated Interest Expense**” means, with respect to the Borrower and its Subsidiaries for any period, the total interest expense of the Borrower and its Subsidiaries during such period determined on a consolidated basis, in accordance with GAAP. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by the Borrower and the Subsidiaries with respect to Swap Agreements.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income of the Borrower and its Subsidiaries for such period plus, without duplication and to the extent deducted in the calculation of such Consolidated Net Income for such period, the sum of (a) income Tax expense, (b) interest expense, (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary, unusual or non-recurring charges, expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, losses on sales of assets outside of the ordinary course of business exceeding \$1,000,000), (f) compensation expense attributable to the issuance or grant of Equity Interest of the Borrower, (g) any other non-cash charges, expenses or losses (excluding any such non-cash charge to the extent it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period) and (h) the amount of net cost savings, operating expense reductions and cost synergies projected by the Borrower in good faith to be realized as the result of actions taken within 12 months of the initiation or consummation of any operational change or operating improvement or other similar initiative, or within 12 months of the consummation of any applicable acquisition or cessation of operations (in each case, calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions (*provided* that any such adjustments in respect of such net cost savings, operating expense reductions and synergies (x) are reasonably identifiable and factually supportable and (y) shall not exceed 10 % of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a) (before giving effect to all such adjustments), and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (i) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of

the ordinary course of business exceeding \$1,000,000), (ii) any other non-cash income or gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash charge in any prior period) and (iii) any gains realized from the disposition of property outside of the ordinary course of business.

“Consolidated Net Income” means, for any period, the consolidated net income (or loss) of the Borrower 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 of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries and (b) the income (or deficit) of any Person (other than a Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions.

“Consolidated Net Tangible Assets” means, at any time, the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom (i) all current liabilities, and (ii) to the extent included in such aggregate amount of assets, all intangible assets, goodwill, trade names, Intellectual Property, unamortized debt discount and expenses and deferred charges (such items referred to in this clause (ii), the **“Intangible Assets”**), all as set forth on the most recent consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the most recently ended fiscal quarter prior to the applicable date of determination for which financial statements are available; provided that, for purposes of testing the covenants under this Agreement in connection with any transaction, (i) the assets and Intangible Assets of the Borrower and its Subsidiaries shall be adjusted to reflect any acquisitions and dispositions of assets or Intangible Assets, as the case may be, that have occurred during the period from the date of the applicable balance sheet through the applicable date of determination, including the transaction being tested under this Agreement and (ii) the current liabilities of the Borrower and its Subsidiaries shall be adjusted to reflect any increase or decrease in current liabilities as a result of any acquisitions or dispositions of assets or Intangible Assets that have occurred during the period from the date of the applicable balance sheet through the applicable date of determination, including the transaction being tested under this Agreement.

“Consolidated Total Indebtedness” means at any time, without duplication, the aggregate principal amount of outstanding Indebtedness (excluding (i) Indebtedness in respect of contingent obligations described in clauses (i) and (j) of the definition of Indebtedness and (ii) Indebtedness described in clauses (c), (d) and (k) of the definition of Indebtedness) of the Borrower and its Subsidiaries calculated on a consolidated basis as of such time in accordance with GAAP.

“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.

“Convertible Debt Security” means any unsecured debt security the terms of which provide for the conversion or exchange thereof into Equity Interests, cash or a combination of Equity Interests and cash with such amount of cash and Equity Interests determined by reference to the Borrower’s common stock.

“**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.

“**Counterpart Agreement**” means a Counterpart Agreement substantially in the form of Exhibit F delivered by a Loan Party pursuant to Section 5.10.

“**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 10.18.

“**Credit Party**” means the Administrative Agent, each Issuing Bank, or any other Lender.

“**Daily Simple SOFR**” means, for any day (a “**SOFR Rate Day**”), a rate per annum equal SOFR for the day (such day “**SOFR Determination Date**”) that is five (5) U.S. Government Securities Business Day prior to (i) if 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 Borrower.

“**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 (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 the 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 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 (A) a Bankruptcy Event or (B) a Bail-In Action.

"DFC Guaranty Agreement" means the Guaranty Agreement dated August 4, 2022, between the Borrower and United States International Development Finance Corporation.

"DFC Loan Agreement" means the Finance Agreement dated July 27, 2022, between FS India Solar Ventures Private Limited and United States International Development Finance Corporation.

"Direct Borrower Obligations" shall mean any Obligations of the Borrower in its capacity as the Borrower under this Agreement, or as a counterparty or direct obligor with respect to any Swap Agreement, any Banking Services Agreement or any Secured Bilateral Letter of Credit.

"Disclosed Matters" means the actions, suits and proceedings and the 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.

"Disqualified Equity Interest" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (excluding any provisions requiring redemption upon the occurrence of a change of control or asset sale event; provided that such change of control or asset sale event results in payment in full of the Loan Documents Obligations), (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests and the payment in cash in lieu of the issuance of fractional shares of such Equity Interests), in whole or in part (excluding any provisions requiring redemption upon the occurrence of a change of control or asset sale event; provided that such change of control or asset sale event results in payment in full of the Obligations), or (iii) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the latest Maturity Date then in effect; *provided* that Equity Interests will not constitute Disqualified Equity Interests solely because of provisions giving holders thereof the right to require repurchase or redemption upon an "asset sale" or "change of control" occurring prior to the date that is 91 days after the latest Maturity Date then in effect if the payment upon such redemption or repurchase is contractually subordinated in right of payment to the Loan Documents Obligations.

“Documentation Agent” means JPMorgan Chase Bank, N.A., Bank of America, N.A., Citibank, N.A., Credit Agricole Corporate and Investment Bank, and PNC Capital Markets LLC.

“Dollars”, **“dollars”** or **“\$”** refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is incorporated or organized under the laws of the United States, any state thereof or in the District of Columbia.

“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 10.02).

“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.

“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 (i) the environment, (ii) preservation or reclamation of natural resources, (iii) the management, release or threatened release of any Hazardous Material or (iv) health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest, *provided* that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash. For the avoidance of doubt, Permitted Bond Hedge Transactions and Permitted Warrant Transactions do not constitute Equity Interests of the Borrower.

“**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 any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001 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 with respect to any 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) with respect to any Plan, 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 determination that any Plan is in “at-risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the imposition on or incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; (f) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan; (g) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition upon any Loan Party or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA), in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or terminated (within the meaning of Section 4041A or 4042 of ERISA); (i) the failure by any Loan Party or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability; or (j) a Foreign Plan Event.

“**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 Section 8.01.

“**Excluded Subsidiary**” means (a) any Subsidiary that is not a wholly-owned Subsidiary of the Borrower and is prohibited by its organizational documents or applicable equity holder agreement from guaranteeing the Obligations or which would require the consent or approval of an equity holder (other than the Borrower or any of its wholly owned Subsidiaries) to provide such Guarantee (unless such consent or approval has been obtained), (b) any Immaterial Subsidiary, (c) any Subsidiary (i) that is prohibited from providing a Guarantee by (A) any requirement of law or (B) any contractual obligation that, in the case of this clause (B), exists on the Effective Date or, if such Subsidiary is acquired after the Effective Date, at the time such Subsidiary is acquired and which contractual obligation was not entered into in contemplation of such acquisition and only for so long as such prohibition is continuing, (ii) that would require a governmental consent, approval, license or authorization to provide a Guarantee (including any regulatory consent, approval, license or authorization) unless such consent, approval, license or authorization has been obtained (it being understood that the Borrower shall not be required to obtain such consent, approval, license or authorization), or (iii) the provision of a Guarantee by which, in the reasonable judgment of the Borrower and the Administrative Agent, would result in material adverse tax consequences to the

Borrower, (d) any not-for-profit subsidiary, (e) any special purpose subsidiaries designated by the Borrower from time to time, (f) (i) any Foreign Subsidiary, (ii) any CFC Holding Company and/or (iii) any Domestic Subsidiary that is a direct or indirect subsidiary of any Foreign Subsidiary or a CFC Holding Company, (g) any Unrestricted Subsidiary, (h) any Subsidiary acquired by the Borrower or any Subsidiary after the Effective Date in a transaction not prohibited by this Agreement that, at the time of the relevant acquisition, is an obligor in respect of assumed Indebtedness permitted by Section 6.02 to the extent (A) (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such subsidiary from providing a Guarantee and (B) the relevant prohibition was not implemented in contemplation of the applicable acquisition, for so long as such prohibition exists and (i) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower and the Administrative Agent, the burden or cost of providing a Guarantee outweighs the benefits afforded thereby.

“Excluded Swap Obligation” means, with respect to any Guarantor at any time, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee by such Guarantor of, or the grant by such 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 Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to any “keepwell”, support or other agreement for the benefit of such Guarantor) at the time the Guarantee of such Guarantor, or the grant of such security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“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 Borrower under Section 2.19(b)) 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 (g), and (d) any withholding Taxes imposed under FATCA.

“Existing Maturity Date” has the meaning assigned to such term in Section 2.21

“Extending Lender” has the meaning assigned to such term in Section 2.21

“Extension Request” means a written request from the Borrower to the Administrative Agent requesting an extension of the Maturity Date pursuant to Section 2.21.

“**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, 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 depository 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.

“**Financial Officer**” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of the Borrower.

“**Fitch**” means Fitch Ratings Inc.

“**Fixed Amount**” has the meaning assigned to it in Section 1.04(d).

“**Floor**” means a rate of interest equal to 0% per annum with respect to the Adjusted Term SOFR Rate and the Adjusted Daily Simple SOFR

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

“**Foreign Plan**” means any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Borrower or any Subsidiary with respect to employees employed outside the United States (other than any governmental arrangement).

“**Foreign Plan Event**” means (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions to any Foreign Plan required by applicable law or by the terms of such Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any Foreign Plan required to be registered; or (c) the failure of any Foreign Plan to comply with any material provisions of applicable law and regulations or with the material terms of such Foreign Plan.

“**Foreign Subsidiary**” any Subsidiary that is not a Domestic Subsidiary.

“**GAAP**” means generally accepted accounting principles in the United States of America.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Grantor**” has the meaning assigned to such term in the Security Agreement.

“**Guarantee**” or “**Guaranty**” 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. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined in good faith by a Financial Officer. The term “Guarantee” or “Guaranty” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning assigned to such term in Section 7.01.

“**Guarantor**” means each Person that shall have become a party hereto as a “Guarantor” and shall have provided a Guaranty of the Obligations by executing and delivering to the Administrative Agent a signature page hereto or a Counterpart Agreement.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“**Immaterial Subsidiary**” means, at any time of determination, each Subsidiary of the Borrower (a) whose Consolidated Net Tangible Assets as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a) were less than 5% of the Consolidated Net Tangible Assets of the Borrower and its Subsidiaries at such date and (b) whose consolidated gross revenues for the most recent period of four fiscal quarters in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a) were less than 5% of the consolidated gross revenues of the Borrower and its Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, as of the most recent date or period referred to in clause (a) or (b) above, the combined Consolidated Net Tangible Assets or the combined consolidated gross revenues of all Subsidiaries that would constitute Immaterial Subsidiaries in accordance with clause (a) and (b) above shall have exceeded 10% of the Consolidated Net Tangible Assets of the Borrower and its Subsidiaries at such date or 10% of consolidated gross revenues of the Borrower and its Subsidiaries for such period, then one or more of such Subsidiaries that would otherwise be an Immaterial Subsidiary shall for all purposes of this Agreement automatically be deemed to not be an Immaterial Subsidiary in descending order based on the amounts of their Consolidated Net Tangible Assets or consolidated gross revenues, as the case may be, until such excess shall have been eliminated.

“Increasing Lender” has the meaning assigned to such term in Section 2.22.

“Incremental Commitments” has the meaning assigned to such term in Section 2.22.

“Incremental Term Loan” has the meaning assigned to such term in Section 2.22.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (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, demand guarantees and similar independent undertakings, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (k) all net payment and performance obligations of such Person under Swap Agreements; *provided that* “Indebtedness” shall not include any obligations arising under any Banking Services. 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. The amount of any net obligation under any Swap Agreement on any date shall be the Swap Termination Value as of such date. For all purposes hereof, the Indebtedness of the Borrower and its Subsidiaries shall exclude intercompany liabilities arising in the ordinary course from their cash management, tax, and accounting operations.

“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 the Borrower under any Loan Document and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“Indemnitee” has the meaning assigned to it in Section 10.03(c).

“Ineligible Institution” has the meaning assigned to it in Section 10.04(b).

“Information” has the meaning assigned to it in Section 10.12.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08, which shall be substantially in the form of Exhibit C or any other form approved by the Administrative Agent.

“Intellectual Property” has the meaning set forth in the Security Agreement.

“Intellectual Property Security Agreements” has the meaning set forth in the Security Agreement.

“Interest Coverage Ratio” means, at any date of determination, the ratio of (a) Consolidated EBITDA for the most recently ended Test Period to (b) Consolidated Interest Expense

for the most recently ended Test Period, all calculated for the Borrower and its Subsidiaries on a consolidated basis. In the event that the Borrower or any Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant Test Period, the Interest Coverage Ratio shall be determined for such period on a Pro Forma Basis as if such acquisition or disposition, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such Test Period.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, (b) with respect to any RFR Loan (to the extent applicable pursuant to Section 2.14), (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date, (c) 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 may elect; *provided*, that (i) 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, (ii) 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, (iii) any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 2.14(e) 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, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investment Grade Ratings” means (a) as to S&P, a Public Debt Rating of BBB- or better (with stable outlook or better), (b) as to Moody’s, a Public Debt Rating of Baa3 or better (with stable outlook or better) and (c) as to Fitch, a Public Debt Rating of BBB- or better (with stable outlook or better).

“Investment Grade Ratings Trigger Date” means the first date after the Effective Date when the Public Debt Ratings from at least two of S&P, Moody’s, and Fitch are Investment Grade Ratings.

“Investments” has the meaning assigned to it in Section 6.06.

“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 JPMorgan Chase Bank, N.A., Bank of America, N.A., Citibank, N.A., Credit Agricole Corporate and Investment Bank, PNC Bank, National Association, and any other Lender that agrees to act as an Issuing Bank (in each case, through itself or through one of its designated affiliates or branch offices), each in its capacity as the issuer of Letters of Credit hereunder, and its 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 Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “Issuing Bank” in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant Issuing Bank with respect thereto.

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

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the LC Exposure 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 in the governing rules or laws or 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 Borrower 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.

“LCA Election” has the meaning assigned to it in Section 1.07.

“LCA Test Date” has the meaning assigned to it in Section 1.07.

“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 it in Section 10.03(b).

“Lender Counterparty” means each Lender, the Administrative Agent, each Arranger and each of their respective Affiliates that is counterparty to a Swap Agreement, a provider of Banking Services pursuant to a Banking Services Agreement or an issuer of a Secured Bilateral Letter of Credit, as applicable, including any Person who is the Administrative Agent or a Lender (and any Affiliate thereof) at the time of entry into (or issuance of) such Swap Agreement, Banking Services Agreement or Secured Bilateral Letter of Credit, as applicable, but subsequently ceases to be the Administrative Agent or a Lender (or an Affiliate thereof), as the case may be.

“**Lenders**” means the Persons listed on Schedule 2.01A and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or otherwise, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption or otherwise.

“**Letter of Credit**” means any letter of credit issued pursuant to this Agreement.

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

“**Letter of Credit Commitment**” means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit hereunder. The initial amount of each Issuing Bank’s Letter of Credit Commitment is set forth on Schedule 2.01B, or if an Issuing Bank has entered into an Assignment and Assumption or has otherwise assumed a Letter of Credit Commitment after the Effective Date, the amount set forth for such Issuing Bank as its Letter of Credit Commitment in the Register maintained by the Administrative Agent. The Letter of Credit Commitment of an Issuing Bank may be modified from time to time by agreement between such Issuing Bank and the Borrower, and notified to the Administrative Agent.

“**Letter of Credit Sublimit**” shall mean the aggregate Letter of Credit Commitments of the Issuing Banks, in an aggregate amount not to exceed \$250,000,000, as such amount may be reduced pursuant to Section 2.06. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“**Leverage Ratio Increase Election**” has the meaning assigned to it in Section 6.01.

“**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.

“**Limited Condition Acquisition**” means any acquisition or Investment permitted by this Agreement, in each case whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

“**LLC**” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

“**Loan Documents**” means this Agreement, including schedules and exhibits hereto, the Collateral Documents, and any agreements entered into in connection herewith or therewith by the Borrower or any Loan Party with or in favor of the Administrative Agent and/or the Lenders that indicates it shall be a “Loan Document” hereunder, including any amendments, modifications or supplements hereto or thereto or waivers hereof or thereof.

