

# **BUILDERS FIRSTSOURCE, INC.**

## **FORM 10-K** (Annual Report)

Filed 03/01/17 for the Period Ending 12/31/16

Address	2001 BRYAN STREET, SUITE 1600 DALLAS, TX 75201
Telephone	(214) 880-3500
CIK	0001316835
Symbol	BLDR
SIC Code	5211 - Lumber and Other Building Materials Dealers
Industry	Construction Supplies & Fixtures
Sector	Consumer Cyclical
Fiscal Year	12/31

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

**Form 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2016  
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: 0-51357

**BUILDERS FIRSTSOURCE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**2001 Bryan Street, Suite 1600  
Dallas, Texas**

*(Address of principal executive offices)*

**52-2084569**

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

**75201**

*(Zip Code)*

**Registrant's telephone number, including area code:  
(214) 880-3500**

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

Title of Each Class  
**Common stock, par value \$0.01 per share**

Name of Exchange on Which Registered  
**NASDAQ Stock Market LLC**

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2016 was approximately \$961.1 million based on the closing price per share on that date of \$11.25 as reported on the NASDAQ Stock Market LLC.

The number of shares of the registrant's common stock, par value \$0.01, outstanding as of February 24, 2017 was 112,040,464.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement for its annual meeting of stockholders to be held on May 24, 2017 are incorporated by reference into Part II and Part III of this Form 10-K.

**BUILDERS FIRSTSOURCE, INC.**  
**Table of Contents to Form 10-K**

	<u>Page</u>
<b><u>PART I</u></b>	
Item 1. <a href="#">Business</a>	3
Item 1A. <a href="#">Risk Factors</a>	11
Item 1B. <a href="#">Unresolved Staff Comments</a>	21
Item 2. <a href="#">Properties</a>	21
Item 3. <a href="#">Legal Proceedings</a>	22
Item 4. <a href="#">Mine Safety Disclosures</a>	22
<b><u>PART II</u></b>	
Item 5. <a href="#">Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	23
Item 6. <a href="#">Selected Financial Data</a>	25
Item 7. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	26
Item 7A. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	39
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	40
Item 9. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	76
Item 9A. <a href="#">Controls and Procedures</a>	76
Item 9B. <a href="#">Other Information</a>	77
<b><u>PART III</u></b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	78
Item 11. <a href="#">Executive Compensation</a>	78
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	78
Item 13. <a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	79
Item 14. <a href="#">Principal Accountant Fees and Services</a>	79
<b><u>PART IV</u></b>	
Item 15. <a href="#">Exhibits and Financial Statement Schedules</a>	80
Item 16. <a href="#">Form 10-K Summary</a>	84

## PART I

### Item 1. *Business*

#### CAUTIONARY STATEMENT

Statements in this report and the schedules hereto that are not purely historical facts or that necessarily depend upon future events, including statements about expected market share gains, forecasted financial performance or other statements about anticipations, beliefs, expectations, hopes, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on forward-looking statements. In addition, oral statements made by our directors, officers and employees to the investor and analyst communities, media representatives and others, depending upon their nature, may also constitute forward-looking statements. As with the forward-looking statements included in this report, these forward-looking statements are by nature inherently uncertain, and actual results may differ materially as a result of many factors. All forward-looking statements are based upon information available to Builders FirstSource, Inc. on the date this report was submitted. Builders FirstSource, Inc. undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Any forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including risks or uncertainties related to the Company's growth strategies, including gaining market share, or the Company's revenues and operating results being highly dependent on, among other things, the homebuilding industry, lumber prices and the economy. Builders FirstSource, Inc. may not succeed in addressing these and other risks. Further information regarding the risk factors that could affect our financial and other results are included as Item 1A of this annual report on Form 10-K.

#### OVERVIEW

In this annual report, unless otherwise stated or the context otherwise requires, references to the "company," "we," "our," "ours" or "us" refer to Builders FirstSource, Inc. and its consolidated subsidiaries, including ProBuild Holdings LLC ("ProBuild"), as of July 31, 2015.

We are a leading supplier and manufacturer of building materials, manufactured components and construction services to professional homebuilders, sub-contractors, remodelers and consumers. Following our acquisition of ProBuild in July 2015, the Company operates 400 locations in 40 states across the United States. We offer an integrated solution to our customers providing manufacturing, supply and installation of a full range of structural and related building products. Our manufactured products include our factory-built roof and floor trusses, wall panels and stairs, vinyl windows, custom millwork and trim, as well as engineered wood that we design, cut, and assemble for each home. We also assemble interior and exterior doors into pre-hung units. Additionally, we supply our customers with a broad offering of professional grade building products not manufactured by us, such as dimensional lumber and lumber sheet goods and various window, door and millwork lines. Our full range of construction-related services includes professional installation, turn-key framing and shell construction, and spans all our product categories.

Given the span and depth of our geographical reach, our locations are organized into nine geographical regions (Regions 1 through 9), which are also our operating segments, further aggregated into four reportable segments: Northeast, Southeast, South and West. All of our segments have similar customers, products and services, and distribution methods as discussed below. Our financial statements contain additional information regarding segment performance which is discussed in Note 15 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K.

Builders FirstSource, Inc. is a Delaware corporation formed in 1998 as BSL Holdings, Inc. On October 13, 1999, our name changed to Builders FirstSource, Inc. Our common stock is listed on the NASDAQ Stock Market LLC under the ticker symbol "BLDR".

#### OUR INDUSTRY

We compete in the professional segment ("Pro Segment") of the U.S. residential building products supply market. Suppliers in the Pro Segment primarily focus on serving professional customers such as homebuilders and remodeling contractors. The Pro Segment consists predominantly of small, privately owned suppliers, including framing and shell construction contractors, local and regional materials distributors, single or multi-site lumberyards, and truss manufacturing and millwork operations. Because of the predominance of smaller privately owned companies and the overall size and diversity of the target customer market, the Pro Segment remains fragmented. There were only five non-specialty building product suppliers in the Pro Segment that generated more than \$500 million in sales, according to *ProSales* magazine's 2015 ProSales 100 list. We were the largest non-specialty building product supplier on this list.

The residential building products industry is driven by the level of activity in both the U.S. residential new construction market and the U.S. residential repair and remodeling market. Growth within these markets is linked to a number of key factors, including demographic trends, housing demand, interest rates, employment levels, availability of credit, foreclosure rates, consumer confidence, the availability of qualified tradesmen, and the state of the economy in general.

The residential building products industry is characterized by several key trends, including greater utilization of manufactured components, an expanding role of the distributor in providing turn-key services and a consolidation of suppliers by homebuilders.

- *Prefabricated components* : Compared to conventional “stick-build” construction where builders cut and assemble lumber at the job site with their own labor, prefabricated components are engineered in an offsite location using specialized equipment and labor. This outsourced task allows for optimal material usage, lower overall labor costs and improved quality of structural elements. In addition, using prefabricated components typically results in faster construction because fabrication can be automated and performed more systematically. As such, we believe there is a long term trend towards increased use of prefabricated components by homebuilders.
- *Turn - key services* : Many homebuilders have taken a more limited role in the homebuilding process and have outsourced certain key elements of the construction process, including process management, product selection, order input, scheduling, framing and installation. As such, we believe that many homebuilders are increasingly looking to suppliers in the Pro Segment to perform these critical functions, resulting in greater demand for integrated project services; and
- *Consolidation of suppliers by homebuilders* : We believe that homebuilders are increasingly looking to consolidate their supplier base. Many homebuilders are seeking a more strategic relationship with suppliers that are able to offer a broad range of products and services and, as a result, are allocating a greater share of wallet to a select number of larger, full service suppliers. We believe this trend accelerated during the recent downturn and continues in the current housing market recovery.