“**Loan Documents 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 the Borrower and the Subsidiaries to any of the Lenders, the Administrative Agent, any Arranger, any Issuing Bank, any Lender Counterparty 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 or arising or incurred under any Secured Swap Agreement Obligations, any Secured Bank Services Obligations or any Secured Bilateral Letter of Credit, provided that Loan Documents Obligations shall exclude Excluded Swap Obligations.

“**Loan Parties**” means the Borrower and each Guarantor.

“**Loans**” means the loans made by the Lenders to the Borrower pursuant to this Agreement (including any loan made pursuant to an increase of the Commitment or an Incremental Term Loan).

“**Margin Stock**” means margin stock within the meaning of Regulations T, U and X, as applicable.

“**Material Acquisition**” means any Acquisition that involves the payment of consideration by the Borrower and/or any of its Subsidiaries in excess of \$50,000,000.

“**Material Acquisition Step-Up**” has the meaning assigned to it in Section 6.01.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, property or condition, financial or otherwise, of the Borrower and the Subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its payment obligations hereunder or (c) the rights of or remedies available to the Lenders under this Agreement or any other Loan Document.

“**Material Disposition**” means any of Disposition of property or series of related Dispositions of property that (a) constitutes assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the common stock (or similar equity interests) of a Person and (b) yields consideration to the Borrower or any of its Subsidiaries in excess of \$50,000,000.

“**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 Borrower and its Subsidiaries in an aggregate principal amount exceeding \$100,000,000.

“**Material IP**” means Intellectual Property that is material to the business of the Borrower or any of its Subsidiaries (individually or taken as a whole), as reasonably determined by the Borrower in good faith.

“**Maturity Date**” means June 30, 2028; *provided* that if the maturity date is extended for any Lender pursuant to Section 2.21, the Maturity Date for such Lender shall be such extended maturity date as determined pursuant to such Section; *provided*, further, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“**Maximum Net Leverage Ratio**” has the meaning assigned to it in Section 6.01.

“**Maximum Rate**” has the meaning assigned to it in Section 10.14.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions.

“**Net Leverage Ratio**” means, at any date of determination the ratio of (i) Consolidated Total Indebtedness as of the last day of the Test Period ending on the last day of any fiscal quarter minus (ii) unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries at such date, in an amount not to exceed \$1,000,000,000, to (ii) Consolidated EBITDA for such Test Period, all calculated for the Borrower and its Subsidiaries on a consolidated basis. In the event that the Borrower or any Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant Test Period, the Net Leverage Ratio shall be determined for such period on a Pro Forma Basis as if such acquisition or disposition, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such Test Period.

“**Non-Extending Lender**” has the meaning assigned to it in Section 2.21.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB Rate**” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**NYFRB’s Website**” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“**Obligations**” means all Loan Documents Obligations (including all Secured Swap Agreement Obligations, Secured Bank Services Obligations and Secured Bilateral Letters of Credit, *provided* that the aggregate amount of Obligations under any such Secured Bilateral Letters of Credit shall not exceed the amounts described in the definition of “Secured Bilateral Letters of Credit” and, to the extent that the aggregate principal face amount of such Secured Bilateral Letters of Credit exceeds at any time the amounts permitted thereunder, the amounts of such Secured Bilateral Letters of Credit included in “Obligations” shall be determined based on the chronological order of the initial issuance date of such Secured Bilateral Letters of Credit), the Secured Designated Indebtedness Obligations, and the Secured Designated Additional Swaps Obligations (*provided* that the aggregate amount of Secured Designated Additional Swaps Obligations classified as Obligations shall not exceed the nominal amounts set forth in the definition of “Secured Designated Additional Swaps Obligations” and, to the extent that the aggregate principal notional amount of such Secured Designated Additional Swaps Obligations at any time exceeds the amounts permitted thereunder, the amounts of such Secured Designated Additional Swaps

Obligations included in “Obligations” shall be determined based on the chronological order of the Swap Agreement giving rise to such Secured Designated Additional Swap Obligation); *provided* that the definition of “Obligations” shall not create or include any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party or obligations arising from Permitted Bond Hedge Transaction; *provided, further*, that (i) the Obligations under any Secured Swap Agreement Obligations, any Secured Bank Services Obligations, any Secured Bilateral Letters of Credit, any Secured Designated Indebtedness Obligations and any Secured Designated Additional Swaps Obligations shall be secured and guaranteed (other than Secured Designated Indebtedness Obligations, which shall not be guaranteed) pursuant to the Loan Documents only to the extent that, and for so long as, the Loan Documents Obligations are so secured and guaranteed; (ii) any release of collateral or Guarantors effected in the manner permitted by any of the Loan Documents (including upon the Investment Grade Ratings Trigger Date) shall not require the consent of any holder of Obligations under Secured Bank Services Obligations, Secured Swap Agreement Obligations, Secured Bilateral Letters of Credit, Secured Designated Indebtedness Obligations (or any designated representative under such Secured Designated Indebtedness Obligations) or Secured Designated Additional Swap Obligations, and (iii) the Secured Designated Indebtedness Obligations shall be secured pursuant to the Loan Documents only for so long as, and solely to the extent that, it is necessary to avoid a default under the Secured Designated Indebtedness Documents.

“*Obligee Guarantor*” has the meaning assigned to it in Section 7.06.

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

“*Other Pari Passu Lien Debt*” means obligations in respect of Permitted Equivalent Indebtedness permitted under Section 6.02(l) that are secured by Liens on the Collateral on a *pari passu* basis with or junior basis to the Obligations (without regard to the right to control remedies) and subject to a *pari passu* or junior lien intercreditor agreement as required pursuant to clause (iii) of the definition of “Permitted Equivalent Indebtedness”.

“*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).

“*Overnight Bank Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight SOFR transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“*Participant*” has the meaning assigned to such term in Section 10.04(c).

“**Participant Register**” has the meaning assigned to such term in Section 10.04(c).

“**Patriot Act**” has the meaning assigned to it in Section 10.16.

“**Payment**” has the meaning assigned to it in Section 9.06(c).

“**Payment Notice**” has the meaning assigned to it in Section 9.06(c).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Perfection Certificate**” means a certificate in form reasonably satisfactory to the Administrative Agent that provides information with respect to the Collateral of each Loan Party.

“**Permitted Acquisition**” means any Acquisition; *provided* that (a) at the time thereof and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (b) such Acquisition shall be effected in such manner so that the acquired Equity Interests, assets or rights are owned either by the Borrower or a Subsidiary and, if effected by merger, consolidation or amalgamation, the continuing, surviving or resulting entity shall be the Borrower or a Subsidiary, subject to Section 6.04 and (c) the Net Leverage Ratio, on a Pro Forma Basis after giving effect to such acquisition, recomputed as at the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, as if such acquisition had occurred on the first day of each relevant period for testing such compliance, shall not exceed 3.50:1.00 (or, in the event a Leverage Ratio Increase Election is in effect or is to be made, the maximum permitted Net Leverage Ratio provided in Section 6.01).

“**Permitted Bond Hedge Transaction**” means any forward purchase, accelerated share repurchase, call or capped call option (or substantively equivalent derivative transaction) relating to Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower) purchased by Borrower in connection with the issuance of any Convertible Debt Security and settled in common stock of Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Borrower.

“**Permitted Encumbrances**” means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations (other than any Lien imposed under ERISA);

- (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 Section 8.01(k);
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;
- (g) leases, licenses, subleases or sublicenses granted to third parties in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Borrower or any Subsidiary;
- (h) Liens in favor of a banking or other financial institution arising as a matter of law or in the ordinary course of business under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;
- (i) Liens on specific items of inventory or other goods (other than fixed or capital assets) and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;
- (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business so long as such Liens only cover the related goods;
- (k) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;
- (l) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and
- (m) obligations with respect to repurchase agreements of the type described in the definition of Cash Equivalents;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Equivalent Indebtedness" means secured or unsecured Indebtedness of the Borrower or any other Loan Party issued or incurred on or after the Effective Date (including letters of credit), *provided* that (i) prior to and after giving effect to such incurrence, no Default or Event of Default shall have occurred and be continuing, (ii) such Permitted Equivalent Indebtedness is not guaranteed by any Subsidiary of the Borrower that is not a Loan Party, (iii) such Permitted Equivalent Indebtedness shall be secured only by the Collateral on a *pari passu* basis with or junior

basis to the Loan Documents Obligations (without regard to the right to control remedies) and (except in the case of a Secured Bilateral Letter of Credit) subject to a customary *pari passu* or junior lien intercreditor agreement that is reasonably satisfactory to the Administrative Agent, (iv) the covenants applicable to such Permitted Equivalent Indebtedness are not more onerous or more restrictive in any material respects (taken as a whole) than the applicable covenants set forth in this Agreement (it being understood that the inclusion of customary delisting prong of the fundamental change definition in any Convertible Debt Security issued as Permitted Equivalent Indebtedness shall not be deemed to be materially more restrictive) and (v) any Permitted Equivalent Indebtedness (except a Secured Bilateral Letter of Credit) shall not mature and shall not require any scheduled amortization or other scheduled payments of principal prior to the date that is 91 days after the then latest Maturity Date of any Facility (other than customary asset sale, event of loss, fundamental change or change of control mandatory offers to purchase and customary acceleration rights after an event of default).

“**Permitted Investments**” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P, Moody’s or Fitch;

(c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

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

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

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) sold by the Borrower substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower.

“**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 Loan Party 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.

“**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.

“**Priority Indebtedness**” means (a) Indebtedness (including Guarantees) of the Borrower or any Subsidiary secured by any Lien on any asset(s) of the Borrower or any Subsidiary and (b) Indebtedness (including Guarantees) of any Subsidiary of the Borrower which is not a Loan Party, in each case owing to a Person other than the Borrower or any Subsidiary.

“**Pro Forma Basis**” means, with respect to compliance with any test, covenant or calculation of any ratio hereunder, the determination or calculations of such test, covenant or ratio on a pro forma basis in accordance with Section 1.04(c).

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

“**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 Debt Rating**” means the rating that has been most recently announced (which may be included in any press release that Moody’s, S&P or Fitch issues) by either Moody’s, S&P or Fitch, as the case may be, for any class of senior, unsecured, non-credit enhanced, long-term indebtedness for borrowed money of the Borrower.

“**Public-Sider**” means a Lender whose representatives may trade in securities of the Borrower or its Controlling person or any of its Subsidiaries while in possession of the financial statements provided by the Borrower 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 10.18.

“**Rating Agency**” means each of S&P, and Moody’s and Fitch.

“**Ratings-Based Pricing Notice**” has the meaning assigned to it in “Applicable Rate”.

“**Recipient**” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“**Reference Time**” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four (4) Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“**Register**” has the meaning assigned to such term in Section 10.04(b)(iv).

“**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, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Relevant Governmental Body**” means, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“**Relevant Rate**” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“**Replacement Lender**” has the meaning assigned to such term in Section 2.21(c).

“**Required Lenders**” means, subject to Section 2.20, at any time, Lenders having Revolving Credit Exposures and Unfunded Commitments representing more than 50% of the sum of the Total Revolving Credit Exposure and Unfunded Commitments at such time, *provided* that for the purpose of determining the Required Lenders needed for any waiver, amendment, modification or consent of or under this Agreement or any other Loan Document, any Lender that is the Borrower or an Affiliate of the Borrower shall be disregarded.

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

“**Response Date**” has the meaning assigned to such term in Section 2.21(a).

“Responsible Officer” means the president, chief executive officer, any executive vice president, any senior vice president, any vice president or Financial Officer of such person and any other individual or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, and, as to any document delivered on the Effective Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of any Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower 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 Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.03.

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“S&P” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business.

“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, the so - called Donetsk People’s Republic, the so- called Luhansk People’s Republic and the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, any Person subject to any Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. government, including by Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, U.S. Department of Commerce, or by the United Nations Security Council, the European Union, any European Union member state, His 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) (it being understood that for purposes of this clause (c), the words “owned” and “controlled” may have the meanings assigned thereto in any applicable Sanctions-related laws, rules, regulations, or orders).

“**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, His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“**SEC**” means the Securities and Exchange Commission of the United State of America.

“**Secured Bank Services**” means Banking Services provided to the Borrower or any Subsidiary by any Lender Counterparty.

“**Secured Bank Services Agreement**” means any agreement with respect to the provision of Secured Bank Services.

“**Secured Bank Services Obligations**” means any obligations of the Borrower or any Subsidiary in their capacity as a counterparty or direct obligor with respect to any Secured Bank Services Agreement.

“**Secured Bilateral Letter of Credit**” means any letter of credit issued for the account of the Borrower or any Subsidiary that satisfies the following requirements: (x) is issued by a Lender Counterparty under any bilateral agreement entered with a Loan Party, (y) if outstanding on the Effective Date, is listed on Schedule 2.01(C) hereto, or if issued after the Effective Date has been designated by the Borrower in writing to the Administrative Agent as a “Secured Bilateral Letter of Credit”, and (z) the principal face amount of (1) any Secured Bilateral Letter of Credit outstanding on the Effective Date does not exceed the amount set forth for such Secured Bilateral Letter of Credit on Schedule 2.01(C) (or, with respect to any Secured Bilateral Letter of Credit that replaces any such Secured Bilateral Letter of Credit existing on the Effective Date and set forth on Schedule 2.01(C), does not exceed the principal face amount of such replaced Secured Bilateral Letter of Credit) or (2) any Secured Bilateral Letter of Credit issued after the Effective Date is permitted to be incurred as secured Indebtedness pursuant to Section 6.02(l) or (m), as applicable (or, with respect to any Secured Bilateral Letter of Credit that replaces any such Secured Bilateral Letter of Credit issued after the Effective Date, does not exceed the principal face amount of such replaced Secured Bilateral Letter of Credit). The Secured Bilateral Letters of Credit on the Effective Date are identified as such in Schedule 2.01(C) hereto.

“**Secured Designated Additional Swap Obligations**” means any and all obligations of the Borrower or a Subsidiary under a Swap Agreement with a Person that is not the Administrative Agent, an Arranger, a Lender or an affiliate of a Lender, to the extent that such Swap Agreement satisfies the following requirements: (x) it is a Swap Agreement outstanding on the Effective Date and listed on Schedule 2.01(D)(1) hereto or (y) is a Swap Agreement entered after the Effective Date with a Person set forth on Schedule 2.01(D)(2), and, in each case of (x) and (y), the aggregate notional amount of all such Swap Agreements do not exceed \$100,000,000; *provided* that, solely with respect to Swap Agreements of the type described in the foregoing clause (y), the Borrower shall have used commercially reasonable efforts to solicit proposals for any such Swap Agreement from one or more Lenders prior to obtaining them from such other financial institutions (it being

understood and agreed that the Borrower shall have no obligation to accept any such Lender proposal that is not on terms satisfactory to the Borrower in its sole and absolute discretion). The Secured Designated Additional Swap Obligations on the Effective Date are identified as such in Schedule 2.01(D)(1) hereto.

“Secured Designated Indebtedness Documents” means the collective reference to the DFC Loan Agreement and the DFC Guaranty Agreement.

“Secured Designated Indebtedness Obligations” means the Borrower’s payment obligations under the DFC Guaranty Agreement.

“Secured Parties” means (a) the holders of the Obligations from time to time, (b) each indemnified party in respect of the obligations and liabilities of the Borrower and its Subsidiaries to such Person hereunder and under the other Loan Documents and the Secured Designated Indebtedness Documents, and (c) the respective successors and (in the case of a Lender, permitted) transferees and assigns of each of the foregoing in clauses (a) and (b) above.

“Secured Swap Agreement” means a Swap Agreement among the Borrower or one or more Subsidiaries and a Lender Counterparty.

“Secured Swap Agreement Obligations” means any obligations of the Borrower and the Subsidiaries in their capacity as a counterparty, direct obligor or guarantor with respect to any Secured Swap Agreement.

“Security Agreement” means the Pledge and Security Agreement executed by the Loan Parties and the Administrative Agent, substantially in the form of Exhibit D, together with each joinder thereto executed and delivered pursuant to Section 5.10.

“SOFR” means a rate 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.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“Solvent” means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts, including contingent debts, as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities, including contingent debts and liabilities, beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in a business or a

transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"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" shall mean, unless the context otherwise requires, a subsidiary of the Borrower. Notwithstanding the foregoing (and except for purposes of the definition of "Unrestricted Subsidiary" contained herein) an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

"Subsidiary Redesignation" shall have the meaning provided in the definition of the term "Unrestricted Subsidiary."