The homebuilding industry experienced a significant downturn which began in 2006. During the downturn, many homebuilders significantly decreased their housing starts because of lower demand and a surplus of both existing and new home inventory. The weakness in the homebuilding industry resulted in a significant reduction in demand for our products and services. Beginning in late 2011, the industry began to stabilize and housing and remodeling activity has steadily strengthened since then. According to the U.S. Census Bureau, the single-family residential construction market was an estimated \$243.4 billion in 2016, which was 4.8% higher than 2015, though still down significantly from the historical high of \$413.2 billion in 2006. Further, according to the Home Improvement Research institute (“HIRI”), the professional repair and remodel end market was an estimated \$98.1 billion in 2016, which was 6.1% higher than 2015.

During the downturn mortgage financing and commercial credit for smaller homebuilders was severely constrained and continues to slow a recovery in our industry despite some recent improvement. However, we believe there are several meaningful trends that indicate U.S. housing demand will likely continue to recover to levels consistent with the historical average of the past fifty years. These trends include relatively low interest rates, the aging of housing stock, and population growth due to immigration and birthrate exceeding death rate. According to the U.S. Census Bureau, U.S. single-family housing starts increased 9.4% in 2016 compared to 2015. A composite of third party sources, including the National Association of Homebuilders (“NAHB”), are predicting that U.S. single-family housing starts will increase to approximately 847,000 in 2017, which would represent an 8.4% increase from 2016 actual U.S. single-family housing starts of 781,500. In addition, the HIRI is forecasting sales in the professional repair and remodel end market to increase approximately 4.2% in 2017 compared to 2016.

## **OUR CUSTOMERS**

We serve a broad customer base in 40 states across the United States. We have a diverse geographic footprint as we have operations in 75 of the top 100 U.S. Metropolitan Statistical Areas (“MSAs”), as ranked by single family housing permits based on 2016 U.S. Census data. In addition, approximately 83% of U.S. housing permits in 2016 were issued in MSAs in which we operate. Given the local nature of our business, we have historically and will continue to locate our facilities in close proximity to our key customers and co-locate multiple operations in one facility to improve efficiency.

We have a diversified customer base, ranging from large production builders to small custom homebuilders, as well as multi-family builders, repair and remodeling contractors and light commercial contractors. For the year ended December 31, 2016, our top 10 customers accounted for approximately 16.8% of sales, and no single customer accounted for more than 5% of sales. Our top 10 customers are comprised primarily of the largest production homebuilders, including publicly traded companies such as D.R. Horton, Inc., Pulte Homes, Inc., Lennar Corporation, Hovnanian Enterprises and CalAtlantic Group.

In addition to the largest production homebuilders, we also service and supply regional production and local custom homebuilders as well as repair and remodeling contractors. These customers require high levels of service and a broad product offering. Our sales team expects to work very closely with the designers on a day-to-day basis in order to ensure the appropriate products are identified, ordered or produced and delivered on time to the building site. To account for these increased service costs, pricing in the industry is tied to the level of service provided and the volumes purchased.

## OUR PRODUCTS AND SERVICES

We group our building products and services into six product categories:

*Lumber & Lumber Sheet Goods.* Lumber & lumber sheet goods include dimensional lumber, plywood and oriented strand board (“OSB”) products used in on-site house framing. Lumber & lumber sheet goods are our largest sales volume product category. The products in this category are highly sensitive to fluctuations in market prices for such commodities.

*Windows, Doors & Millwork.* Windows & doors are comprised of the manufacturing, assembly and distribution of windows, and the assembly and distribution of interior and exterior door units. We manufacture a portion of the vinyl windows that we distribute in our plant in Houston, Texas which allows us to supply builders, primarily in the Texas market, with cost-competitive products. Our pre-hung interior and exterior doors consist of a door slab with hinges and door jambs attached, reducing on-site installation time and providing higher quality finished door units than those constructed on site. These products typically require a high degree of product knowledge and training to sell. Millwork includes interior trim and custom features that we manufacture under the Synboard® brand name. Synboard is produced from extruded PVC and offers several advantages over traditional wood features, such as greater durability and no ongoing maintenance such as periodic caulking and painting.

*Manufactured Products.* Manufactured products are factory-built substitutes for job-site framing and include wood floor and roof trusses, steel roof trusses, wall panels, stairs, and engineered wood that we design, cut, and assemble for each home. Our manufactured products allow builders to build higher quality homes more efficiently. Roof trusses, floor trusses, wall panels and stair units are built in a factory controlled environment. Engineered floors and beams are cut to the required size and packaged for the given application at many of our locations. Without manufactured products, builders construct these items on site, where weather and variable labor quality can negatively impact construction cost, quality and installation time. In addition, engineered wood beams have greater structural strength than conventional framing materials, allowing builders to frame houses with more open space creating a wider variety of house designs. Engineered wood floors are also stronger and straighter than conventionally framed floors.

*Gypsum, Roofing & Insulation.* Gypsum, roofing, and insulation include wallboard, ceilings, joint treatment and finishes.

*Siding, Metal, and Concrete.* Siding, metal, and concrete includes vinyl, composite, and wood siding, exterior trim, other exteriors, metal studs and cement.

*Other Building Products & Services.* Other building products & services consist of various products, including cabinets and hardware. This category also includes services such as turn-key framing, shell construction, design assistance and professional installation of products spanning all our product categories. We provide professional installation and turn-key services as a solution for our homebuilder customers. Through our installation services program, we help homebuilders realize efficiencies through improved scheduling, resulting in reduced cycle time and better cost controls. By utilizing an energy efficiency software program, we also assist homebuilders in designing energy efficient homes in order to meet increasingly stringent energy rating requirements. Upgrading to our premium windows, doors, and insulating products reduces overall cost to the homebuilder by minimizing costs of the required heating/cooling system. We work closely with the homebuilder to select the appropriate mix of our products in order to meet current and forthcoming energy codes. We believe these services require scale, capital and sophistication that smaller competitors do not possess. We will continue to pursue profitable business in this category.

We compete in a fragmented marketplace. We believe our integrated approach and scale allow us to compete effectively through our comprehensive product lines, prefabricated components, and value-added services combined with the knowledge of our integrated sales forces to enable our homebuilder customers to complete construction more quickly, with higher quality and at a lower cost. While we expect these benefits to be particularly valuable to our customers in market environments characterized by labor shortages, sourcing challenges or sharply rising demand for new homes, we expect such benefits will also be increasingly valued and demanded by our customers operating under normal market conditions.

## MANUFACTURING

Our manufacturing facilities utilize the latest industry leading technology and the highest quality materials to improve product quality, increase efficiency, reduce lead times and minimize production errors. We manufacture products within two of our product categories: manufactured products, and windows, doors & millwork.