"Supported QFC" has the meaning assigned to it in Section 10.18.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *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 Borrower or the Subsidiaries shall be a Swap Agreement, *provided* further that neither a Permitted Bond Hedge Transaction nor a Permitted Warrant Transaction shall constitute a Swap Agreement.

"Swap Obligations" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales

taxes, 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 Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two 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”**), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City 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, so long as such day is otherwise a U.S. Government Securities Business Day, 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 U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“Termination Date” means the date on which (i) the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full, (ii) all Letters of Credit have expired or terminated, in each case, without any pending draw, or have been cash collateralized in accordance with Section 2.06(j), (iii) all LC Disbursements have been reimbursed and (iv) all other Loan Documents Obligations (other than Loan Documents Obligations under any Secured Swap Agreement, any Secured Bank Services Agreement, any Secured Bilateral Letters of Credit or contingent Obligations for reimbursement or indemnification and other Loan Documents Obligations that expressly survive the termination of the Loan Documents) have been paid in full in cash.

“Test Period” means, as of any date of determination, the period of four consecutive fiscal quarters of the Borrower most recently ended on or prior to such date.

“Total Revolving Credit Exposure” means, at any time, the sum of (a) the outstanding principal amount of the Revolving Loans at such time and (b) the total LC Exposure at such time.

“Transactions” means the execution, delivery and performance by the Borrower and the other Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans, 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, the Alternate Base Rate or the Adjusted Daily Simple SOFR.

“**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.

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

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Administrative Agent’s or any Lender’s Lien on any Collateral.

“**Unrestricted Subsidiary**” shall mean (1) any Subsidiary of the Borrower, whether now owned or acquired or created after the Effective Date, that is designated by the Borrower as an Unrestricted Subsidiary hereunder after the Effective Date and prior to the Investment Grade Rating Trigger Date by written notice to the Administrative Agent; *provided*, that the Borrower shall only be permitted to so designate a new Unrestricted Subsidiary after the Effective Date and prior to the Investment Grade Rating Trigger Date if (a) at the time of such designation no Event of Default has occurred and is continuing or would result therefrom, (b) immediately after giving effect to such designation, the Borrower shall be in compliance on a Pro Forma Basis with Section 6.01 as of the last day of the then most recently ended Test Period, (c) Investments in such Unrestricted Subsidiary at the time of designation (as contemplated by the immediately following sentence) are permitted under in accordance with the relevant requirements of Section 6.06, (d) such Subsidiary being designated as an “Unrestricted Subsidiary” shall also, concurrently with such designation and thereafter, constitute an “unrestricted subsidiary” under any Material Indebtedness issued or incurred after the Effective Date, (e) such Subsidiary was not previously designated as an Unrestricted Subsidiary and thereafter re-designated as a Subsidiary and (f) the Borrower shall have delivered to the Administrative Agent an officer’s certificate executed by a Responsible Officer of the Borrower, certifying to the best of such officer’s knowledge, compliance with the requirements of the preceding clauses; and (2) any subsidiary of an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower (or its Subsidiaries) therein at the date of designation in an amount equal to the fair market value of the Borrower’s (or its Subsidiaries’) Investments therein, which shall be required to be permitted on such date in accordance with Section 6.06 (and not as an Investment permitted thereby in a Subsidiary). The Borrower may designate any Unrestricted Subsidiary to be a Subsidiary for purposes of this Agreement (each, a “**Subsidiary Redesignation**”); *provided*, that (a) at the time of such designation no Event of Default has occurred and is continuing or would result therefrom (after giving effect to the provisions of the immediately succeeding sentence), (b) immediately after

giving effect to such redesignation, the Borrower shall be in compliance on a Pro Forma Basis with Section 6.01 as of the last day of the most recently ended Test Period and (c) the Borrower shall have delivered to the Administrative Agent an officer's certificate executed by a Responsible Officer of the Borrower, certifying to the best of such officer's knowledge, compliance with the requirements of the preceding clauses. The designation of any Unrestricted Subsidiary as a Subsidiary on or after the Effective Date shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the applicable Loan Party (or its relevant Subsidiaries) in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of such Loan Party's (or its relevant Subsidiaries') Investment in such Subsidiary. The Borrower may not designate any Subsidiary as an Unrestricted Subsidiary to the extent such Subsidiary owns Material IP, other than pursuant to (i) any bona fide operational business purposes (including as part of a joint venture) as determined by the Borrower in good faith and (ii) where such Material IP is necessary for the anticipated business activities to be conducted by such Unrestricted Subsidiary, as determined by the Borrower in good faith; for the avoidance of doubt, it is understood and agreed that such restriction shall not restrict any non-exclusive licenses, sublicenses or cross licenses of rights in Intellectual Property or any rights in Intellectual Property that become Material IP subsequent to the acquisition by such Unrestricted Subsidiary. Notwithstanding the foregoing, on the Investment Grade Rating Trigger Date, all Unrestricted Subsidiaries shall automatically be designated as Subsidiaries of the Borrower and the Borrower shall not be permitted to designate any subsidiary as an Unrestricted Subsidiary thereafter, *provided* that if any such automatic designation of an Unrestricted Subsidiary as a Subsidiary would result in the incurrence of an Investment, Indebtedness, or Lien that would not be permitted on the Investment Grade Rating Trigger Date under Section 6.06, 6.02, or 6.03, respectively, such Unrestricted Subsidiary shall remain as an Unrestricted Subsidiary notwithstanding any requirement hereunder until such time as the Borrower elects to designate such Unrestricted Subsidiary as a Subsidiary pursuant to a Subsidiary Redesignation.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means 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 10.18.

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

"Variable Amount" has the meaning assigned to it in Section 1.04(d).

"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 an “RFR Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan” or an “RFR 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 an “RFR Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing” or an “RFR Revolving Borrowing”).

Section 1.03. *Terms Generally.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law, rule or regulation herein shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time and (f) 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; Pro Forma Calculations.* (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 the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. 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, without giving effect to (i) any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value”, as

defined therein and (ii) any treatment of Indebtedness under Accounting Standards Codification 470-20 or 2015-03 (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) [Reserved.]

(c) Subject to Section 1.07, all pro forma computations required to be made hereunder giving effect to any Material Acquisition or Material Disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such Material Acquisition or Material Disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of and any related incurrence or reduction of Indebtedness, all as calculated in good faith by the Borrower. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness). Items related to any Indebtedness no longer outstanding or to be repaid or redeemed on the date of determination (including, without limitation, for purposes of all pro forma computations made hereunder, interest, fees, debt discounts, charges and other items) will be excluded and such Indebtedness shall be deemed to have been repaid or redeemed as of the first day of the applicable period.

(d) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of any covenant (including Section 2.22) that does not require compliance with a financial ratio or test (any such amounts, the “*Fixed Amounts*”) substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (any such amounts, the “*Variable Amounts*”), it is understood and agreed that Variable Amounts shall be calculated first and the Fixed Amounts shall be disregarded in such calculation of the financial ratio or test applicable to the Variable Amounts and the Fixed Amounts shall be calculated thereafter.

Section 1.05. *Interest Rates; Benchmark Notification.* 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 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 or 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 value or economic equivalence of, the existing interest rate being replaced or have 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 thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its 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 Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.06. *Letter of Credit Amounts.* Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms, 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.

Section 1.07. *Limited Condition Acquisition.* Notwithstanding anything in this Agreement or any other Loan Document to the contrary, for purposes of:

- (i) determining compliance with any provision of this Agreement (other than Section 6.01) which requires the calculation of the Interest Coverage Ratio or the Net Leverage Ratio;
- (ii) determining the accuracy of representations and warranties and/or whether a Default or Event of Default (or any subset of Defaults or Events of Default) has occurred, is continuing or would result from an action; or
- (iii) testing availability under baskets set forth in this Agreement (including any baskets based on, or measured as, a percentage of Consolidated Net Tangible Assets);

in each case, in connection with a Limited Condition Acquisition, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "*LCA Election*"), with such LCA Election to be made on or prior to the date of execution of the definitive agreement related to such Limited Condition Acquisition, the date of determination of whether any such Limited Condition Acquisition (including any action in connection therewith) is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Acquisition is entered into (the "*LCA Test Date*"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness or Liens and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date (except with respect to any incurrence or repayment of Indebtedness for purposes of the calculation of any leverage ratio-based test or ratio, which shall in each case be treated as if they had occurred on the last day of such test period), the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with.

For the avoidance of doubt, if the Borrower has made an LCA Election and (x) any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date (including with respect to the incurrence of Indebtedness or Liens) are not satisfied as a result of fluctuations in any such ratio or basket, including due to fluctuations in Consolidated EBITDA of the Borrower or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been unsatisfied as a result of such fluctuations and (y) such ratios and other provisions need not be tested again at the time of consummation of such Limited Condition Acquisition and such other transactions to be entered into in connection therewith. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other transaction on or following the relevant LCA Test Date and prior to the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness or Liens and the use of proceeds thereof) have been consummated.

Section 1.08. *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.

Section 1.09. *Foreign Currency Calculations.* For purposes of any determination under Sections 6.02, 6.03, 6.05, 6.06, 6.07 and 6.08, all amounts in a currency other than Dollars shall be translated into Dollars at the exchange rates in effect on the relevant date of such determination (determined by the Borrower in good faith by reference to customary indices), provided that no Default or Event of Default shall arise as a result of any limitation set forth in Dollars in such Sections being exceeded solely as a result of changes in currency exchange rates from those rates applicable at the time the relevant Indebtedness, Liens or other action were initially consummated in reliance on the exceptions under those Sections.

ARTICLE 2 The Credits

Section 2.01. *Commitments.* Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.10) in such Lender's Revolving Credit Exposure exceeding such Lender's Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

Section 2.02. *Loans and Borrowings.* (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. 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.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of ABR Loans, Term Benchmark Loans or, only to the extent applicable, RFR Loans, as the Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Term Benchmark Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each ABR Revolving Borrowing and/or RFR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000; *provided* that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of ten (10) Term Benchmark Revolving Borrowings or RFR Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower 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 shall notify the Administrative Agent of such request by submitting a Borrowing Request (a)(i) in the case of a Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three U.S. Government Securities Business Days before the date of the proposed Borrowing or (ii) in the case of an RFR Borrowing, not later than 12:00 noon, New York City time, five U.S. Government Securities Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and shall be signed by a Responsible Officer of the Borrower. Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing, a Term Benchmark Borrowing or an RFR Borrowing;
- (iv) 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"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each 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. *[Reserved]*.

Section 2.05. *[Reserved]*.

Section 2.06. *Letters of Credit.*

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request any Issuing Bank to issue Letters of Credit 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.

If (i) any letter of credit has been previously issued by an Issuing Bank, (ii) the reimbursement obligations of the account party (the "**Original Letter of Credit Account Party**") relating to such letter of credit have been or are assumed in writing by the Borrower pursuant to a Permitted Acquisition or other transaction permitted under this Agreement, (iii) after giving effect to the inclusion of such letter of credit as a Letter of Credit hereunder, the provisions of Section 2.06(b) shall not be contravened, (iv) such letter of credit satisfies all of the requirements of a Letter of Credit hereunder, and (v) the conditions of Sections 4.01 and 4.02 are satisfied, then upon the written request (which request shall include a statement that the foregoing requirements (i) through (v), inclusive, have been satisfied) of the Borrower to such Issuing Bank (consented to in writing by such Issuing Bank) and the submission by the Borrower to the Administrative Agent of a copy of such request bearing such consent, such letter of credit shall be (from the date of such consent of such Issuing Bank) deemed a Letter of Credit for all purposes of this Agreement and the other Loan Documents and considered issued hereunder pursuant to the terms hereof (the terms hereof and of the other Loan Documents shall govern and prevail in the case of any conflict with the provisions of the agreement(s) pursuant to which such letter of credit had been issued (such agreement(s), the "**Original Letter of Credit Agreements**"), and such Issuing Bank shall be deemed to have released the Original Letter of Credit Account Party and the Borrower, as applicable, from the Original Letter of Credit Agreements to the extent of such conflict). Notwithstanding that any such assumed letter of credit is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower agrees that it shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such letter of credit.

(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 shall hand deliver or telecopy (or transmit by electronic communication, 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 the requested date of issuance, amendment or extension, but in any event no less than three Business Days) 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 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 conflict 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 Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) (x) the aggregate undrawn amount of all outstanding Letters of Credit issued by any Issuing Bank at such time plus (y) the aggregate amount of all LC Disbursements made by such Issuing Bank that have not yet been reimbursed by or on behalf of the Borrower at such time shall not exceed its Letter of Credit Commitment, (ii) the LC Exposure shall not exceed the Letter of Credit Sublimit and (iii) no Lender's Revolving Credit Exposure shall exceed its Commitment. The Borrower may, at any time and from time to time, reduce the Letter of Credit Commitment of any Issuing Bank with the consent of such Issuing Bank; *provided* that the Borrower shall not reduce the Letter of Credit Commitment of any Issuing Bank if, after giving effect of such reduction, the conditions set forth in clauses (i) through (iii) above shall not be satisfied.

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 request that such Issuing Bank refrain from issuing such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, the issuance of letters of credit generally or such Letter of Credit in particular, or any such order, judgment or decree, or law shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital or liquidity 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 that was not applicable on the Effective Date and that 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 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 and (ii) the date that is five Business Days prior to the Maturity Date, provided, that any Letter of Credit may provide for automatic renewal or extension thereof for an additional period of up to one year (or as otherwise mutually agreed upon by the Borrower and the applicable Issuing Bank) (which, in no event, shall extend beyond the date referred to in subclause (ii) of this clause (c), except to the extent cash collateralized or backstopped pursuant to an arrangement reasonably acceptable to the relevant Issuing Bank) so long as such Letter of Credit (any such Letter of Credit, an "Auto Renewal Letter of Credit") permits the Issuing Bank to prevent any such extension at least once in each one-year period (commencing with the date of issuance of such Auto Renewal Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such one-year period to be agreed upon at the time such Auto Renewal Letter of Credit is issued.

(d) *Participations.* By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the term thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each 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 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 Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each 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 Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice; *provided* that if such LC Disbursement is not less than \$5,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount, and to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, 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 Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Bank or, to the extent that 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 Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent

or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by 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 Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor 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, document, 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 Borrower 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 Borrower to the extent permitted by applicable law) suffered by the 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 Borrower by telephone (confirmed by telecopy or electronic mail) of such demand for payment if such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that such notice need not be given prior to payment by the Issuing Bank and any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the 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 Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum then applicable to ABR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section 2.06 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, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (x) 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 by it thereafter and (y) 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 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 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 receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account or accounts with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the “*Collateral Account*”), an amount in cash equal to 103% of the LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(h) or (i). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remain outstanding after the expiration date specified in said paragraph (c), the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to 103% 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 such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse 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 Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the

occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) 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 applicable Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the applicable 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 the 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. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrower, and that the 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 it hereunder on the proposed date thereof solely by wire transfer of immediately available funds, by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Except in respect of the provisions of this Agreement covering the reimbursement of Letters of Credit, the Administrative Agent will make such Loans available to the Borrower by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request; *provided* that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(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 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 Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing.

Section 2.08. *Interest Elections.* (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Revolving Borrowing, may elect Interest

Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving 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 shall be signed by a Responsible Officer of the Borrower.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

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

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

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing or an RFR 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 Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term Benchmark Revolving 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 deemed to have an Interest Period that is the same as the immediately preceding Interest Period. 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, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, (A) each Term Benchmark Borrowing and (B) each RFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.09. *Termination and Reduction of Commitments.* (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; *provided* that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$5,000,000 and not less than \$25,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, any Lender's Revolving Credit Exposure would exceed its Commitment.

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

Section 2.10. *Repayment of Loans; Evidence of Debt.* (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *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 Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower 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 10.04) be represented by one or more promissory notes in such form.

Section 2.11. *Prepayment of Loans.* (a) The Borrower 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 (b) of this Section.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or electronic mail) of any prepayment hereunder (i) in the case of a prepayment of (1) a Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment or (2) an RFR Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment, (ii) in the case of a prepayment of an ABR Borrowing, not later than 12:00 noon, New York City time, on 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 a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the satisfaction of a specified condition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. 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 Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13 and any break funding payments required by Section 2.16.