*Manufactured Products — Trusses and Wall Panels.* Truss and wall panel production has two steps — design and fabrication. Each house requires its own set of designed shop drawings, which vary by builder type: production versus custom builders. Production builders use prototype house plans as they replicate houses. These house plans may be minimally modified to suit individual customer demand. The number of changes made to a given prototype house, and the number of prototype houses used, varies by builder and their construction and sales philosophy. We maintain an electronic master file of trusses and wall panels for each builder's prototype houses. There are three primary benefits to master filing. First, master filing is cost effective as the electronic master file is used rather than designing the components individually each time the prototype house is built. Second, it improves design quality as a house's design is based on the proven prototype except for any minor builder modifications. Third, master filing allows us to change one file and update all related prototype house designs automatically as we improve the design over time or as the builder modifies the base prototype house. We do not maintain a master file for custom builders who do not replicate houses, as it is not cost effective. For these builders, the components are designed individually for each house.

After we design shop drawings for a given house, we download the shop drawings into a proprietary software system to review the design for potential errors and to schedule the job for production. The fabrication process begins by cutting individual pieces of lumber to required lengths in accordance with the shop drawings. We download the shop drawings from our design department to computerized saws. We assemble the cut lumber to form roof trusses, floor trusses or wall panels, and store the finished components by house awaiting shipment to the job site.

We generate fabrication time standards for each component during the design step. We use these standards to measure efficiency by comparing actual production time with the calculated standard. Each plant's performance is benchmarked by comparing efficiency across plants.

*Manufactured Products — Engineered Wood.* As with trusses and wall panels, engineered wood components have a design and fabrication step. We design engineered wood floors using a master filing system similar to the truss and wall panel system. Engineered wood beams are designed to ensure the beam will be structurally sound in the given application. After the design phase, a printed layout is generated. We use this layout to cut the engineered wood to the required length and assemble all of the components into a house package. We design and fabricate engineered wood at many of our distribution locations.

*Manufactured Products — Stairs.* We manufacture box stairs at some of our locations. After a house is framed, our salesman takes measurements at the job site prior to manufacturing to account for any variation between the blueprints and the actual framed house. We fabricate box stairs based on these measurements.

*Custom Millwork.* Our manufactured custom millwork consists primarily of synthetic exterior trim, custom windows, features and box columns that we sell under our Synboard brand name and throughout our company.

We sand, cut, and shape sheets of 4 foot by 18 or 20 foot Celuka-blown, extruded PVC, or Synboard, to produce the desired product. We produce exterior trim boards by cutting the Synboard into the same industry-standard dimensions used for wood-based exterior trim boards. We form exterior features by assembling pieces of Synboard and other PVC-based moldings that have been cut, heated and bent over forms to achieve the desired shape. For custom windows, we build the frame from Synboard and glaze the glass into place. We fabricate box columns from sections of PVC that are cut on a 45 degree angle and mitered together.

*Windows.* We manufacture a full line of traditional vinyl windows at an approximately 200,000 square foot manufacturing facility located in Houston, Texas. The process begins by purchasing vinyl lineal extrusions. We cut these extrusions to size and join them together to form the window frame and sash. We then purchase sheet glass and cut it to size. We combine two pieces of identically shaped glass with a sealing compound to create a glass unit with improved insulating capability. We then insert the sealed glass unit and glaze it into the window frame and sash. The unit is completed when we install a balance to operate the window and add a lock to secure the window in a closed position.

*Pre-hung Doors.* We pre-hang interior and exterior doors at many of our locations. We insert door slabs and pre-cut door jambs into a door machine, which bores holes into the doors for the door hardware and applies the jambs and hinges to the door slab. We then apply the casing that frames interior doors at a separate station. Exterior doors do not have a casing, and instead may have sidelights applied to the sides of the door, a transom attached over the top of the door unit and a door sill applied to the threshold.

## **OUR STRATEGY**

We intend to build on our strong market positions and increase our sales and profits by pursuing the following strategies:

### ***Utilize our competitive strengths to capitalize on housing market recovery and growth***

As the U.S. housing market recovery continues, we intend to increase sales through our scale, product portfolio and structural efficiencies. Our Pro Segment homebuilding customers continue to emphasize the importance of competitive pricing, a broad product portfolio, sales force knowledge, on-site services and overall “ease of use” of their building products suppliers. Our comprehensive product offering, experienced sales force and tenured senior management team position us well to capitalize on strong demand in the new home construction market as well as the repair and remodel segment. Our acquisition of ProBuild further developed the suite of products and services we provide to our customers, in addition to substantially expanding our national footprint. This comprehensive network of products, services and facilities provides a platform which we believe enhances our “one-stop-shop” strategy and more evenly distributes and promotes additional “pull through” of our value added products. We believe that homebuilders will continue to place an increased value on these capabilities, which will further differentiate us from our competitors.

### ***Execute on identified cost saving strategies***

Our management has shown the capability to effectively and efficiently integrate newly acquired businesses, ramping up productivity and driving value. Prior to the ProBuild acquisition, we successfully integrated 33 acquisitions since 1998. These integration capabilities should enable us to achieve annual run rate cost savings of \$100 to \$120 million within two years of the close date of the ProBuild acquisition. We have realized approximately \$74 million in 2016 and \$10 million in 2015 of the anticipated synergy cost savings. One-time costs to achieve these cost savings is estimated to be \$90-\$100 million, of which we incurred approximately \$28 million and \$43 million in 2016 and 2015, respectively. The remainder of these costs are expected to be incurred in 2017.

### ***Maximize our share of wallet with individual customers across our service areas***

We believe that Pro Segment customers will continue to consolidate the number of supplier relationships they utilize in the future. As a result, this will create the opportunity to win a greater share of wallet for remaining suppliers. By focusing on and developing our differentiated “one-stop-shop” strategy, which includes broadening our product mix, we will be able to offer a complete array of products and services that would otherwise need to be sourced from various distributors. Additionally, as the largest non-specialty distributor of building products, we will be capable of providing customers with a consistent partner on projects regardless of where they are located. This operational platform often will make us a preferred distributor relationship for large scale national homebuilders while still providing value to local and custom homebuilders looking for assistance with product selection, on-site installation and project management.

### ***Continue to leverage strategic vendor relationships***

Our acquisition of ProBuild made us the largest non-specialty distributor in the Pro Segment. We believe we will be able to leverage this size and our strong homebuilder relationships to provide our vendors access to a large customer base. We believe that our size, purchasing power, and strong financial position allows us to negotiate favorable pricing (including back-end rebates), savings in procurement costs and to receive a higher priority with our vendors when product supply is limited. We strive to continually enhance our role as a preferred partner for vendors and our size, strong liquidity position, and access to capital markets is expected to mitigate natural credit concerns. Furthermore, our broad product portfolio includes a variety of higher-margin products, which we believe will enhance our preferred partner status. This preferred status enables us to participate in mutually beneficial joint marketing programs with our vendors. These incremental efficiencies in procurement provide an opportunity to pass on additional value to our customers.

### ***Optimize cash flow with highly scalable cost structure***

Through the downturn we focused on standardizing processes and technology-based workflows to minimize costs, streamline our operations and enhance working capital efficiency. Significant investments in our technology infrastructure and reengineering of our business processes enabled us to centralize many corporate and field tasks. This standardization helps us to optimize our cost structure, allows our centralized operating team to make better purchasing and pricing decisions based on an accurate, up-to-the-minute understanding of costs and trends, and enables us to redeploy capital more strategically. We believe that these efficiencies will drive enhanced profit margins and cash flow conversion across our entire platform as we continue to grow with improving market conditions.



## **SALES AND MARKETING**

We seek to attract and retain customers through exceptional customer service, leading product quality, broad product and service offerings, and competitive pricing. This strategy is centered on building and maintaining strong customer relationships rather than traditional marketing and advertising. We strive to add value for the homebuilders through shorter lead times, lower material costs, faster project completion and higher quality. By executing this strategy, we believe we will continue to generate new business.

Our experienced, locally focused sales force is at the core of our sales effort. This sales effort involves deploying salespeople who are skilled in housing construction to meet with a homebuilder's construction superintendent, local purchasing agent, or local executive with the goal of becoming their primary product supplier. If selected by the homebuilder, the salesperson and his or her team review blueprints for the contracted homes and advise the homebuilder in areas such as opportunities for cost reduction, increased energy efficiencies, and regional aesthetic preferences. Next, the team determines the specific package of products that are needed to complete the project and schedules a sequence of site deliveries. Our large delivery fleet and comprehensive inventory management systems enable us to provide "just-in-time" product delivery, ensuring a smoother and faster production cycle for the homebuilder. Throughout the construction process, the salesperson makes frequent site visits to ensure timely delivery and proper installation and to make suggestions for efficiency improvements. We believe this level of service is highly valued by our customers and generates significant customer loyalty. At December 31, 2016, we employed approximately 1,700 sales representatives, who are typically paid a commission based on gross margin dollars collected and work with approximately 1,400 sales coordinators and product specialists.

## **BACKLOG**

Due to the nature of our business, backlog information is not meaningful. While our customers may provide an estimate of their future needs, in most cases we do not receive a firm order from them until just prior to the anticipated delivery dates. Accordingly, in many cases the time frame from receipt of a firm order to shipment does not exceed a few days.

## **MATERIALS AND SUPPLIER RELATIONSHIPS**

We purchase inventory primarily for distribution, some of which is also utilized in our manufacturing plants. The key materials we purchase include dimensional lumber, plywood, OSB, engineered wood, windows, doors, and millwork. Our largest suppliers are national companies such as Weyerhaeuser Company, Boise Cascade Company, Canfor Corporation, Norbord, Inc., James Hardie Industries plc, National Gypsum Company, PlyGem Holdings, Inc., M I Windows and Doors, Inc., Andersen Corporation, Masonite International Corporation and JELD-WEN Inc. We believe there is sufficient supply in the marketplace to competitively source most of our requirements without reliance on any particular supplier and that our diversity of suppliers affords us purchasing flexibility. Due to our centralized procurement platform for commodity wood products and corporate oversight of purchasing programs we believe we are better able to maximize the advantages of both our and our suppliers' broad geographic footprints and negotiate purchases across multiple markets to achieve more favorable contracts with respect to price, terms of sale, and supply than our regional competitors. Additionally, for certain customers, we institute purchasing programs on commodity wood products such as OSB and lumber to align portions of our procurement costs with our customer pricing commitments. We balance our OSB and lumber purchases with a mix of contract and spot market purchases to ensure consistent supply of product necessary to fulfill customer contracts, to source products at the lowest possible cost, and to minimize our exposure to the volatility of commodity lumber prices.

We currently source products from approximately 6,000 suppliers in order to reduce our dependence on any single company and to maximize purchasing leverage. Although no purchases from any single supplier represented more than 7% of our total materials purchases for the year ended December 31, 2016, we believe we are one of the largest customers for many suppliers, and therefore have significant purchasing leverage. We have found that using multiple suppliers ensures a stable source of products and the best purchasing terms as the suppliers compete to gain and maintain our business.

We maintain strong relationships with our suppliers, and we believe opportunities exist to improve purchasing terms in the future, including inventory storage or "just-in-time" delivery to reduce our inventory carrying costs. We will continue to pursue additional procurement cost savings and purchasing synergies which would further enhance our margins and cash flow.

## **COMPETITION**

We compete in the Pro Segment of the U.S. residential building products supply market. We have and will continue to experience competition for homebuilder business due to the highly fragmented nature of the Pro Segment. Most of our competitors in the Pro Segment are small, privately held local businesses. Most of these companies have limited access to capital and lack sophisticated information technology systems and large-scale procurement capabilities. We believe we have substantial competitive advantages over these smaller competitors due to our long-standing customer relationships, local market knowledge and competitive pricing. Our largest competitors in our markets include 84 Lumber Co., which is privately held, as well as BMC Stock Holdings, Inc., which is publicly held.

Our customers primarily consist of professional homebuilders and those that provide construction services to them, with whom we focus on developing strong relationships. The principal methods of competition in the Pro Segment are the development of long-term relationships with professional builders and retaining such customers by (i) delivering a full range of high-quality products on time, and (ii) offering trade credit, competitive pricing, flexibility in transaction processing, and integrated service and product packages, such as turn-key framing and shell construction, as well as manufactured components and installation. Our leading market positions in the highly competitive Pro Segment create economies of scale that allow us to cost-effectively supply our customers, which both enhances profitability and reduces the risk of losing customers to competitors.

## **EMPLOYEES**

At December 31, 2016, we had approximately 14,000 full-time equivalent employees. Approximately 2% of the workforce at our company are members of ten different unions. We believe that we have good relations with our employees.

## **INFORMATION TECHNOLOGY SYSTEMS**

Our operations are dependent upon our information technology systems, which encompass all of our major business functions. Our primary enterprise resource planning (“ERP”) system, which we currently use for approximately half of our operations, is a proprietary system that has been highly customized by our computer programmers. The materials required for thousands of standard builder plans are stored by the system for rapid quoting or order entry. Hundreds of price lists are maintained on thousands of SKUs, facilitating rapid price changes in a changing product cost environment. A customer’s order can be tracked at each stage of the process and billing can be customized to reduce a customer’s administrative costs and speed payment.

We have a customized financial reporting system which consolidates financial, sales and workforce data from our ERP systems and our human resource information system (“HRIS”). This technology platform provides management with robust corporate and location level performance management by leveraging standardized metrics and analytics allowing us to plan, track and report performance and compensation measures.

We have developed a proprietary program for use in our component plants. This software reviews product designs for errors, schedules the plants and provides the data used to measure plant efficiency. In addition, we have purchased several software products that have been integrated with our primary ERP system. These programs assist in analyzing blueprints to generate material lists and in purchasing lumber products at the lowest cost.

ProBuild maintained multiple ERP systems to manage its operations. We are in the process of integrating the legacy ProBuild information technology systems with ours, which we expect will be a multi-year process. Our initial area of focus has been where we have operations within the same geographic market. Once overlapping markets have been addressed, we will begin integration of the broader geographic footprint of our company.

## **SEASONALITY AND OTHER FACTORS**

Our first and fourth quarters have historically been, and are generally expected to continue to be, adversely affected by weather causing reduced construction activity during these quarters. In addition, quarterly results historically have reflected, and are expected to continue to reflect, fluctuations from period to period arising from the following:

- The volatility of lumber prices;
- The cyclical nature of the homebuilding industry;
- General economic conditions in the markets in which we compete;
- The pricing policies of our competitors;

- The production schedules of our customers; and
- The effects of weather.