Section 2.12. *Fees.* (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a non-refundable commitment fee, which shall accrue at the applicable Applicable Rate, on the daily amount of the Unfunded Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Commitment fees accrued through and including the last day of March, June, September and December of each year shall be payable in arrears on the fifteenth day following such last day and on the date on which the Commitments terminate, commencing on the first such date to occur after the Effective Date, *provided* that any accrued and unpaid commitment fees as of the date on which the Commitments terminate shall be payable on demand. 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 and the last day of each period but excluding the date on which the Commitments terminate).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum stated 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 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 or rates separately agreed upon between the Borrower and such Issuing Bank (but in no event greater than 0.15% per annum) on the daily maximum stated 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 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 customary administration, issuance, amendment, extension, payment and negotiation charges 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 March, June, September and December of each year shall be payable on the fifteenth day following such last day, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after

the date on which the Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

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

(d) 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 each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

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

(c) To the extent applicable pursuant to Section 2.14, each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, 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 an ABR 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 Revolving 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) Interest computed by reference to the Term SOFR Rate or Daily Simple SOFR and the Alternate Base Rate hereunder shall be computed on the basis of a year of 360 days. Interest computed by reference to the Alternate Base Rate only at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. A determination of the applicable Alternate Base Rate, Adjusted Term SOFR Rate,

Term SOFR Rate, Adjusted Daily Simple SOFR or Daily Simple SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14. *Alternate Rate of Interest.* (a) 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 absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR; or

(ii) the Administrative Agent is advised by the Required Lenders that (A) 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 or (B) at any time, Adjusted Daily Simple SOFR 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;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers 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, (1) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Revolving Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above and (2) any Borrowing Request that requests an RFR Borrowing shall instead be deemed to be a Borrowing Request, as applicable, for an ABR 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 or RFR Loan is outstanding on the date of the Borrower'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 or RFR Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers 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, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR 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. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders of each Class

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent, in consultation with the Borrower, will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Benchmark Replacement Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) 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, in consultation with the Borrower, 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, in consultation with the Borrower, 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's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing or RFR 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 Borrower will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR 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 Issuing Bank;

(ii) impose on any Lender or Issuing Bank or the applicable offshore 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, Issuing Bank or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, such 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 receivable by such Lender, Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender,

such Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

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

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

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or 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 Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or 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.* (a) With respect to Loans that are not RFR Loans, in the event of (i) 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 an optional or mandatory prepayment of Loans, but excluding in connection with any deemed repayment pursuant to Section 2.22(d)), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) 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 2.11(b) and is revoked in accordance therewith) or (iv) 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 pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an

Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith) or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 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 any 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) 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 Borrower.* 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, Other Taxes.

(c) *Evidence of Payments.* As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section, any 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 Borrower.* The Loan Parties shall jointly and severally indemnify each Recipient, within 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. A certificate as to the amount of such payment or liability delivered to the Borrower 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 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 any

Loan Party to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04(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 the 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 and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower 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 or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower 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 the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower 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 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 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 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-E or IRS Form W-8BEN 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-E or IRS Form W-8BEN 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;

(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 G-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 the Borrower within the meaning of Section 871(h)(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-E or IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-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 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 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 Borrower 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 and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower 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 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 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 (h) (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 (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) 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 with respect to such Tax had never been paid. This paragraph 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.

(i) *Defined Terms.* For purposes of this Section, the term "**Lender**" includes any Issuing Bank and the term "**applicable law**" includes FATCA.

Section 2.18. *Payments Generally; Pro Rata Treatment; Sharing of Setoffs.* (a) The Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) in Dollars prior to 1:00 p.m., New York City 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 383 Madison Avenue, New York, New York, except payments to be made directly to Issuing Banks as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for

the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If 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 Revolving Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements; *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 Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The 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 the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) 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 Banks pursuant to the terms hereof or any other Loan Document (including any date that is fixed for prepayment by notice from the Borrower to the Administrative Agent pursuant to Section 2.11(b)), notice from the Borrower that the Borrower will not make such payment or prepayment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, 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 NYFRB Rate.

Section 2.19. *Mitigation Obligations; Replacement of Lenders.* (a) If any Lender requests compensation under Section 2.15, or if the Borrower is 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 judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 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 Borrower hereby agrees 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 Borrower is 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, or if any Lender becomes Defaulting Lender, or if any Lender does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders has been obtained), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 or 2.17) and obligations under this Agreement and the 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 Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks), which consent shall not unreasonably 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, 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 Borrower (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 Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (A) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, 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 (B) 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 and 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 Commitment of such Defaulting Lender pursuant to Section 2.12;

(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 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 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 hereunder; third, to cash collateralize LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower 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, 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 or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank 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 Borrower as a result of any judgment of a court of competent jurisdiction obtained by the 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 Borrower's obligations corresponding to such Defaulting Lender's LC Exposure is 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) the Commitment and Revolving Credit 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 10.02); provided that 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 affected thereby;

Section 2.21. *Extension of Maturity Date.* (a) The Borrower may, by delivering an Extension Request to the Administrative Agent (who shall promptly deliver a copy to each of the Lenders), no earlier than 90 days but no less than 60 days in advance of any anniversary of the Effective Date (the “**Applicable Anniversary**”), request that the Lenders extend the Maturity Date in effect at such time (the “**Existing Maturity Date**”) to the first anniversary of such Existing Maturity Date. Each Lender, acting in its sole discretion, shall, by written notice to the Administrative Agent no later than 30 days prior to the Applicable Anniversary (the “**Response Date**”), advise the Administrative Agent in writing whether or not such Lender agrees to the requested extension. Each Lender that advises the Administrative Agent that it will not extend the Existing Maturity Date is referred to herein as a “**Non-Extending Lender**”; *provided*, that any Lender that does not advise the Administrative Agent of its consent to such requested extension by the Response Date and any Lender that is a Defaulting Lender on the Response Date shall be deemed to be a Non-Extending Lender. The Administrative Agent shall notify the Borrower, in writing, of the Lenders’ elections no later than 25 days prior to the Applicable Anniversary. The election of any Lender to agree to such an extension shall not obligate any other Lender to so agree. The Maturity Date may be extended no more than two times pursuant to this Section 2.21.

(b) (i) If, by the Response Date, Lenders holding Commitments that aggregate 50% or more of the total Commitments shall constitute Non-Extending Lenders, then the Existing Maturity Date shall not be extended and the outstanding principal balance of all Loans and other amounts payable hereunder shall be payable, and the Commitments shall terminate, on the Existing Maturity Date in effect prior to such proposed extension.

(ii) If (and only if), by the Response Date, Lenders holding Commitments that aggregate more than 50% of the total Commitments shall have agreed to extend the Existing Maturity Date (each such consenting Lender, an “**Extending Lender**”), then effective as of the Applicable Anniversary, the Maturity Date for such Extending Lenders shall be extended to the first anniversary of the Existing Maturity Date (subject to satisfaction of the conditions set forth in Section 2.21(d)). In the event of such extension, the Commitment of each Non-Extending Lender shall terminate on the Existing Maturity Date in effect for such Non-Extending Lender prior to such extension and the outstanding principal balance of all Loans and other amounts payable hereunder to such Non-Extending Lender shall become due and payable on such Existing Maturity Date and, subject to Section 2.21(c) below, the total Commitments hereunder shall be reduced by the Commitments of the Non-Extending Lenders so terminated on such Existing Maturity Date.

(c) In the event of any extension of the Existing Maturity Date pursuant to Section 2.21(b)(ii), the Borrower shall have the right on or before the Existing Maturity Date, at its own expense, to require any Non-Extending Lender to transfer and assign without recourse (in accordance with and subject to the restrictions contained in Section 10.04) all its interests, rights (other than its rights to payments pursuant to Section 2.15, Section 2.16, Section 2.17 or Section 10.03 arising prior to the effectiveness of such assignment) and obligations under this Agreement effective as of the applicable Existing Maturity Date to one or more third party eligible assignees (each a “**Replacement Lender**”) in an amount or amounts equal to the amount of the commitments of any Non-Extending Lenders; *provided* that (i) the Extending Lenders shall have the right to increase their Commitments on a pro rata basis up to the amount of the Non-Extending Lenders’ Commitments before the Borrower will be permitted to substitute any other eligible

assignees for the Non-Extending Lenders, (ii) such Replacement Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent and each Issuing Bank (such approvals to not be unreasonably withheld) to the extent the consent of the Administrative Agent or the Issuing Banks would be required to effect an assignment under Section 10.04(b), (iii) such assignment shall become effective as of a date specified by the Borrower (which shall not be later than the Existing Maturity Date in effect for such Non-Extending Lender prior to the effective date of the requested extension) and (iv) the Replacement Lender shall pay to such Non-Extending Lender in immediately available funds on the effective date of such assignment the principal of and interest accrued to the date of payment on the outstanding principal amount Loans made by it hereunder and all other amounts accrued and unpaid for its account or otherwise owed to it hereunder on such date.

(d) As a condition precedent to each such extension of the Existing Maturity Date pursuant to Section 2.21(b)(ii), the Borrower shall (i) deliver to the Administrative Agent a certificate of the Borrower dated as of the Existing Maturity Date signed by a Responsible Officer of the Borrower certifying that, as of such date, both before and immediately after giving effect to such extension, (A) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct and (B) no Default shall have occurred and be continuing and (ii) first make such prepayments of the outstanding Loans and second provide such cash collateral (or make such other arrangements satisfactory to the applicable Issuing Bank) with respect to the outstanding Letters of Credit as shall be required such that, after giving effect to the termination of the Commitments of the Non-Extending Lenders pursuant to Section 2.21(b) and any assignment pursuant to Section 2.21(c), the aggregate Revolving Credit Exposure less the face amount of any Letter of Credit supported by any such cash collateral (or other satisfactory arrangements) so provided does not exceed the aggregate amount of Commitments being extended.

(e) For the avoidance of doubt, (i) no consent of any Lender (other than the existing Lenders participating in the extension of the Existing Maturity Date) shall be required for any extension of the Maturity Date pursuant to this Section 2.21 and (ii) the operation of this Section 2.21 in accordance with its terms is not an amendment subject to Section 10.02.

Section 2.22. *Incremental Commitments and Incremental Term Loans.* (a) The Borrower may from time to time elect to increase the total revolving Commitments (each an “**Incremental Commitment**”) or enter into one or more tranches of term loans (each an “**Incremental Term Loan**”), in each case in minimum increments of \$10,000,000 so long as the aggregate outstanding amount of all such Incremental Commitments and all such Incremental Term Loans does not exceed, together with all outstanding Permitted Equivalent Indebtedness incurred pursuant to Section 6.02(l), \$1,000,000,000.

(b) The Borrower may arrange for any such increase or tranche pursuant to this Section 2.22 to be provided by one or more Lenders (each Lender so agreeing to an increase in its Commitment, or to participate in such Incremental Term Loans, an “**Increasing Lender**”), or by one or more new banks, financial institutions or other institutional investors or entities (each such new bank, financial institution or other investor or entity, an “**Augmenting Lender**”; *provided* that no Ineligible Institution may be an Augmenting Lender), which agree to increase their existing Commitments of the applicable Class, or to participate in such Incremental Term Loans, or provide new Incremental Commitments of the applicable Class, as the case may be; *provided* that (i) each Augmenting Lender shall be subject to the approval of the Borrower and, if the Administrative Agent’s consent would be required under Section 10.04 for an assignment of Loans to such Augmenting Lender, the Administrative Agent and (ii) the Borrower and such Increasing Lender or Augmenting Lender shall execute such documentation that is reasonably satisfactory to the

Administrative Agent and the Borrower. No consent of any Lender (other than the Lenders participating in the Incremental Commitments or any Incremental Term Loan) shall be required for any Incremental Commitments or any Incremental Term Loan pursuant to this Section 2.22. Incremental Commitments and Incremental Term Loans created pursuant to this Section 2.22 shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof.

(c) Notwithstanding the foregoing, no Incremental Commitments or Incremental Term Loans shall become effective under this Section 2.22 unless, (i) on the proposed date of the effectiveness of such Incremental Commitments or Incremental Term Loans, (A) the conditions set forth in Section 4.02 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Borrower and (B) the Borrower shall be in compliance (on a Pro Forma Basis) with the covenants contained in Section 6.01 after giving effect to any such Incremental Commitments or Incremental Term Loans and the use of proceeds thereof (but without giving effect to any netting of the cash proceeds of any such incurrence against outstanding debt), determined as if such Incremental Commitments and/or commitments with respect to any Incremental Term Loans are fully drawn and (ii) the Administrative Agent shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase.

(d) On the effective date of any Incremental Commitments or any Incremental Term Loans being made, (i) each relevant Increasing Lender and Augmenting Lender 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 and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Loans of all the Lenders to equal its Applicable Percentage, as applicable, of such outstanding Loans, and (ii) except in the case of (x) any Incremental Term Loans, (y) any Incremental Commitments that are provided by the Lenders ratably in accordance with the respective revolving Commitments or (z) any Incremental Commitments that are provided at a time when no Revolving Loans are outstanding, the Borrower shall be deemed to have repaid and reborrowed all outstanding Loans as of the date of any Incremental Commitments (with such reborrowing to consist of the Types of Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower, 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 and RFR Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods.

(e) The Incremental Term Loans (i) shall rank *pari passu* in right of payment and security with the Revolving Loans and any other Loans hereunder, (ii) shall not mature earlier than the latest Maturity Date (but may have amortization prior to such date), (iii) if other Term Loans are then outstanding hereunder, shall have a weighted average life to maturity no shorter than the remaining weighted average life to maturity of other Term Loans then outstanding hereunder with the longest remaining weighted average life to maturity, (iv) shall have the same guarantees from the same Loan Parties as the Revolving Loans and shall otherwise be *pari passu* in right of payment and security with the Revolving Loans and (v) shall otherwise be on terms and pursuant to documentation to be determined by the Borrower and the lenders thereunder, *provided* that except to the extent permitted hereunder, to the extent such terms are not materially consistent with the

terms in respect of the Revolving Loans, they shall be no more restrictive, when taken as a whole, than those in respect of the Revolving Loans (except for (a) pricing terms and prepayment premiums, (b) covenants or other provisions applicable only to periods after the latest Maturity Date for the Revolving Loans and (c) covenants or other provisions that are also added for the benefit of any Revolving Loans; *provided* that only the consent of the Administrative Agent shall be required to add such covenants or provisions to this Agreement or any other Loan Document, as applicable). All Incremental Commitments shall have identical terms as the Commitments outstanding on such date.

(f) Any Incremental Commitments and any Incremental Term Loans may be made hereunder pursuant to an amendment to or an amendment and restatement (including pursuant to an amendment attaching the form of amended and restated credit agreement) of this Agreement (each such amendment or amendment and restatement, an “**Incremental Amendment**”) and, as appropriate, the other Loan Documents, executed by the Borrower, each Increasing Lender participating in such tranche, each Augmenting Lender participating in such tranche, if any, each Guarantor party thereto, if any, and the Administrative Agent, as applicable, without the consent of any other Lenders. The Incremental Amendment may, without the consent of any Lenders (other than the Lenders providing such increased Commitments or Incremental Term Loans), effect such other amendments and/or amendments and restatements to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.22, and the Administrative Agent is authorized to receive and deliver such agreements, documents and instruments as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.22.

(g) Nothing contained in this Section 2.22 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its revolving Commitment hereunder, or provide Incremental Term Loans, at any time. No Lender shall be committed to increase its revolving Commitment and/or to provide any portion of any Incremental Term Loans in respect of any exercise by the Borrower pursuant to this Section 2.22 without the consent of such Lender.

ARTICLE 3 Representations and Warranties

The Borrower (on behalf of itself and, as applicable, on behalf of its Subsidiaries) and each other Loan Party (on behalf of itself and only with respect to Sections 3.01, 3.02 and 3.03) represents and warrants to the Lenders that:

Section 3.01. *Organization; Powers.* Each of the Borrower and its Subsidiaries 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 in, and is in good standing in, every jurisdiction where such qualification is required.

Section 3.02. *Authorization; Enforceability.* The Transactions are within the each Loan Party’s corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, stockholder action. Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto 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 (i) such as have been obtained or made and are in full force and effect and (ii) such consents, approvals, registrations, filings and other actions the failure to obtain or make which could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries which violation, default or right could reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of the Borrower or any of its Subsidiaries which Lien could reasonably be expected to result in a Material Adverse Effect .

Section 3.04. *Financial Condition; No Material Adverse Change* (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of comprehensive income, operations, stockholders' equity and cash flows (i) as of and for the fiscal year ended December 31, 2022, reported on by PricewaterhouseCoopers LLP, independent public accountants, and (ii) as of and for the fiscal quarter ended March 31, 2023. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since December 31, 2022, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole.

Section 3.05. *Properties.* (a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all Intellectual Property material to its business, and, to the knowledge of the Borrower, the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.06. *Litigation and Environmental Matters.* (a) Except for the Disclosed Matters, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

Section 3.07. *Compliance with Laws and Agreements.* Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.08. *Investment Company Status.* Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 3.09. *Taxes.* Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.10. *ERISA.* 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. Except as could not 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 Accounting Standards Codification No. 715 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Accounting Standards Codification No. 715 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

Section 3.11. *Disclosure.* (a) No information memorandum, report, financial statement, certificate or other information furnished by or on behalf of the Borrower or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the Effective Date, to the best knowledge of the 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. *Anti-Corruption Laws and Sanctions.* The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and directors and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or to the knowledge of the Borrower or such Subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower 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 or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

Section 3.13. *Affected Financial Institutions.* No Loan Party is an Affected Financial Institution.

Section 3.14. *[Reserved].*

Section 3.15. *Margin Regulations.* The Borrower is not 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 extension 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 the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) will be Margin Stock.

Section 3.16. *Solvency.* The Borrower and its Subsidiaries taken as a whole are Solvent.

Section 3.17. *Subsidiaries.* Schedule 3.17 sets forth, as of the Effective Date and in all material respects, a list of all Subsidiaries and the percentage ownership (directly or indirectly) of the Borrower therein. Except as has not resulted and would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the shares of capital stock or other ownership interests of all Subsidiaries of Borrower are fully paid and non-assessable and are owned (directly or indirectly) by Borrower (other than minority interests held by other Persons that do not violate any provision of this Agreement), directly or indirectly, free and clear of all Liens other than Liens permitted under Section 6.03.

Section 3.18. *Security Interests in Collateral.* (a) The Security Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral and, (x) when stock certificates (if any) representing certificated securities of a Domestic Subsidiary are delivered to the Administrative Agent and for so long as the Administrative Agent remains in possession of such Collateral, and (y) in the case of the other Collateral described in the Security Agreement, when financing statements in appropriate form are filed in the relevant filing offices, the security interest created by the Security Agreement shall constitute a perfected security interest in all right, title and interest of the pledgor thereunder in such Collateral (other than the Intellectual Property), in each case free

and clear of all Liens, other than Liens permitted by Section 6.03, to the extent the actions described in (x) and (y) above are sufficient to perfect a security interest in the relevant Collateral.

(b) When (x) the Intellectual Property Security Agreements are filed in and recorded by the United States Patent and Trademark Office and (y) the financing statements referred to in Section 3.18(a) above are appropriately filed, the security interest created by the Security Agreement shall constitute a perfected security interest in all right, title and interest of the grantors thereunder in the Intellectual Property covered by such Intellectual Property Security Agreements and related filings in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office and filing the financing statements referred to in Section 3.18(a) above, in each case free and clear of all Liens (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office and subsequent UCC filings may be necessary to perfect a lien on registered trademarks, trademark applications, issued patents, patent applications, and registered copyrights (including exclusive licenses to registered copyrights under which a Loan Party is the licensee) acquired by the Loan Parties after the Effective Date), other than Liens permitted by Section 6.03.

ARTICLE 4 Conditions

Section 4.01. *Effective Date.* The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.02):

(a) The Administrative Agent (or its counsel) shall have received a signed counterpart of this Agreement, the Security Agreement and each Intellectual Property Security Agreement from each party hereto or thereto (which, subject to Section 10.06(b), may include any Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page).

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Cravath, Swaine and Moore LLP, counsel for the Borrower, in form and substance reasonably satisfactory to the Administrative Agent. The Borrower hereby requests such counsel to deliver such opinion.

(c) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the Borrower and each other Loan Party approving the transactions contemplated by the Loan Documents to which it is a party and the execution and delivery of such Loan Documents to be delivered by the Borrower and the other Loan Parties on the Effective Date, and all documents evidencing other necessary corporate (or other applicable organizational) action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of each Loan Party and authorization of the transactions contemplated hereby.

(d) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign the Loan Documents and the other documents, in each case to which it is a party, to be delivered by each Loan Party on the Effective Date.

(e) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(f) The Administrative Agent shall have received the results of recent UCC, tax and judgment Lien searches with respect to each of the Loan Parties to the extent reasonably required by the Administrative Agent, and such results shall not reveal any material judgment or any Lien on any of the assets of the Loan Parties except for Liens permitted under Section 6.02 or Liens to be discharged on or prior to the Effective Date.

(g) In order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid, perfected first priority security interest in the Collateral, each Loan Party shall have delivered to the Collateral Agent:

(i) a completed Perfection Certificate dated the Effective Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby;

(ii) (A) the certificates representing the Equity Interests (to the extent certificated) required to be pledged pursuant to the Security Agreement, together with an un-dated stock power or similar instrument of transfer for each such certificate endorsed in blank by a duly authorized officer of the pledgor thereof, and (B) each instrument evidencing any Indebtedness which is required to be pledged and delivered to the Administrative Agent pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by a transfer form endorsed in blank) by the pledgor thereof; and

(iii) (A) UCC (or similar) financing statements naming the Borrower and each Guarantor as debtor and the Administrative Agent as secured party, in appropriate form for filing, registration or recordation in the jurisdiction of incorporation or organization of each such Loan Party and (B) the Intellectual Property Security Agreements in appropriate form for filing with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, that are required pursuant to the Security Agreement.

(h) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(i) The Administrative Agent shall have received the audited financial statements and the unaudited quarterly financial statements of the Borrower referred to in Section 3.04(a).

(j) (i) The Administrative Agent shall have received, at least three days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, to the extent requested in writing of the Borrower at least 10 Business Days prior to the Effective Date and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least three days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 Business Days prior to the Effective Date, a Beneficial Ownership Certification in relation to the 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).

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

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

(a) The representations and warranties made by the Borrower (on behalf of itself and, as applicable, on behalf of its Subsidiaries) and each other Loan Party set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (or in all respects if any such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable (other than, from and after the occurrence of the Investment Grade Rating Trigger Date, Section 3.04(b) and 3.06(a)).

(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, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE 5 Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, each Loan Party covenants and agrees with the Lenders that:

Section 5.01. *Financial Statements; Ratings Change and Other Information.* The Borrower will furnish to the Administrative Agent and each Lender, including their Public-Siders:

(a) within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2023), its audited consolidated balance sheet and related statements of comprehensive income, operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception (other than a qualification related to the maturity of the Commitments and the Loans at the Maturity Date) 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 Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended June 30, 2023), its condensed consolidated balance sheets and related statements of comprehensive income, operations stockholders’ equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures as of the end of

and for the corresponding period or periods of the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate by a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and is continuing as of the date thereof and, if a Default has occurred and is continuing as of the date thereof, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.01, (iii) listing any Secured Bilateral Letters of Credit that are issued during the fiscal quarter covered by such Compliance Certificate and (iv) listing any Secured Designated Additional Swap Obligations that are entered into during the fiscal quarter covered by such Compliance Certificate;

(d) promptly after the same become publicly available, copies of all annual, quarterly and current reports and proxy statements filed by the Borrower or any Subsidiary with the SEC or any Governmental Authority succeeding to any or all of the functions of the SEC, provided that no such delivery shall be required hereunder with respect to the foregoing to the extent that such are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR);

(e) as soon as practicable and in any event no later than 90 days after the beginning of each fiscal year of the Borrower (commencing with the fiscal year beginning January 1, 2024), a forecasted consolidated balance sheet, income statements and statements of cash flow for each such fiscal year, together with an explanation of the material assumptions on which such forecasts are based;

(f) only on and after the Investment Grade Rating Trigger Date, promptly after any Rating Agency shall have announced a change in the Public Debt Rating, written notice of such rating change;

(g) promptly following any request therefor, (x) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent may reasonably request and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation; and

(h) each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 5.01(a), a certificate of its Responsible Officer either confirming that there has been no change in the information contained in the Perfection Certificate since the Effective Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes in the form of a supplement delivered pursuant to the Security Agreement.

Documents required to be delivered pursuant to Section 5.01(a) or (b) (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 the 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 the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and, if requested, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

Section 5.02. *Notices of Material Events.* The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default or Event of Default;
- (b) the filing or commencement of any Proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof, including pursuant to any applicable Environmental Laws, that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect, specifying the nature thereof, what action the Borrower, any Loan Party or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto;
- (d) notice of any action arising under any Environmental Law or of any noncompliance by the Borrower or any Subsidiary with any Environmental Law or any permit, approval, license or other authorization required thereunder that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;
- (f) 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.

Each notice delivered under this Section (i) shall be in writing and (ii) shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Each notice delivered under this Section 5.02 shall be delivered within five (5) days of the date on which any Responsible Officer of the Borrower obtains actual knowledge of such event unless specified otherwise in this Agreement.

Section 5.03. *Existence; Conduct of Business.* The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises and Intellectual Property rights material to the conduct of its business; *provided* that (i) the foregoing

shall not prohibit any merger, consolidation, liquidation or dissolution not prohibited under Section 6.04 and (ii) none of the Borrower or any of its Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights, licenses, permits, privileges, franchises or Intellectual Property rights where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 5.04. *Payment of Obligations.* The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

Section 5.05. *Maintenance of Properties; Insurance.* The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted and except (i) for surplus and obsolete properties and (ii) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, and (b) maintain, with financially sound and reputable insurance companies, (i) insurance on such of its property and in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar location and (ii) all insurance required pursuant to the Collateral Documents. The Borrower will furnish to the Administrative Agent, upon any reasonable request of the Administrative Agent, information in reasonable detail as to the insurance so maintained. The Borrower will use commercially reasonable efforts to, within 60 days (as such period may reasonably be extended by the Administrative Agent at the request of the Borrower) after the Effective Date, cause the Administrative Agent (x) to be listed as lender loss payee with respect to all casualty insurance policies on the Collateral of the Borrower and the other Grantors, and (y) to be listed as an additional insured with respect to all general liability and other liability policies of the Borrower and the other Grantors. At any time during the continuance of an Event of Default, if the Borrower or any of its Subsidiaries fails to obtain or maintain any of the policies or insurance required herein with respect to the Collateral or to pay any premium in whole or in part relating thereto, then the Administrative Agent, without waiving or releasing any obligations or resulting Default hereunder, may at any time or times thereafter (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which the Administrative Agent reasonably deems advisable. All sums so disbursed by the Administrative Agent shall constitute part of the Obligations, payable as provided in this Agreement.

Section 5.06. *Books and Records; Inspection Rights.* The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, at such reasonable times and no more often than once in each fiscal year (or, after the occurrence and during the continuation of an Event of Default, at any time) permit any representatives designated by the Administrative Agent (or, after the occurrence and during the continuation of an Event of Default, any Lender), upon at least 3 Business Days' notice, to visit and inspect its properties, to examine and make extracts from its books and records, 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. Notwithstanding anything to the contrary in this Section, none of the Borrower or any of its Subsidiaries shall be required to disclose, permit the inspection, examination or making extracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party consent legally binding on the Borrower or any of its Subsidiaries (not entered in contemplation thereof) or (iii) is subject to attorney, client or similar privilege or constitutes or includes attorney work-product.

Section 5.07. *Compliance with Laws.* The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.08. *Use of Proceeds and Letters of Credit.* The proceeds of the Loans will be used only for working capital and other general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) 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, (b) 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 (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.09. *Post-Closing Conditions.* The Borrower shall, or shall cause its Subsidiaries to execute and/or deliver the documents and/or complete the tasks set forth on Schedule 5.09 in each case within the time limits specified on such schedule (or such longer period as the Administrative Agent may agree to in its sole discretion).

Section 5.10. *Guarantors; Collateral; Investment Grade Rating Trigger Date.*

(a) Upon (i) the formation or acquisition after the Effective Date of a Subsidiary that is not an Excluded Subsidiary, (ii) the designation of any Unrestricted Subsidiary as a Subsidiary (but only in the event that such newly designated Subsidiary is not an Excluded Subsidiary) or (iii) any Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, then in any such event the Borrower shall, within 45 days thereafter (or such longer period of time as the Administrative Agent may agree in its reasonable discretion), (A) cause such Subsidiary to become (x) a Guarantor hereunder by executing and delivering to the Administrative Agent a Counterpart Agreement and (y) a Grantor under the Security Agreement by executing and delivering to the Administrative Agent the joinder agreement required thereunder, and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by the Administrative Agent or required by the Collateral Documents.

(b) Subject to the limitations set forth in the Security Agreement or any other Loan Document, each Loan Party shall take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are secured by the Collateral to the extent required under the Collateral Documents.

(c) On the Investment Grade Rating Trigger Date, all Liens in favor of the Secured Parties securing the Obligations pursuant to the Collateral Documents shall be released and terminated, and all rights in and to the Collateral pledged or assigned by any Loan Party thereunder to the Secured Parties shall automatically revert to such Loan Party, and the Administrative Agent (or such other collateral agent) shall return promptly any pledged Collateral in its possession to such Loan Party, or to the Person or Persons legally entitled thereto, and shall endorse, execute, deliver, record and file all instruments and documents, and do all other acts and things, reasonably required for the return of the Collateral to such Loan Party, or to the Person or Persons legally entitled thereto, and to evidence or document the release of the interests of the Secured Parties arising under the Collateral Documents, all as reasonably requested by, and at the sole expense of, such Loan Party, pursuant to Section 10.20.

Section 5.11. *Subsidiaries and Unrestricted Subsidiaries.* The Borrower shall designate any Subsidiary as an Unrestricted Subsidiary or redesignate any Unrestricted Subsidiary as a Subsidiary only in accordance with the definition of “Unrestricted Subsidiary” contained herein. No Loan Party shall sell, lease, sublease, license, sublicense, dispose of or otherwise transfer to an Unrestricted Subsidiary any Material IP, other than as permitted under the definition of “Unrestricted Subsidiary.”

ARTICLE 6 Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, each Loan Party covenants and agrees with the Lenders that:

Section 6.01. *Financial Covenants.* The Borrower and its Subsidiaries, on a consolidated basis shall not:

(a) permit the Net Leverage Ratio as of the last day of any Test Period ending on and after the Effective Date, to be greater than 3.50:1.00 (the “**Maximum Net Leverage Ratio**”); *provided* that following the completion of the fiscal quarter during which a Material Acquisition is consummated, if the Borrower shall so elect by a notice delivered to the Administrative Agent within 30 days following the completion of such Material Acquisition (a “**Leverage Ratio Increase Election**”), the Maximum Net Leverage Ratio shall be increased to 4.00:1.00 in respect of the fiscal quarter during which such Material Acquisition was consummated and each of the three consecutive fiscal quarters immediately thereafter (the “**Material Acquisition Step-Up**”). If a Leverage Ratio Increase Election shall have been made under this Section 6.01, the Borrower may not make another Leverage Ratio Increase Election until this covenant is tested as of the last day of two successive fiscal quarters following the expiration of the most recent prior Material Acquisition Step-Up.

(b) permit the Interest Coverage Ratio, as of the last day of any Test Period ending after the Effective Date, to be less than 3.00 to 1.00.