The composition and level of working capital typically change during periods of increasing sales as we carry more inventory and receivables. Working capital levels typically increase in the second and third quarters of the year due to higher sales during the peak residential construction season. These increases have in the past resulted in negative operating cash flows during this peak season, which historically have been financed through available cash and our borrowing availability under credit facilities. Collection of receivables and reduction in inventory levels following the peak building and construction season have in the past positively impacted cash flow.

## AVAILABLE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and in accordance therewith, we file reports, proxy and information statements and other information with the Securities and Exchange Commission (“SEC”). Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements and other information and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available through the investor relations section of our website under the links to “Financial Information.” Our Internet address is [www.bldr.com](http://www.bldr.com). Reports are available on our website free of charge as soon as reasonably practicable after we electronically file them with, or furnish them to, the SEC. In addition, our officers and directors file with the SEC initial statements of beneficial ownership and statements of change in beneficial ownership of our securities, which are also available on our website at the same location. We are not including this or any other information on our website as a part of, nor incorporating it by reference into, this Form 10-K or any of our other SEC filings.

In addition to our website, you may read and copy public reports we file with or furnish to the SEC at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, DC 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains our reports, proxy and information statements, and other information that we electronically file with, or furnish to, the SEC at [www.sec.gov](http://www.sec.gov).

## EXECUTIVE OFFICERS

*Floyd F. Sherman, Chief Executive Officer and Director, age 77.* Mr. Sherman has been our Chief Executive Officer and a director since 2001, when he joined the Company. He served as President of the Company from 2001 until October 2006 and also served from February 2008 until November 2014. Prior to joining the Company, he spent 28 years at Triangle Pacific/Armstrong Flooring, the last nine of which he served as Chairman and Chief Executive Officer. Mr. Sherman is currently a director of PGT, Inc. Mr. Sherman has over 40 years of experience in the building products industry. A native of Kerhonkson, New York and a veteran of the U.S. Army, Mr. Sherman is a graduate of the New York State College of Forestry at Syracuse University. He also holds an M.B.A. degree from Georgia State University.

*M. Chad Crow, President and Chief Operating Officer, age 48.* Mr. Crow joined the Company in September 1999 as Assistant Controller. He served as Vice President – Controller of the Company from May 2000 and was promoted to Senior Vice President and Chief Financial Officer in November 2009. In November 2014, he was appointed to the position of President, Chief Operating Officer and Chief Financial Officer. Mr. Crow continued in his position as President and Chief Operating Officer when Mr. Jackson joined the Company as Senior Vice President and Chief Financial Officer in November 2016. Prior to joining the Company, Mr. Crow served in a variety of positions at Pier One Imports. Mr. Crow also has five years of public accounting experience with Price Waterhouse LLP. Mr. Crow is a C.P.A. and received his B.B.A. degree from Texas Tech University.

*Donald F. McAleenan, Senior Vice President and General Counsel, age 62.* Mr. McAleenan has served as Senior Vice President and General Counsel of the Company since 1998. Prior to joining the Company, Mr. McAleenan served as Vice President and Deputy General Counsel of Fibreboard Corporation from 1992 to 1997. Mr. McAleenan was also Assistant General Counsel of AT&E Corporation and spent nine years as a securities lawyer at two New York City law firms. Mr. McAleenan has a B.S. from Georgetown University and a J.D. from New York University Law School.

*Morris E. Tolly, Senior Vice President — Operations, age 73.* Mr. Tolly has served as Senior Vice President — Operations of the Company since January 25, 2007. Mr. Tolly has been with Builders FirstSource since 1998 when the Company acquired Pelican Companies, Inc. (“Pelican”) and has over 40 years of experience in the building products industry. He served in a myriad of roles at Pelican, including sales, Sales Manager and General Manager. Mr. Tolly was an Area Vice President responsible for 12 locations at the time of Pelican’s acquisition. In 2000, he was promoted to President of the company’s Southeast Group, with responsibility for 48 locations.

*Peter M. Jackson, Senior Vice President and Chief Financial Officer, age 45.* Mr. Jackson joined the Company on November 4, 2016 as Senior Vice President and Chief Financial Officer. Prior to joining the Company, Mr. Jackson was employed by Lennox International, Inc. (“Lennox”), which manufactures and markets a broad range of heating, ventilation, air conditioning, and refrigeration products. Since July 2014, Mr. Jackson had served as Vice President and CFO of Lennox’s Refrigeration Segment. From March 2013 to June 2014, he was Vice President, Finance - Financial Planning and Analysis and Mergers and Acquisitions for Lennox. He also served as Vice President and Chief Financial Officer of Lennox’s Residential Heating and Cooling Segment from 2007 until 2013. Before joining Lennox, Mr. Jackson served in multiple financial leadership positions at SPX Corporation, General Electric, and Gerber Scientific. Mr. Jackson is a certified public accountant and a graduate of General Electric’s Experienced Financial Leadership program. He holds an M.B.A. degree from Rensselaer Polytechnic Institute and a B.S. from Bryant University.

#### **Item 1A. Risk Factors**

Risks associated with our business, an investment in our securities, and with achieving the forward-looking statements contained in this report or in our news releases, websites, public filings, investor and analyst conferences or elsewhere, include, but are not limited to, the risk factors described below. Any of the risk factors described below could cause our actual results to differ materially from expectations and could have a material adverse effect on our business, financial condition or operating results. We may not succeed in addressing these challenges and risks.

#### **The industry in which we operate is dependent upon the residential homebuilding industry, as well as the U.S. economy, the credit markets and other important factors.**

The building products industry is highly dependent on new home and multifamily construction, which in turn are dependent upon a number of factors, including interest rates, consumer confidence, employment rates, foreclosure rates, housing inventory levels and occupancy, housing demand and the health of the U.S. economy and mortgage markets. Unfavorable changes in demographics, credit markets, consumer confidence, housing affordability, or housing inventory levels and occupancy, or a weakening of the U.S. economy or of any regional or local economy in which we operate could adversely affect consumer spending, result in decreased demand for our products, and adversely affect our business. Production of new homes and multifamily buildings may also decline because of shortages of qualified tradesmen, reliance on inadequately capitalized builders and sub-contractors, and shortages of suitable building lots and material. The homebuilding industry is currently experiencing a shortage of qualified, trained labor in many areas, including those served by us. In addition, the building industry is subject to various local, state, and federal statutes, ordinances, and regulations concerning zoning, building design and safety, construction, energy and water conservation and similar matters, including regulations that impose restrictive zoning and density requirements in order to limit the number of homes that can be built within the boundaries of a particular area or in order to maintain certain areas as primarily or exclusively residential. Regulatory restrictions may increase our operating expenses and limit the availability of suitable building lots for our customers, which could negatively affect our sales and earnings. Because we have substantial fixed costs, relatively modest declines in our customers’ production levels could have a significant adverse effect on our financial condition, operating results and cash flows.

The homebuilding industry is still recovering from a significant downturn that began in mid-2006 and began to stabilize in late 2011. Housing and remodeling activity has steadily strengthened since then. In 2016, U.S. homebuilding activity increased to approximately 781,500 single-family starts although it remains well below the historical average (from 1959 through 2016) of approximately 1.0 million single-family starts per year. According to the U.S. Census Bureau, actual U.S. single family housing starts in the U.S. during 2016 were 46.7% lower than in 2006. We believe that the slow recovery of the housing market is due to a variety of factors including: a severe economic recession, followed by a gradual economic recovery; limited credit availability; shortages of suitable building lots in many regions; shortages of experienced labor; rising home prices in many markets resulting in affordability issues for potential buyers; and soft housing demand in certain markets. The downturn in the homebuilding industry resulted in a substantial reduction in demand for our products and services.