Section 6.02. *Indebtedness.* (A) Prior to the Investment Grade Rating Trigger Date, the Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, and (B) on and after the Investment Grade Rating Trigger Date, the Borrower will not permit any Subsidiary that is not a Loan Party to create, incur, assume or permit to exist any Indebtedness, in each case of (A) and (B), as applicable, except:

(a) the Loan Documents Obligations;

(b) (i) Indebtedness existing on the date hereof and, to the extent in excess of \$25,000,000 individually, set forth in Schedule 6.02A, (ii) Indebtedness related to letters of credit issued under the bilateral agreements set forth in Schedule 6.02B (each with an aggregate face amount not to exceed the maximum face amount set forth in Schedule 6.02B for each such bilateral agreement), and in each case extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount (or with respect to clause (ii), the maximum permitted face amount set forth in Schedule 6.02B) thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof) and (iii) to the extent constituting Indebtedness, any obligations of the Borrower or any of its Subsidiaries arising after the Closing Date pursuant to the real property leasing arrangements set forth in Schedule 6.02C;

(c) Indebtedness of any Subsidiary to the Borrower or to any other Subsidiary, or of the Borrower to any Subsidiary; *provided* that (x) all such Indebtedness owing by a Loan Party to any Subsidiary that is not a Guarantor shall be unsecured and subordinated in right of payment to the payment in full of the Loan Documents Obligations and (y) all such Indebtedness owing by a Subsidiary that is not a Guarantor to a Loan Party shall be permitted under Section 6.06 (to the extent then applicable);

(d) Guarantees by the Borrower of Indebtedness of a Subsidiary or Guarantees by a Subsidiary of the Borrower of Indebtedness of the Borrower or another Subsidiary of the Borrower with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.02; *provided* that if the Indebtedness that is being guaranteed is unsecured and/or subordinated to the Loan Documents Obligations, the Guarantee shall also be unsecured and/or subordinated to the Loan Documents Obligations;

(e) Indebtedness of any Person that becomes a Subsidiary after the date hereof; *provided* that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) after giving effect to such incurrence on a Pro Forma Basis the Borrower is in compliance with the Net Leverage Ratio set forth in Section 6.01;

(f) Indebtedness which may be deemed to exist pursuant to any performance, statutory or similar obligations (including in connection with workers' compensation) or obligations in respect of letters of credit, surety bonds, bank guarantees or similar instruments related thereto incurred in the ordinary course of business, or pursuant to any appeal obligation, appeal bond or letter of credit in respect of judgments that do not constitute an Event of Default;

(g) Indebtedness in connection with cash management or custodial agreements, netting services, overdraft protections and otherwise similarly in connection with deposit accounts and Indebtedness in connection with credit card, debit card or other similar cards or payment processing services;

(h) Indebtedness in respect of Secured Bilateral Letters of Credit existing on the Effective Date and set forth on Schedule 2.01(C), and replacements thereof that do not increase its principal face amount;

(i) Swap Agreements not entered into for speculative purposes;

(j) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; *provided* that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed at any time outstanding an amount equal to the greater of (x) \$115,000,000 and (y) 10% of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a), and (iii) extensions, renewals and replacements of the foregoing that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof);

(k) only prior to the Investment Grade Rating Trigger Date, (i) other unsecured Indebtedness of the Borrower and its Subsidiaries, so long as at the time of incurrence and immediately after giving effect thereto on a Pro Forma Basis, (x) the Net Leverage Ratio does not exceed 3.50:1.00 and (y) no Default or Event of Default shall have occurred or be continuing; *provided* that the aggregate principal outstanding amount of such unsecured Indebtedness incurred by Subsidiaries that are not Loan Parties pursuant to this clause (k) shall not exceed \$100,000,000, and (ii) extensions, renewals and replacements of the foregoing that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect thereto and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof);

(l) only prior to the Investment Grade Rating Trigger Date, Permitted Equivalent Indebtedness of the Loan Parties in an aggregate principal outstanding amount, together with the aggregate principal amount of any outstanding Incremental Commitments and Incremental Term Loans incurred pursuant to Section 2.22, not to exceed \$1,000,000,000;

(m) only on and after the Investment Grade Rating Trigger Date, Indebtedness of Subsidiaries that are not Loan Parties constituting Priority Indebtedness in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, together with (i) the aggregate principal amount of other Priority Indebtedness incurred pursuant to this clause (m) and then outstanding and (ii) the aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries then outstanding that is secured by a Lien pursuant to Section 6.03(m), does not exceed the greater of (x) \$1,000,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower and its Subsidiaries as of the Investment Grade Rating Trigger Date (calculated by reference to the latest financial statements most recently delivered on such date pursuant to Section 5.01(a) or (b));

(n) Convertible Debt Securities of the Borrower; *provided* that (i) after giving effect to such incurrence on a Pro Forma Basis the Borrower is in compliance with the Net Leverage Ratio set forth in Section 6.01(a) (giving effect to any Leverage Ratio Increase Election then in

effect or to occur in the case of an incurrence to fund a Material Acquisition), (ii) both immediately prior to and after giving effect on a Pro Forma Basis, no Default or Event of Default shall exist or would result therefrom, (iii) such Convertible Debt Securities mature after, and do not require any scheduled amortization or other scheduled payments of principal prior to, the date that is 91 days after the then latest Maturity Date (it being understood that neither (x) any provision requiring an offer to purchase such Convertible Debt Securities as a result of change of control or asset sale or other fundamental change, (y) any provision providing for optional redemption of such Convertible Debt Securities, nor (z) any early conversion whether in Equity Interests, cash or a combination of Equity Interests and cash shall violate the foregoing restriction), (iv) such Convertible Debt Securities are not guaranteed by any Subsidiary of the Borrower other than the Guarantors (which guarantees, if such Convertible Debt Securities are subordinated, shall be expressly subordinated to the Obligations on terms not less favorable to the Lenders than the subordination terms of such subordinated Convertible Debt Securities) and (v) the covenants applicable to such Convertible Debt Securities are customary for convertible Indebtedness of such type (as determined by the Borrower in good faith);

(o) (i) Indebtedness incurred by FS India Solar Ventures Private Limited under the DFC Loan Agreement and the Guarantee thereof by the Borrower under the DFC Guaranty Agreement and (ii) extensions, renewals and replacements of the foregoing that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect thereto and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof); and

(p) other Indebtedness of the Borrower or any Subsidiary in respect of working capital facilities, line of credit facilities or similar operating facilities (including letter of credit facilities, short-term loan facilities, trade payable facilities, trade finance, trade receivable facilities, export credit facilities, factoring facilities and buyer's or supplier's credit financing) in an aggregate principal amount at any time outstanding not exceeding an amount equal to \$250,000,000, provided that (i) after giving effect to such incurrence on a Pro Forma Basis the Borrower is in compliance with the Net Leverage Ratio set forth in Section 6.01(a) (giving effect to any Leverage Ratio Increase Election then in effect or to occur in the case of an incurrence to fund a Material Acquisition) and (ii) both immediately prior to and after giving effect on a Pro Forma Basis, no Default or Event of Default shall exist or would result therefrom (it being understood and agreed that Indebtedness of FS India Solar Ventures Private Limited that was incurred prior to the First Amendment Effective Date under Section 6.02(k) and that is set forth on Schedule 6.02P shall be deemed to be incurred and outstanding under this clause (p) from and after the First Amendment Effective Date).

Section 6.03. *Liens.* The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) Permitted Encumbrances;

(b) Liens securing the Obligations pursuant to the Collateral Documents (including in respect of Incremental Commitments and Incremental Term Loans pursuant to Section 2.22);

(c) (i) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and, to the extent in excess of \$25,000,000 individually, set forth in Schedule 6.03; *provided* that (x) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (y) 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 (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof) and (ii) any Lien arising from the real property leasing arrangements set forth in Schedule 6.02C;

(d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof);

(e) Liens granted by a Subsidiary that is not a Loan Party in favor of any Subsidiary and Liens granted by a Loan Party in favor of any other Loan Party;

(f) Liens on Equity Interests in joint ventures (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement;

(g) easements, licenses, sublicenses, leases or subleases granted to others in the ordinary course of business (A) not interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole, or (B) not securing any Indebtedness;

(h) the interest and title of a lessor under any lease, license, sublease or sublicense entered into by Parent or any Subsidiary of Parent in the ordinary course of its business and other statutory and common law landlords' Liens under leases;

(i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents or other securities on deposit in one or more accounts maintained by Borrower or any Subsidiary of Parent, in each case granted in the ordinary course of business in favor of the bank or banks, securities intermediaries or other depository institutions with which such accounts are maintained, securing amounts owing to institutions with respect to cash management operating account arrangements and similar arrangements;

(j) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any of its Subsidiaries in the ordinary course of business;

(k) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; *provided* that (i) such security interests secure Indebtedness permitted by clause (j) of Section 6.02, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary;

(l) only prior to the Investment Grade Rating Trigger Date, Liens securing Other Pari Passu Lien Debt;

(m) only on and after the Investment Grade Rating Trigger Date, Liens securing Indebtedness and other obligations of the Borrower and its Subsidiaries so long as the aggregate principal amount of the Indebtedness and other obligations then outstanding subject to such Liens, together with the aggregate principal amount of Priority Indebtedness then outstanding incurred pursuant to Section 6.02(m), does not exceed the greater of (x) \$1,000,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower and its Subsidiaries as of the Investment Grade Rating Trigger Date (calculated by reference to the latest financial statements most recently delivered on such date pursuant to Section 5.01(a) or (b));

(n) only prior to the Investment Grade Rating Trigger Date, Liens securing Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount at any time outstanding that shall not exceed (other than extensions, renewals and replacements of such Indebtedness that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect thereto and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof)) \$200,000,000.

Section 6.04. *Fundamental Changes.* (a) The Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose (whether in one transaction or in a series of related transactions) of all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole, or liquidate or dissolve, except that (i) any Subsidiary may be merged or consolidated with or into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary may be merged or consolidated with or into any Subsidiary in a transaction in which the surviving entity is a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity), (iii) any Subsidiary may Dispose its assets to the Borrower or to another Subsidiary (provided that any such Disposition made by a Guarantor must be made to the Borrower or another Guarantor), (iv) any Subsidiary may be liquidated, wound up or dissolved if the Borrower determines in good faith that such liquidation, winding up or dissolution is not materially disadvantageous to the Lenders and (v) the Borrower and the Subsidiaries may be merged or consolidated with or into another Person (*provided* that if the Borrower is a party to the merger or consolidation then the Borrower shall be the continuing or surviving corporation) to effect transactions permitted pursuant to Sections 6.05 (other than 6.05(e)), 6.06 (other than 6.06(i)) and 6.07 (other than 6.07(h)).

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the Effective Date and similar, incidental, complementary, ancillary or reasonably related businesses to, or reasonable extensions, developments or expansions of, the businesses conducted by the Borrower and its Subsidiaries on the Effective Date.

(c) The Borrower will not permit its fiscal year to end on a day other than December 31 or change the Borrower's method of determining its fiscal quarters; provided that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year end and/or its method of determining its fiscal quarters, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustments to this Agreement that are necessary to reflect any such changes.

Section 6.05. *Dispositions*. At any time prior to the Investment Grade Rating Trigger Date, the Borrower will not, and will not permit any Subsidiary to, make any Disposition, except:

(a) Dispositions of surplus, obsolete, used or worn-out property in the ordinary course of business and Dispositions of other property (including Intellectual Property) that, in the reasonable judgment of the Borrower, is no longer used or useful, or economically practicable to maintain, in the conduct of the business of the Borrower and its Subsidiaries;

(b) Dispositions of inventory, Permitted Investments, Intellectual Property and other assets sold, leased or licensed out in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and its Subsidiaries;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property (including the sale of any Equity Interest owned by such Person) from (i) any Subsidiary that is not a Guarantor to any other Subsidiary that is not a Guarantor or to any Loan Party or (ii) any Loan Party to any other Loan Party;

(e) Dispositions permitted by Section 6.04 (other than 6.04(a)(v));

(f) leases, licenses, subleases or sublicenses granted in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and its Subsidiaries;

(g) Dispositions of property in connection with casualty or condemnation events;

(h) the discount, write-off or Disposition of overdue accounts receivable, in each case in the ordinary course of business;

(i) Restricted Payments permitted by Section 6.07 (other than 6.07(h)) and Investments permitted by Section 6.06 (other than 6.06(i));

(j) Dispositions of cash and Cash Equivalents;

(k) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(l) other Dispositions by the Borrower and its Subsidiaries, so long as at the time thereof and immediately after giving effect thereto on a Pro Forma Basis, (x) the Net Leverage Ratio does not exceed 3.00:1.00 and (y) no Default or Event of Default shall have occurred and be continuing;

(m) so long as at the time thereof and immediately after giving effect thereto on a Pro Forma Basis, (x) the Borrower shall be in compliance on a Pro Forma Basis with Section 6.01 as of the last day of the then most recently ended Test Period and (y) no Default or Event of Default shall have occurred and be continuing, Dispositions of property during any fiscal year of the Borrower having an aggregate fair market value not to exceed an amount equal to the greater of (x)

\$230,000,000 and (y) 20% of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a);

(n) Dispositions of non-core assets (or assets Disposed to secure a regulatory approval) constituting property acquired after the Effective Date pursuant to an acquisition; *provided* that such Dispositions are effected within 360 days after such acquisition; and

(o) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(p) Dispositions of Equity Interests of an Unrestricted Subsidiary, other than Unrestricted Subsidiaries substantially all the assets of which are cash or Cash Equivalents; and

(q) the unwind of any Permitted Bond Hedge Transaction or Permitted Warrant Transaction.

Section 6.06. *Investments, Loans, Advances, Guarantees and Acquisitions.* The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment 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 (all of the foregoing, collectively, "*Investments*"), except:

(a) Permitted Investments;

(b) investments by the Borrower in any Subsidiary and Investments made by any Subsidiary in the Borrower or any other Subsidiary;

(c) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary;

(d) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(e) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided such Investment was not made in connection with or anticipation of such Person becoming a Subsidiary;

(f) trade receivables in the ordinary course of business;

(g) Guarantees constituting Indebtedness permitted by Section 6.02(d) and 6.02(o);

(h) (A) at any time prior to the Investment Grade Ratings Trigger Date, other Investments so long as before and after giving effect thereto on a Pro Forma Basis, (x) the Net

Leverage Ratio does not exceed 3.00:1.00 and (y) no Default or Event of Default shall have occurred and be continuing and (B) at any time on and after the Investment Grade Ratings Trigger Date, other Investments so long as before and after giving effect thereto on a Pro Forma Basis the Borrower is in compliance with the financial covenants set forth in Section 6.01;

(i) to the extent constituting an Investment, transactions permitted by Section 6.04 (other than 6.04(a)(v)), Section 6.05 (other than 6.05(e)) and Section 6.07 (other than 6.07(h));

(j) Permitted Acquisitions; and

(k) so long as at the time thereof and immediately after giving effect thereto on a Pro Forma Basis, (x) the Borrower shall be in compliance on a Pro Forma Basis with Section 6.01 as of the last day of the then most recently ended Test Period and (y) no Default or Event of Default shall have occurred and be continuing, Investments in an aggregate amount at any time outstanding not to exceed an amount equal to the greater of (x) \$230,000,000 and (y) 20% of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a).

Section 6.07. *Restricted Payments.* At any time prior to the Investment Grade Rating Trigger Date, the Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock;

(b) any Subsidiary of the Borrower may declare and pay dividends or make other Restricted Payments ratably to (i) its equity holders, (ii) the Borrower or (iii) any Guarantor;

(c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries;

(d) the Borrower may make Restricted Payments so long as at the time thereof and immediately after giving effect thereto on a Pro Forma Basis, (x) the Net Leverage Ratio does not exceed 3.00:1.00 and (y) no Default or Event of Default shall have occurred and be continuing;

(e) the Borrower may (i) repurchase fractional shares of its Equity Interests arising out of stock dividends, splits or combinations, business combinations or conversions of convertible securities, exercises of warrants or options, or settlements of restricted stock units or (ii) "net exercise" or "net share settle" warrants or options;

(f) the Borrower or any Subsidiary thereof may make any payments and/or deliveries required by the terms of, and otherwise perform its obligations under, any Convertible Debt Security (including, without limitation, payments of principal and interest thereon, making payments due upon redemption or repurchase thereof and/or making payments and deliveries due upon conversion or exchange thereof; provided that the payment of cash upon any such conversion or exchange does not exceed an amount equal to the principal amount of such Convertible Debt Security being converted or exchanged, plus (x) accrued and unpaid interest thereon, and (y) the net amount of any cash payments received upon any concurrent unwind, settlement or other termination of any related Permitted Bond Hedge Transaction);

(g) (i) the purchase of any Permitted Bond Hedge Transaction by the Borrower and (ii) the Borrower may make any payments and/or deliveries required by the terms of, and otherwise perform its obligations under, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction (including, without limitation, making payments and/or deliveries due upon exercise and settlement, unwinding or termination thereof); and

(h) to the extent constituting a Restricted Payment, the Borrower and the Subsidiaries may consummate transactions permitted by Section 6.04 (other than 6.04(a)(v)), Section 6.05 (other than 6.05(e)) and Section 6.06 (other than 6.06(i));

(i) the Borrower and the Subsidiaries may purchase any Equity Interests of any Subsidiary;

(j) the Borrower may repurchase or otherwise acquire Equity Interests (or any options, warrants, restricted stock units or stock appreciation rights or other equity-linked interests issued with respect to any of such Equity Interests) of the Borrower or any Subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or family member thereof) of the Borrower or any Subsidiary, in an amount not to exceed in any fiscal year the greater of (x) \$62,500,000 and (y) 5% of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a), which amount, if not used in such fiscal year, may be carried forward to the succeeding fiscal years; and

(k) so long as at the time thereof and immediately after giving effect thereto on a Pro Forma Basis, (x) the Borrower shall be in compliance on a Pro Forma Basis with Section 6.01 as of the last day of the then most recently ended Test Period and (y) no Default or Event of Default shall have occurred and be continuing, Restricted Payments in an aggregate amount not to exceed an amount equal to the greater of (x) \$230,000,000 and (y) 20% of Consolidated EBITDA of the Borrower and its Subsidiaries as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 5.01(a) or (b) or Section 3.04(a).