During the downturn mortgage financing and commercial credit for smaller homebuilders was severely constrained and continues to slow a recovery in our industry despite some recent improvement. Since the housing industry is dependent upon the economy as well as potential homebuyers’ access to mortgage financing and homebuilders’ access to commercial credit, it is likely that the housing industry will not fully recover until conditions in the economy and the credit markets further improve.

**The building supply industry is cyclical and seasonal.**

The building products supply industry is subject to cyclical market pressures. Prices of building products are subject to fluctuations arising from changes in supply and demand, national and international economic conditions, labor costs, competition, market speculation, government regulation, and trade policies, as well as from periodic delays in the delivery of lumber and other products. For example, prices of wood products, including lumber and panel products, are subject to significant volatility and directly affect our sales and earnings. In particular, low prices for wood products over a sustained period can adversely affect our financial condition, operating results and cash flows, as can excessive spikes in prices. Our lumber and lumber sheet goods product category represented 33.5% of total sales for the year ended December 31, 2016. We have limited ability to manage the timing and amount of pricing changes for building products. In addition, the supply of building products fluctuates based on available manufacturing capacity. A shortage of capacity or excess capacity in the industry can result in significant increases or declines in prices for those building products, often within a short period of time. Such price fluctuations can adversely affect our financial condition, operating results and cash flows.

In addition, although weather patterns affect our operating results throughout the year, adverse weather historically has reduced construction activity in the first and fourth quarters in the regions where we operate. To the extent that hurricanes, severe storms, floods, other natural disasters or similar events occur in the regions in which we operate, our business may be adversely affected. We anticipate that fluctuations from period to period will continue in the future.

**Our industry is highly fragmented and competitive, and increased competitive pressure may adversely affect our results.**

The building products supply industry is highly fragmented and competitive. We face, and will continue to face, significant competition from local and regional building materials chains, as well as from privately-owned single site enterprises. Any of these competitors may (1) foresee the course of market development more accurately than we do, (2) develop products that are superior to our products, (3) have the ability to produce or supply similar products at a lower cost, (4) develop stronger relationships with local homebuilders or commercial builders, (5) adapt more quickly to new technologies or evolving customer requirements than we do, or (6) have access to financing on more favorable terms than we can obtain in the market. As a result, we may not be able to compete successfully with them. In addition, home center retailers, which have historically concentrated their sales efforts on retail consumers and small contractors, have intensified their marketing efforts to professional homebuilders in recent years and may continue to intensify these efforts in the future. Furthermore, certain product manufacturers sell and distribute their products directly to production homebuilders or commercial builders. The volume of such direct sales could increase in the future. Additionally, manufacturers of products distributed by us may elect to sell and distribute directly to homebuilders or commercial builders in the future or enter into exclusive supplier arrangements with other distributors. Consolidation of production homebuilders or commercial builders may result in increased competition for their business. Finally, we may not be able to maintain our operating costs or product prices at a level sufficiently low for us to compete effectively. If we are unable to compete effectively, our financial condition, operating results and cash flows may be adversely affected.

**We are subject to competitive pricing pressure from our customers.**

Production homebuilders and multi-family builders historically have exerted and will continue to exert significant pressure on their outside suppliers to keep prices low because of their market share and their ability to leverage such market share in the highly fragmented building products supply industry. The housing industry downturn and its aftermath have resulted in significantly increased pricing pressures from production homebuilders and other customers. Over the past few years, these pricing pressures have adversely affected our operating results and cash flows. In addition, continued consolidation among production homebuilders or commercial builders, and changes in production homebuilders' or commercial builders' purchasing policies or payment practices, could result in additional pricing pressure, and our financial condition, operating results and cash flows may be adversely affected.

**Our level of indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, and prevent us from meeting our obligations under our debt instruments .**

As of December 31, 2016, our debt totaled \$1,831.2 million, including \$246.0 million of lease finance obligations and capital lease obligations. We also have an \$800 million senior secured revolving credit facility ("2015 facility"). As of December 31, 2016, we had \$84.8 million of letters of credit outstanding under the 2015 facility. There were no outstanding borrowings under the 2015 facility as of December 31, 2016. In addition, we have significant obligations under ongoing operating leases that are not reflected on our balance sheet.

Our substantial debt could have important consequences to us, including:

- increasing our vulnerability to general economic and industry conditions;
- requiring a substantial portion of our operating cash flow to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our liquidity and our ability to use our cash flow to fund our operations, capital expenditures, and future business opportunities;
- exposing us to the risk of increased interest rates, and corresponding increased interest expense, because borrowings under the 2015 facility and the \$600.0 million term loan credit agreement (“2015 term loan”) are at variable rates of interest;
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions, and general corporate or other purposes;
- limiting our ability to adjust to changing marketplace conditions and placing us at a competitive disadvantage compared to our competitors who may have less debt.
- limiting our attractiveness as an investment opportunity for potential investors.

In addition, some of our debt instruments, including those governing the 2015 facility, the 2015 term loan, the 10.75% senior unsecured notes due 2023 (“2023 notes”) and the 5.625% senior secured notes due 2024 (“2024 notes”), contain cross-default provisions that could result in our debt being declared immediately due and payable under a number of debt instruments, even if we default on only one debt instrument. In such event, it is unlikely that we would be able to satisfy our obligations under all of such accelerated indebtedness simultaneously.

Our financial condition and operating performance including that of our subsidiaries are also subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. There are no assurances that we will maintain a level of liquidity sufficient to permit us to pay the principal, premium and interest on our indebtedness.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital, or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations in an effort to meet our debt service and other obligations. The agreements governing the 2015 facility and the 2015 term loan and the indentures governing our 2023 notes and our 2024 notes restrict our ability to dispose of assets and to use the proceeds from such dispositions. We may not be able to consummate those dispositions or be able to obtain the proceeds that we could realize from them, and these proceeds may not be adequate to meet any debt service obligations then due.

**We may have future capital needs and may not be able to obtain additional financing on acceptable terms.**

We are substantially reliant on cash on hand and borrowing availability under the 2015 facility, which totaled \$681.6 million at December 31, 2016, to provide working capital and fund our operations. Our working capital requirements are likely to grow assuming the housing industry improves. Our inability to renew, amend or replace the 2015 facility, the 2015 term loan, the 2023 notes or the 2024 notes when required or when business conditions warrant could have a material adverse effect on our business, financial condition and results of operations.

Economic and credit market conditions, the performance of our industry, and our financial performance, as well as other factors, may constrain our financing abilities. Our ability to secure additional financing, if available, and to satisfy our financial obligations under indebtedness outstanding from time to time will depend upon our future operating performance, the availability of credit, economic conditions and financial, business and other factors, many of which are beyond our control. Any worsening of current housing market conditions or the macroeconomic factors that affect our industry could require us to seek additional capital and have a material adverse effect on our ability to secure such capital on favorable terms, if at all.