Section 6.08. *Transactions with Affiliates.* The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate, (c) payment of customary directors' fees, customary out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers, employees or other providers of services of the Borrower or any of its Subsidiaries, (d) any transaction involving amounts less than \$10,000,000 individually and (e) any Restricted Payment permitted by Section 6.07 (other than 6.07(h)), any Investment permitted by Section 6.06 (other than 6.06(i)) and any Disposition permitted by Section 6.05 (other than 6.05(e)).

Section 6.09. *Restrictive Agreements.* The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) prior to the Investment Grade Rating Trigger Date, the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (b) at all times, the

ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; *provided* that the foregoing shall not apply to (i) restrictions and conditions imposed by law or by this Agreement, (ii) restrictions and conditions existing on the date hereof identified on Schedule 6.09 (but shall apply to any extension or renewal of, or any amendment or modification that materially expands the scope of, any such restriction or condition), (iii) 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) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) customary provisions in leases, licenses and other agreements restricting the assignment thereof, (vi) restrictions or conditions set forth in any agreement governing any other Indebtedness not prohibited by Section 6.02; *provided* that such restrictions and conditions are customary for such Indebtedness as determined in the good faith judgment of the Borrower, (vii) the foregoing shall not apply to restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business and (viii) restrictions that are binding on a Subsidiary at the time it becomes a Subsidiary and that were not entered into in contemplation of its becoming a Subsidiary.

Section 6.10. *Suspension of Covenants on Achievement of Investment Grade Status.*

For the avoidance of doubt, upon the Investment Grade Rating Trigger Date:

- (a) So long as no Event of Default has occurred and is continuing, the Liens on the Collateral shall be released pursuant to Section 5.10(c) and Section 10.20;
- (b) All Unrestricted Subsidiaries shall be automatically designated as Subsidiaries; except as otherwise set forth in the definition of “Unrestricted Subsidiaries”;
- (c) Section 6.07 (“*Restricted Payments*”) shall no longer apply; and
- (d) Section 6.05 (“*Dispositions*”) shall no longer apply.

ARTICLE 7
GUARANTY

Section 7.01. *Guaranty of the Obligations.* Subject to Section 7.11, the Guarantors jointly and severally hereby irrevocably and unconditionally guaranty the due and punctual payment in full of all Obligations (other than Obligations with respect to any Secured Designated Indebtedness Obligations) when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the “Guaranteed Obligations”); *provided* that the Guaranteed Obligations of the Borrower in its capacity as a Guarantor shall exclude any Direct Borrower Obligations.

Section 7.02. *Payment by Guarantors.* The Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Borrower or any other Guarantor to pay any of the Guaranteed Obligations when and as the same

shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, Guarantors will upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to the Beneficiaries as aforesaid.

Section 7.03. *Liability of Guarantors Absolute.* Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability and this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) the Administrative Agent may enforce this Guaranty during the continuation of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower, any such other guarantor or any other Person and whether or not the Borrower, any such other guarantor or any other Person is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate under the relevant Loan Document, Secured Swap Agreement, Secured Bank Services Agreement, Secured Bilateral Letters of Credit or Secured Designated Additional Swap Obligations, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter,

subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable Secured Swap Agreement, Secured Bank Services Agreement, Secured Bilateral Letter of Credit or Secured Designated Additional Swap Obligation and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or any Secured Swap Agreement, any Secured Bank Services Agreement, any Secured Bilateral Letter of Credit or any Secured Designated Additional Swap Obligation; and

(f) this Guaranty and the obligations of the Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made and Obligations in respect of Secured Swap Agreements, Secured Bank Services, Secured Bilateral Letters of Credit or Secured Designated Additional Swap Obligation) and the cancellation or expiration with no pending drawings or cash collateralization of all Letters of Credit in an amount equal to 103% of the LC Exposure at such time on terms satisfactory to the applicable Issuing Banks), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, any Secured Swap Agreements, any Secured Bank Services Agreements, any Secured Bilateral Letter of Credit or any Secured Designated Additional Swap Obligation, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any Secured Swap Agreements, any Secured Bank Services Agreements, any Secured Bilateral Letter of Credit or any Secured Designated Additional Swap Obligation or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Secured Swap Agreement, such Secured Bank Services Agreement, such Secured Bilateral Letter of Credit, such Secured Designated Additional Swap Obligation or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents, any Secured Swap Agreements, any Secured Bank Services Agreements, any Secured Bilateral Letter of Credit or any Secured Designated Additional Swap Obligation of Credit or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) the change, reorganization or termination of the corporate

structure or existence of the Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations, whether or not consented to by any Beneficiary; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which the Borrower or any other Person may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Anything contained in this Agreement to the contrary notwithstanding, the obligations of each Guarantor in respect of its Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any similar federal or state law; provided, however, that this limitation shall not apply to the Borrower with respect to its Direct Borrower Obligations.

Section 7.04. *Waivers by Guarantors.* Each Guarantor hereby waives, for the benefit of the Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (1) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (2) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (3) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of any Loan Party or any other Person, or (4) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) any rights to set offs, recoupments and counterclaims, (iii) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto, and (iv) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Swap Agreements, the Secured Bank Services Agreements, the Secured Bilateral Letters of Credit, the Secured Designated Additional Swap Obligations or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.03 and any right to consent to any thereof; and (f) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof, in each case other than the indefeasible payment in full of the Guaranteed Obligations.

Section 7.05. *Guarantors' Rights of Subrogation, Contribution, Etc.* Until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification

obligations for which no claim has been made and Obligations under or in respect of Secured Swap Agreements, Secured Bank Services, the Secured Bilateral Letters of Credit or Secured Designated Additional Swap Obligations) and the Commitments shall have terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including, (i) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Guaranteed Obligations, (ii) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against the Borrower, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification obligations for which no claim has been made and Obligations under or in respect of Secured Swap Agreements, Secured Bank Services, the Secured Bilateral Letters of Credit or Secured Designated Additional Swap Obligations) and all Letters of Credit shall have expired with no pending drawings or been cancelled or cash collateralized in an amount equal to 103% of the LC Exposure at such time on terms satisfactory to the applicable Issuing Banks and the Commitments shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against the Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made and Obligations under or in respect of Secured Swap Agreements, Secured Bank Services, the Secured Bilateral Letters of Credit or Secured Designated Additional Swap Obligations) shall not have been paid in full, such amount shall be held in trust for the Administrative Agent on behalf of the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof. Notwithstanding the foregoing, to the extent that any Guarantor's right to indemnification or contribution arises from a payment or sale of Collateral made to satisfy Obligations constituting Secured Swap Agreement Obligations or Secured Designated Additional Swap Obligation, only those Loan Parties for whom such Swap Obligations do not constitute Excluded Swap Obligations shall indemnify and/or contribute to such Guarantor with respect to such Swap Obligations and the amount of any indemnity or contribution shall be adjusted accordingly.

Section 7.06. *Subordination of Other Obligations.* Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be

credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Section 7.07. *Continuing Guaranty.* This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made, Secured Swap Agreements, Secured Bank Services, the Secured Bilateral Letters of Credit and the Secured Designated Additional Swap Obligations) shall have been paid in full and the Commitments shall have terminated and all Letters of Credit shall have expired with no pending drawings or been cancelled or cash collateralized in an amount equal to 103% of the LC Exposure at such time on terms satisfactory to the applicable Issuing Banks. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Section 7.08. *Authority of Guarantors or the Borrower.* It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

Section 7.09. *Financial Condition of the Borrower.* Any Loan may be made to the Borrower or continued from time to time and any Secured Swap Agreement, Secured Bank Services Agreement, Secured Bilateral Letter of Credit or Secured Designated Additional Swap Obligations may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower or any other Loan Party at the time of any such grant or continuation or at the time such Secured Swap Agreement, Secured Bank Services Agreement, Secured Bilateral Letter of Credit or Secured Designated Additional Swap Obligation is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower or any other Loan Party. Each Guarantor has adequate means to obtain information from the Borrower and the other Loan Parties on a continuing basis concerning the financial condition of the Borrower and the other Loan Parties and their respective ability to perform their obligations under the Loan Documents and the Secured Swap Agreements, Secured Bank Services Agreements, Secured Bilateral Letters of Credit and Secured Designated Additional Swap Obligations, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and each other Loan Party and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower or any other Loan Party now known or hereafter known by any Beneficiary.

Section 7.10. *Bankruptcy, Etc.* (a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of the Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against the Borrower or any other Loan Party. The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Loan Party or by any defense which the Borrower or any other Loan Party may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred

to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and the Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower or any other Loan Party of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower or any Subsidiary, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 7.11. *Excluded Swap Obligations.* (a) Notwithstanding any provision of this Agreement or any other Loan Document, no Guaranty by any Guarantor under any Loan Document shall include a guaranty of any Obligation and no Guaranteed Obligations shall include any Obligation that, as to such Guarantor, is an Excluded Swap Obligation, and no Collateral provided by any Guarantor shall secure any Obligation and no Obligations shall include any Obligation that, as to such Guarantor, is an Excluded Swap Obligation. In the event that any payment is made pursuant to any Guaranty by any Guarantor, or any amount is realized from Collateral of any Guarantor, as to which any Guaranteed Obligations or Obligations, as applicable, are Excluded Swap Obligations, such payment or amount shall be applied to pay the Guaranteed Obligations or Obligations, as applicable, of such Guarantor as otherwise provided herein and in the other Loan Documents without giving effect to such Excluded Swap Obligations, with payments from Guarantors of all Obligations, on the one hand, and Guarantors who cannot guarantee Excluded Swap Obligations, on the other hand, being distributed in such manner (but without applying payments from Guarantors who cannot guarantee Excluded Swap Obligations to such obligations) so as to ensure, as nearly as practicable, the distribution of payments as required by the Loan Documents. Each reference in this Agreement or any other Loan Document to the ratable application of such amounts as among the Guaranteed Obligations, the Obligations or the Obligations or any specified portion thereof that would otherwise include such Excluded Swap Obligations shall be deemed so to provide.

(b) 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 to enable each other Loan Party to honor all of its obligations under the Loan Documents in respect of Secured Swap Agreement Obligations and Secured Designated Additional Swap Obligations; provided, however, that such Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred by such Qualified ECP Guarantor without rendering its obligations under this Section or otherwise its Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer and not for any greater amount. The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until its Guaranty is released. Each Qualified ECP Guarantor intends that this Section shall constitute, and this Section 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 8
Events of Default

Section 8.01. *Events of Default.* If any of the following events (“*Events of Default*”) shall occur:

(a) the Borrower shall fail to pay any principal of any Loan 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 Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three days Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement, 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, any other Loan Document, or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made, and such incorrect representation or warranty (if curable, including by restatement of any relevant financial statements) shall remain incorrect for a period of 30 days following the earlier to occur of (i) the Borrower’s receipt of notice thereof from the Administrative Agent and (ii) a Responsible Officer of the Borrower obtaining actual knowledge thereof;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to the Borrower’s existence) or 5.08 or in Article 6;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure shall have continued after the applicable grace period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided* that this clause (g) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; (y) any

Convertible Debt Security to the extent such event or condition occurs as a result of (A) the satisfaction of a conversion contingency, (B) the exercise by a holder of Convertible Debt Security of a conversion right resulting from the satisfaction of a conversion contingency or (C) a required repurchase under such Convertible Debt Security or (z) any early payment requirement or unwinding or termination with respect to any Permitted Bond Hedge Transaction or Permitted Warrant Transaction;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$100,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof (to the extent not (i) adequately covered by insurance as to which the relevant third party insurance company has been notified and not denied coverage or (ii) otherwise indemnified by a creditworthy indemnitor) and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(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; or

(n) (i) any material provision of any Loan Document, at any time after its execution and delivery, ceases to be in full force and effect or any Loan Party contests in any manner the validity or enforceability thereof, in each case for any reason other than as expressly permitted hereunder or thereunder or as a result of the satisfaction in full of all the obligations hereunder or thereunder, (ii) the Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any material portion of the Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document for any reason or (iii) any Loan Party

shall contest in any manner the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Collateral Documents, and in the case of clauses (ii) and (iii) except (x) as a result of the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents or (y) as a result of (A) the Administrative Agent no longer having possession of any stock certificates, promissory notes or other instruments actually delivered to it under the Collateral Documents or (B) failure by the Administrative Agent to file Uniform Commercial Code in a timely manner.

Section 8.02. *Remedies Upon an Event of Default.* If an Event of Default occurs (other than an event with respect to the Borrower described in Sections 8.01(h) or 8.01(i)), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent may with the consent of the Required Lenders, and shall at the request of the Required Lenders, by notice to the Borrower, take any or all of the following actions, at the same or different times:

- (a) terminate the Commitments, and thereupon the Commitments shall terminate immediately;
- (b) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under any other Loan Document, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower;
- (c) require that the Borrower provide cash collateral as required in Section 2.06(j);
- (d) the Administrative Agent may enforce any and all Liens and security interests created pursuant to the Collateral Documents; and
- (e) exercise on behalf of itself, the Lenders and the Issuing Banks all other rights and remedies available to it, the Lenders and the Issuing Banks under the Loan Documents and applicable law.

If an Event of Default described in Sections 8.01(h) or 8.01(i) occurs with respect to the Borrower, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under any other Loan Document (including any break funding payment), shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the LC Exposure as provided in clause (c) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE 9 The Administrative Agent

Section 9.01. *Authorization and Action.* (a) Each Lender (including in its capacity as a potential counterparty under a Secured Swap Agreement, a provider of Secured Bank Services or an issuing bank in respect of or a provider of a Secured Bilateral Letter of Credit), each Issuing Bank and each other Secured Party hereby irrevocably appoints (or, in the case of a Security Party that is not party to this Agreement, is deemed to have appointed) 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.

(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 the Borrower, 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 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;

(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 nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Arranger or Documentation Agent 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 shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) 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 10.03) allowed in such judicial proceeding; and

(ii) 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 10.03). 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 Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or 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 Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

Section 9.02. *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 telecopy, 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, 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, a Lender or an Issuing Bank. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Loan Document, (B) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (C) 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, (D) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (E) the satisfaction of any condition set forth in Article 4 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 (F) the creation, perfection or priority of Liens on the Collateral. Notwithstanding anything herein to the contrary, the Administrative Agent

shall not be liable for, or be responsible for any Liabilities, costs or expenses suffered by the Borrower, any Subsidiary, any Lender or any Issuing Bank as a result of, any determination of the Revolving Credit Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or Issuing Bank.

(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 10.04, (ii) may rely on the Register to the extent set forth in Section 10.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), 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 9.03. *Posting of Communications.* (a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform 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, each of the Issuing Banks and the 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, each of the Issuing Banks and the 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 the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and each 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, each of the Issuing Banks and the 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 any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 9.04. *The Administrative Agent Individually.* With respect to its Commitment, Loans, Letter of Credit Commitments 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 Banks”, “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, the Borrower, 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 Banks.

Section 9.05. *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 Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, (i) the Administrative Agent may appoint one of its Affiliates acting through an office in the European Union as a successor Administrative Agent and (ii) if the Administrative Agent has not appointed one of its Affiliates acting through an office in the European Union as a successor Administrative Agent 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 Banks, 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 acting through an office in the European Union as a successor Administrative Agent pursuant to clause (i) above), such appointment shall be subject to the prior written approval of the Borrower (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 Banks and the Borrower, 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, 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 each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article and Section 10.03, 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 (i) above.

Section 9.06. *Acknowledgements of Lenders and Issuing Banks.* (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 information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its 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.

(c) (i) Each Lender and, if applicable, Issuing Bank, hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "**Payment**") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the

Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “**Payment Notice**”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making a payment to satisfy certain Obligations and is not otherwise repaid or returned to a Loan Party by the Administrative Agent, any Lender or their respective Affiliates, whether pursuant to a legal proceeding or otherwise.