We may be unable to secure additional financing, financing on favorable terms or our operating cash flow may be insufficient to satisfy our financial obligations under indebtedness outstanding from time to time, including the 2015 facility, the 2015 term loan, the 2023 notes and the 2024 notes. The agreements governing the 2015 facility and the 2015 term loan and the indentures governing the 2023 notes and the 2024 notes, moreover, restrict the amount of permitted indebtedness allowed. In addition, if financing is not available when needed, or is available on unfavorable terms, we may be unable to take advantage of business opportunities, including potential acquisitions, or respond to competitive pressures, any of which could have a material adverse effect on our business, financial condition, and results of operations. If additional funds are raised through the issuance of additional equity or convertible debt securities, our stockholders may experience significant dilution.

**We may incur additional indebtedness.**

We may incur additional indebtedness in the future, including collateralized debt, subject to the restrictions contained in the agreements governing the 2015 facility and the 2015 term loan and the indentures governing the 2023 notes and the 2024 notes. If new debt is added to our current debt levels, the related risks that we now face could intensify.

**Our debt instruments contain various covenants that limit our ability to operate our business.**

Our financing arrangements, including the agreements governing the 2015 facility and the 2015 term loan and the indentures governing the 2023 notes and the 2024 notes, contain various provisions that limit our ability to, among other things:

- transfer or sell assets, including the equity interests of our restricted subsidiaries, or use asset sale proceeds;
- incur additional debt;
- pay dividends or distributions on our capital stock or repurchase our capital stock;
- make certain restricted payments or investments;
- create liens to secure debt;
- enter into transactions with affiliates;
- merge or consolidate with another company or continue to receive the benefits of these financing arrangements under a “change in control” scenario (as defined in those agreements); and
- engage in unrelated business activities.

The agreement governing the 2015 facility contains a financial covenant requiring the satisfaction of a minimum fixed charge coverage ratio of 1.00 to 1.00 if our excess availability falls below the greater of \$80.0 million or 10% of the maximum borrowing amount. As of December 31, 2016, our excess availability was \$667.2 million. We do not anticipate excess availability falling below \$80.0 million in 2017.

These provisions may restrict our ability to expand or fully pursue our business strategies. Our ability to comply with the agreements governing the 2015 facility and the 2015 term loan and the indentures governing the 2023 notes and the 2024 notes may be affected by changes in our operating and financial performance, changes in general business and economic conditions, adverse regulatory developments, a change in control or other events beyond our control. The breach of any of these provisions, including those contained in the 2015 facility and the 2015 term loan and the indentures governing the 2023 notes and the 2024 notes, could result in a default under our indebtedness, which could cause those and other obligations to become due and payable. If any of our indebtedness is accelerated, we may not be able to repay it.

**In connection with the ProBuild acquisition, we incurred significant additional indebtedness which could adversely affect us, including by decreasing our business flexibility, and increased our interest expense.**

Our consolidated indebtedness as of December 31, 2016 was approximately \$1,831.2 million. We substantially increased our indebtedness in connection with the ProBuild acquisition, which has increased our interest expense and could have the effect of, among other things, reducing our flexibility to respond to changing business and economic conditions.

The amount of cash required to pay interest on our increased indebtedness level puts greater demands on our cash resources. The increased levels of indebtedness could also reduce funds available for working capital, capital expenditures, acquisitions and other general corporate purposes and may create competitive disadvantages for us relative to other companies with lower debt levels. If we do not achieve the expected benefits and cost savings from the ProBuild acquisition, or if the financial performance of the combined company does not meet current expectations, then our ability to service our indebtedness may be adversely impacted.

Moreover, we may be required to raise substantial additional financing to fund working capital, capital expenditures, acquisitions or other general corporate requirements. Our ability to arrange additional financing or refinancing will depend on, among other factors, our financial position and performance, as well as prevailing market conditions and other factors beyond our control. We cannot assure you that we will be able to obtain additional financing or refinancing on terms acceptable to us or at all.

**Our variable rate indebtedness subjects us to interest rate risk, which could cause our indebtedness service obligations to increase significantly.**

Interest rates may increase in the future. As a result, interest rates on our 2015 facility and our 2015 term loan could be higher or lower than current levels. As of December 31, 2016, we had approximately \$467.7 million, or 25.5%, of our outstanding debt at variable interest rates. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income and cash flows, including cash available for servicing our indebtedness, would correspondingly decrease. At December 31, 2016, a 1.0% increase in interest rates on the 2015 term loan would, subject to the interest rate floor specified in the agreement, result in approximately \$3.6 million in additional interest expense annually. At December 31, 2016, a 1.0% increase in interest rates on the 2015 facility would result in no additional interest expense annually as we had no outstanding borrowings. The 2015 facility also assesses variable commitment and outstanding letter of credit fees based on quarterly average loan utilization.

**The agreements that govern our indebtedness contain various covenants that impose restrictions on us and certain of our subsidiaries that may affect our ability to operate our businesses.**

The agreements that govern our indebtedness contain various affirmative and negative covenants that may, subject to certain significant exceptions, restrict the ability of us and certain of our subsidiaries to, among other things, have liens on our property, and/or merge or consolidate with any other person or sell or convey certain of our assets to any one person. The ability of us and our subsidiaries to comply with these provisions may be affected by events beyond our control. Failure to comply with these covenants could result in an event of default, which, if not cured or waived, could accelerate our repayment obligations.

**Concluding the integration of Builders FirstSource and ProBuild may be more difficult, costly or time consuming than expected and the anticipated additional benefits and cost savings of the ProBuild acquisition may not be realized.**

We continue to assess additional synergies that we may realize as a consolidated company, the realization of which will depend on a number of factors. The success of the ProBuild acquisition, including expected additional benefits and cost savings, will depend, in part, on our ability to successfully conclude the integration of the two businesses. It is possible that the integration process could result in the loss of key employees, higher than expected costs, diversion of management attention, the disruption of the combined company's ongoing businesses or inconsistencies in standards, controls, procedures and policies that adversely affect the company's ability to maintain relationships with customers, suppliers, vendors and employees or to achieve the expected additional benefits and cost savings of the ProBuild acquisition. If we experience difficulties concluding the integration process, or if the operating or financial performance of the combined company is less than we expect, we may forfeit some or all of the cost savings achieved to date, and the expected additional benefits and costs savings of the ProBuild acquisition may not be realized fully or at all, or may take longer to realize than expected. The integration planning and implementation process has resulted and will continue to result in significant costs and diversion of management attention and resources. The integration process could have an adverse effect on the combined company for an undetermined period. Further, the actual additional cost savings of the ProBuild acquisition could be less than anticipated.

**We are continuing to incur significant costs in connection with the integration of ProBuild and we may not achieve all of the anticipated cost savings.**

We have incurred substantial fees and costs related to formulating and implementing integration plans, including facilities and systems consolidation costs and employment-related costs. At the time of the ProBuild acquisition in July 2015 we estimated these integration-related costs in the range of \$90 to \$100 million over the two-year period following the closing. Through December 31, 2016, we had incurred approximately \$71 million of integration-related costs. The remainder of these costs are expected to be incurred in 2017. We continue to assess the magnitude of these costs, and additional unanticipated costs may be incurred in connection with the integration of the combined company's businesses. Although we expect that the elimination of duplicative costs, as well as the realization of other efficiencies related to the integration of the businesses, should allow us to offset integration-related costs over time, this net benefit may not be achieved in the near term, or at all.