(iv) Each party’s obligations under this Section 9.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

Section 9.07. *Collateral Matters.* (a) Except with respect to the exercise of setoff rights in accordance with Section 10.08 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 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.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Bank Services Obligations, no Swap Agreement the obligations under which constitute Secured Swap Agreement Obligations or Secured Designated Additional Swap Obligation, and no other Obligations which constitute Secured Bilateral Letters of Credit or Secured Designated Indebtedness 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, Swap Agreement, Secured Bilateral Letter of Credit or Secured Designated Indebtedness Obligations, 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. Notwithstanding any other provision to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to any Secured Swap Agreement Obligations, Secured Designated Additional Swap Obligation, Secured Bilateral Letters of Credit or Secured Designated Indebtedness Obligations unless the Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable counterparty, provider, issuer, designated holder or designated representative thereof, as applicable.

(c) The Secured Parties irrevocably authorize the Administrative Agent to (i) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document or to release any Guarantor, in each case in accordance with Section 10.20, (ii) 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 (x) permitted by Section 6.03(k) or (y) permitted by any other clause of Section 6.03 (provided that any such subordination effectuated in reliance on this clause (y) shall not be in relation to a Lien that secures Indebtedness for borrowed money), and (iii) enter into subordination, intercreditor, collateral trust and/or similar agreements (and any amendments thereto) with respect to Indebtedness that is required or permitted to be subordinated hereunder or *pari passu* with the Liens securing the Obligations. 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 9.08. *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 10.02 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 9.09. *Certain ERISA Matters.* (a) Each Lender (x) represents and warrants, as of the date such Person becomes a Lender party hereto, and (y) covenants, from the date such Person becomes a Lender party hereto, to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the 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 becomes a Lender party hereto, and (y) covenants, from the date such Person becomes a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or 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, commitment fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE 10
Miscellaneous

Section 10.01. *Notices.* (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and

other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by teletype, as follows:

(i) if to the Borrower:

[REDACTED]

(ii) if to the Administrative Agent:

[REDACTED]

(iii) if to an Issuing Bank,

[REDACTED]

(iv) if to any other Lender, to it at its address (or teletype number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Approved Electronic Platforms, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Borrower, the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Approved Electronic Platforms pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor.

(d) Any party hereto may change its address or teletype number for notices and other communications hereunder by notice to the other parties hereto.

Section 10.02. *Waivers; Amendments.* (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the

Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.14(b) and (c) and Section 10.02(c) below, neither this Agreement nor any other Loan Document may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; *provided* that no such waiver, amendment or modification shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.09(c) or 2.18(b) or (c) in a manner that would alter the ratable reduction of Commitments or the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change the payment waterfall provisions of Section 2.20(b) or similar “waterfall” provisions in the other Loan Documents in each case in a manner that would alter the pro rata sharing of payments required thereby other without the written consent of each Lender, (vi) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vii) release all or substantially all of the value of the Guaranties or the Collateral, without the written consent of each Lender, except to the extent the release of any Guarantor or any Collateral is permitted pursuant to Article 9 or Section 10.20 (in which case such release may be made by the Administrative Agent, acting alone) or (viii) change any other provision of the Loan Documents in a manner that by its terms affects the rights in respect of payments in respect of Loans of any Class more adversely than Loans of any other Class without the written consent of Lenders holding a majority of the outstanding Loans and Commitments of such affected Class and; *provided further* that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Banks hereunder without the prior written consent of the Administrative Agent or the Issuing Banks, as the case may be; (B) 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, (C) no Defaulting Lender shall have any right to approve or disapprove any such waiver, amendment or modification hereunder (and any such waiver, amendment or modification which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or the termination thereof extended without the consent of such Lender, (y) the principal amount of any Defaulting Lender’s Loan, or the interest rate thereon or any fees payable hereunder to any Defaulting Lender may not be reduced without the consent of such Lender and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender, and (D) this Agreement may be amended to provide

for a Incremental Commitments or an Incremental Term Loan in the manner contemplated by Section 2.22 and the extension of the Maturity Date as contemplated by Section 2.21.

(c) If the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

Section 10.03. *Expenses; Limitation of Liability; Indemnity, Etc.*

(a) *Expenses.* The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (but limited, in the case of legal fees and expense, to the actual and documented reasonable fees, charges and disbursements of Simpson Thacher & Bartlett LLP and, if necessary, of one local counsel per relevant jurisdiction, taken as a whole) in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender (but limited, in the case of legal fees and expense, to the actual and documented reasonable fees, charges and disbursements of one legal counsel and, if necessary, of one local counsel per relevant jurisdiction, taken as a whole) in connection with the enforcement or protection of its rights in connection with this Agreement and the other 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.

(b) *Limitation of Liability.* To the extent permitted by applicable law (i) the Borrower and any Loan Party shall not assert, and the 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 10.03(b) shall relieve the Borrower and each Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 10.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) *Indemnity.* The Borrower shall indemnify the Administrative Agent, each Arranger, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all Liabilities and related expenses (but limited, in the case of legal fees and expense, to the actual and documented reasonable fees, charges and disbursements of one legal counsel and, if necessary, of one local counsel per relevant jurisdiction, taken as a whole, and, solely in the case of an actual or perceived conflict of interest, one additional counsel to each

similarly situated group of affected Persons, taken as a whole, and, if reasonably necessary, one additional local counsel to each similarly situated group of affected Persons, taken as a whole, in each relevant jurisdiction) incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, (ii) the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (iii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an 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), (iv) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (v) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by the Borrower or any other Loan Party or its 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 Indemnatee is a party thereto; *provided* that such indemnity shall not, as to any Indemnatee, apply to any Liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to (I) result from (x) the willful misconduct or gross negligence of such Indemnatee or (y) a claim brought by the Borrower or any Subsidiary against such Indemnatee for a material breach of such Indemnatee's obligations under this Agreement, or (II) have resulted from a proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and have been brought by an Indemnatee against any other Indemnatee (other than any claims against any arranger, bookrunner or agent in its capacity or in fulfilling its role as an arranger, bookrunner or agent or any similar role hereunder). This Section 10.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(d) *Lender Reimbursement.* Each Lender severally agrees to pay any amount required to be paid by the Borrower under paragraphs (a), (b) or (c) of this Section 10.03 to the Administrative Agent, each Issuing Bank, and each Related Party of any of the foregoing Persons (each, an "**Agent-Related Person**") (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower 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), and agrees to indemnify and hold each Agent-Related Person harmless 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 nonappealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Party's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(e) *Payments*. All amounts due under this Section 10.03 shall be payable /not later than 10 Business Days after written demand therefor.

Section 10.04. *Successors and Assigns*. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more 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, conditioned or delayed) of:

(A) the Borrower (*provided* that the Borrower shall be deemed to have consented to an assignment of all or a portion of the Loans and Commitments unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof); *provided* that no consent of the Borrower 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; *provided* that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) each 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 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 and the Administrative Agent otherwise consent; *provided* that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this

Agreement; *provided* that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(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 Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 10.04(b), the term "**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 or (d) the Borrower or any of its Affiliates; 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; provided, further, that upon the occurrence and during the continuance of an Event of Default, any Person (other than a Lender) shall be an Ineligible Institution if after giving effect to any proposed assignment to such Person, such Person would hold more than 25% of the then outstanding Commitments.

(i) From and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 10.03). 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.

(ii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, 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 (and stated interest) 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 Borrower, the Administrative Agent, the Issuing Banks 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 Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(iii) 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 2.06(d) or (e), 2.07(b), 2.18(d) or 10.03(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 Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more banks or other entities (a “*Participant*”), other than an Ineligible Institution, in all or a portion of such Lender’s rights and/or 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 Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Sections 2.17(f) and Section 2.18(b)(i) (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 Borrower 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 Section 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 Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower 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 10.08 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.18(c) 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 Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender 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 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 10.05. *Survival.* All covenants, agreements, representations and warranties made by the Borrower herein and in the other Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article 9 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 provision hereof.

Section 10.06. *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) the reductions of the Letter of Credit Commitment of any 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 as of the date hereof, 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 10.01), 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 telecopy, 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 telecopy, 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 the 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, the 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, and the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, 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 telecopy, 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 the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 10.07. *Severability.* Any provision of this Agreement 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 hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08. *Right of Setoff.* If an Event of Default shall have occurred and be continuing, each Lender, each 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 setoff 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, such Issuing Bank or any such Affiliate, to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, Issuing Bank or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or such 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 setoff 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 Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each 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, such Issuing Bank or their respective Affiliates may have. Each Lender and Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09. *Governing Law; Jurisdiction; Consent to Service of Process.* (a) This Agreement and the other Loan Documents shall be construed in accordance with and governed by the law of the State of New York.

(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 the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or 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 Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall (i) affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower, any Loan Party or its properties in the courts of any jurisdiction, (ii) waive any statutory, regulatory, common law, or other rule, doctrine, legal restriction, provision or the like providing for the treatment of bank branches, bank agencies, or other bank offices as if they were separate juridical entities for certain purposes, including Uniform Commercial Code Sections 4-106, 4-A-105(1)(b), and 5-116(b), UCP 600 Article 3 and ISP98 Rule 2.02, and URDG 758 Article 3(a), or (iii) affect which courts have or do not have personal jurisdiction over the issuing bank or beneficiary of any Letter of Credit or any advising bank, nominated bank or assignee of proceeds thereunder or proper venue with respect to any litigation arising out of or relating to such Letter of Credit with, or affecting the rights of, any Person not a party to this Agreement, whether or not such Letter of Credit contains its own jurisdiction submission clause.

(d) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement 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 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.10. *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 OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN

INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11. *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 10.12. *Confidentiality.* Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and its and their respective 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 applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder or under any other Loan Document, (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 Borrower and its obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or (ii) 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, (h) with the consent of the Borrower or (i) to the extent such Information (ii) becomes publicly available other than as a result of a breach of this Section or (iii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section, "**Information**" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely 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 Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.13. *Material Non-Public Information.* (a) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 10.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS 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.

(b) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER 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 BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER 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.

Section 10.14. *Interest Rate Limitation.* Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “*Charges*”), shall exceed the maximum lawful rate (the “*Maximum Rate*”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.]

Section 10.15. *No Fiduciary Duty, etc.* (a) The 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 the 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, the Borrower or any other person. The 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, the Borrower acknowledges and agrees that no Credit Party is advising the Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. The 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 the Borrower with respect thereto.

(b) The 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, the Borrower and other companies with which the 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, the 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 the Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with the 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. The 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 the Borrower, confidential information obtained from other companies.

Section 10.16. *USA PATRIOT Act.* Each Lender that is subject to the requirements of the USA PATRIOT Act of 2001 (the "**Patriot Act**") hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

Section 10.17. *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 10.18. *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 10.19. *Judgment Currency.* If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such Currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable law).

Section 10.20. *Releases of Liens and Guarantees.*

(a) A Guarantor shall automatically be released from its obligations under this Agreement upon the consummation of any transaction permitted by this Agreement as a result of which such Guarantor ceases to be a Subsidiary. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party’s expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any

execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent may (and is hereby irrevocably authorized by each Lender to), upon the request of the Borrower, release any Subsidiary that is a Guarantor from its obligations under this Agreement if such Guarantor becomes an Excluded Subsidiary.

(c) The Lenders and the other Secured Parties hereby irrevocably agree that the Liens granted to the Administrative Agent by the Loan Parties on any Collateral shall be automatically released: (i) in full upon the occurrence of the Termination Date as provided in Section 10.20(e); (ii) upon the Disposition of such Collateral by any Loan Party to a person that is not (and is not required to become) a Loan Party in a transaction not prohibited by this Agreement (and the Administrative Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.02), (iv) to the extent that the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guarantee in accordance with Section 10.20(a) or (b) (and the Administrative Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (v) as required by the Administrative Agent to effect any Disposition of Collateral in connection with any exercise of remedies of the Administrative Agent pursuant to the Loan Documents, and (vi) upon the occurrence of the Investment Grade Ratings Trigger Date (so long as no Event of Default has occurred and is continuing). Any such release (other than pursuant to clause (i) above) shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents.

(d) The Lenders and the other Secured Parties hereby authorize the Administrative Agent to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this Section 10.20 and to return to the Borrower or the applicable Loan Party all possessory collateral (including share certificates and related powers (if any)) held by it in respect of any Collateral so released, all without the further consent or joinder of any Lender or any other Secured Party. In connection with any release hereunder, the Administrative Agent shall promptly (and the Secured Parties hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense in connection with the release of any Liens created by any Loan Document in respect of such person, property or asset; *provided*, that the Administrative Agent shall have received a certificate of a Responsible Officer or other executive officer of the Borrower containing such certifications as the Administrative Agent shall reasonably request and any such release shall be without recourse to or warranty by the Administrative Agent.

(e) Notwithstanding anything to the contrary contained herein or any other Loan Document, on the Termination Date, all Liens granted to the Administrative Agent by the Loan Parties on any Collateral and all Loan Documents Obligations of the Borrower and the other Loan Parties under any Loan Documents (other than such obligations that expressly survive the Termination Date pursuant to the terms hereof and all other Loan Documents Obligations with respect to Banking Services, Swap Agreements or Secured Bilateral Letters of Credit) shall, in each

case, be automatically released and, upon request of the Borrower and/or the Administrative Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to evidence the release of its security interest in all Collateral (including returning to the Borrower or the applicable Loan Party all possessory collateral (including all share certificates and related powers (if any)) held by it in respect of any Collateral), and to evidence the release of all Loan Documents Obligations under any Loan Document (other than such obligations that expressly survive the Termination Date pursuant to the terms hereof and all other Loan Documents Obligations with respect to Banking Services, Swap Agreements or Secured Bilateral Letters of Credit), whether or not on the date of such release there may be any (i) Obligations in respect of any Secured Swap Agreement, any Secured Bank Services Agreement, any Secured Bilateral Letter of Credit, any Secured Designated Additional Swap Obligation or any Secured Designated Indebtedness Obligations and (ii) any contingent indemnification obligations or expense reimbursement claims not then due and payable. Any such release of obligations shall be deemed subject to the provision that such obligations shall be reinstated if after such release any portion of any payment in respect of the obligations guaranteed thereby shall be rescinded, avoided, or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Loan Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Loan Party or any substantial part of its property, or otherwise, all as though such payment had not been made. The Loan Parties agree to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent (and its representatives) in connection with taking such actions to release security interest in all Collateral and all Loan Documents Obligations as contemplated by this Section 10.20(e).

(f) Any Obligations under any Secured Swap Agreement, any Secured Bank Services Agreement, Secured Bilateral Letter of Credit, Secured Designated Additional Swap Obligation and any Secured Designated Indebtedness Obligations shall be secured and, if applicable, guaranteed, pursuant to the Loan Documents only to the extent that, and for so long as, the other Loan Documents Obligations are so secured and guaranteed. No Person shall have any voting rights under any Loan Document solely as a result of the existence of Obligations owed to it under any such Secured Swap Agreement, any Secured Bank Services Agreement, Secured Bilateral Letter of Credit, Secured Designated Additional Swap Obligation or any Secured Designated Indebtedness Obligations. For the avoidance of doubt, no release of Collateral or Guarantors effected in the manner permitted by this Agreement shall require the consent of any holder of Obligations under any Secured Swap Agreement, any Secured Bank Services Agreement, Secured Bilateral Letter of Credit, Secured Designated Additional Swap Obligation or any Secured Designated Indebtedness Obligations.

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 15 U.S.C. SECTION 7241, AS
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark R. Widmar, certify that:

- (1) I have reviewed the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2025, as filed with the Securities and Exchange Commission;
 - (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 - (3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for, the periods presented in this report;
 - (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 - (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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.
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July 31, 2025

By: /s/ MARK R. WIDMAR
Name: Mark R. Widmar
Title: Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 15 U.S.C. SECTION 7241, AS
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Alexander R. Bradley, certify that:

- (1) I have reviewed the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2025, as filed with the Securities and Exchange Commission;
 - (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 - (3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for, the periods presented in this report;
 - (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 - (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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.
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July 31, 2025

By: /s/ ALEXANDER R. BRADLEY
Name: Alexander R. Bradley
Title: Chief Financial Officer

**CERTIFICATION OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2025, as filed with the Securities and Exchange Commission, each of the undersigned officers of First Solar, Inc. certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his respective knowledge:

- (1) the quarterly 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 quarterly report fairly presents, in all material respects, the financial condition and results of operations of First Solar, Inc. for the periods presented therein

July 31, 2025

By: /s/ MARK R. WIDMAR
Name: Mark R. Widmar
Title: Chief Executive Officer

July 31, 2025

By: /s/ ALEXANDER R. BRADLEY
Name: Alexander R. Bradley
Title: Chief Financial Officer