**The loss of any of our significant customers or a reduction in the quantity of products they purchase could affect our financial health.**

Our ten largest customers generated approximately 16.8% of our sales for the year ended December 31, 2016. We cannot guarantee that we will maintain or improve our relationships with these customers or that we will supply these customers at historical levels. Due to the relatively weak housing market over the past several years, many of our homebuilder customers substantially reduced their construction activity. Some homebuilder customers exited or severely curtailed building activity in certain of our regions during the downturn and in subsequent years.



In addition, production homebuilders, commercial builders and other customers may: (1) seek to purchase some of the products that we currently sell directly from manufacturers, (2) elect to establish their own building products manufacturing and distribution facilities or (3) give advantages to manufacturing or distribution intermediaries in which they have an economic stake. Continued consolidation among production homebuilders could also result in a loss of some of our present customers to our competitors. The loss of one or more of our significant customers or deterioration in our relations with any of them could significantly affect our financial condition, operating results and cash flows. Furthermore, our customers are not required to purchase any minimum amount of products from us. The contracts into which we have entered with most of our professional customers typically provide that we supply particular products or services for a certain period of time when and if ordered by the customer. Should our customers purchase our products in significantly lower quantities than they have in the past, such decreased purchases could have a material adverse effect on our financial condition, operating results and cash flows.

**A range of factors may make our quarterly revenues and earnings variable.**

We have historically experienced, and in the future will continue to experience, variability in revenues and earnings on a quarterly basis. The factors expected to contribute to this variability include, among others: (1) the volatility of prices of lumber, wood products and other building products, (2) the cyclical nature of the homebuilding industry, (3) general economic conditions in the various areas that we serve, (4) the intense competition in the industry, including expansion and growth strategies by competitors, (5) the production schedules of our customers, and (6) the effects of the weather. These factors, among others, make it difficult to project our operating results on a consistent basis, which may affect the price of our stock.

**Our continued success will depend on our ability to retain our key employees and to attract and retain new qualified employees.**

Our success depends in part on our ability to attract, hire, train and retain qualified managerial, operational, sales and other personnel. We face significant competition for these types of employees in our industry and from other industries. We may be unsuccessful in attracting and retaining the personnel we require to conduct and expand our operations successfully. In addition, key personnel may leave us and compete against us. Our success also depends to a significant extent on the continued service of our senior management team. We may be unsuccessful in replacing key managers who either resign or retire. The loss of any member of our senior management team or other experienced senior employees could impair our ability to execute our business plan, cause us to lose customers and reduce our net sales, or lead to employee morale problems and/or the loss of other key employees. In any such event, our financial condition, operating results and cash flows could be adversely affected.

**Product shortages, loss of key suppliers, and our dependence on third-party suppliers and manufacturers could affect our financial health.**

Our ability to offer a wide variety of products to our customers is dependent upon our ability to obtain adequate product supply from manufacturers and other suppliers. Generally, our products are obtainable from various sources and in sufficient quantities. However, the loss of, or a substantial decrease in the availability of, products from our suppliers or the loss of key supplier arrangements could adversely impact our financial condition, operating results, and cash flows.

Although in many instances we have agreements with our suppliers, these agreements are generally terminable by either party on limited notice. Failure by our suppliers to continue to supply us with products on commercially reasonable terms, or at all, could put pressure on our operating margins or have a material adverse effect on our financial condition, operating results and cash flows. Short-term changes in the cost of these materials, some of which are subject to significant fluctuations, are sometimes, but not always passed on to our customers. Our delayed ability to pass on material price increases to our customers could adversely impact our financial condition, operating results and cash flows.

**If the housing market declines, we may be required to take impairment charges relating to our operations or temporarily idle or permanently close under-performing locations.**

If conditions in the housing industry deteriorate we may need to take goodwill and/or asset impairment charges relating to certain of our reporting units. Any such non-cash charges would have an adverse effect on our financial results. In addition, in response to industry conditions, we may have to temporarily idle or permanently close certain facilities in under-performing regions. Any such facility closures could have a significant adverse effect on our financial condition, operating results and cash flows.

**The nature of our business exposes us to product liability, product warranty, casualty, construction defect, asbestos, vehicle and other claims and legal proceedings.**

We are involved in product liability, product warranty, casualty, construction defect, asbestos, vehicle and other claims relating to the products we manufacture and distribute, and services we provide that, if adversely determined, could adversely affect our financial condition, operating results, and cash flows. We rely on manufacturers and other suppliers to provide us with many of the products we sell and distribute. Because we have no direct control over the quality of such products manufactured or supplied by such third-party suppliers, we are exposed to risks relating to the quality of such products. In the fourth quarter of 2016, the Company has seen an increased occurrence of known and threatened legal claims, primarily related to construction defect type claims. We are also involved in several asbestos personal injury suits due to the alleged sale of asbestos-containing products by legacy businesses that we acquired. In addition, we are exposed to potential claims arising from the conduct of our respective employees and subcontractors, and builders and their subcontractors, for which we may be contractually liable. Although we currently maintain what we believe to be suitable and adequate insurance in excess of our self-insured amounts, there can be no assurance that we will be able to maintain such insurance on acceptable terms or that such insurance will provide adequate protection against potential liabilities. Product liability, product warranty, casualty, construction defect, asbestos, vehicle, and other claims can be expensive to defend and can divert the attention of management and other personnel for significant periods, regardless of the ultimate outcome. Claims of this nature could also have a negative impact on customer confidence in our products and our company. In addition, we are involved on an ongoing basis in other types of legal proceedings. We cannot assure you that any current or future claims against us will not adversely affect our financial condition, operating results and cash flows.

**We occupy most of our facilities under long-term non-cancelable leases. We may be unable to renew leases at the end of their terms. If we close a facility, we are still obligated under the applicable lease.**

Most of our facilities are leased. Many of our leases are non-cancelable, typically have initial expiration terms ranging from five to 15 years and most provide options to renew for specified periods of time. We believe that leases we enter into in the future will likely be of the same terms (five to 15 years), will be non-cancelable and will feature similar renewal options. If we close or idle a facility we would remain committed to perform our obligations under the applicable lease, which would include, among other things, payment of the base rent, insurance, taxes and other expenses on the leased property for the balance of the lease term. Management may explore offsets to remaining obligations such as subleasing opportunities or negotiated lease terminations. During the period from 2007 through 2016, we closed or idled a number of facilities for which we continue to remain liable. Our obligation to continue making rental payments with respect to leases for closed or idled facilities could have a material adverse effect on our business and results of operations. At the end of a lease term and any renewal period for a leased facility, for those locations where we have no renewal options remaining, we may be unable to renew the lease without additional cost, if at all. If we are unable to renew our facility leases, we may close or, if possible, relocate the facility, which could subject us to additional costs and risks which could have a material adverse effect on our business. Additionally, the revenue and profit generated at a relocated facility may not equal the revenue and profit generated at the former operation.

**We are a holding company and conduct all of our operations through our subsidiaries.**

We are a holding company that derives all of our operating income from our subsidiaries. All of our assets are held by our direct and indirect subsidiaries. We rely on the earnings and cash flows of our subsidiaries, which are paid to us by our subsidiaries in the form of dividends and other payments or distributions, to meet our debt service obligations. The ability of our subsidiaries to pay dividends or make other payments or distributions to us will depend on their respective operating results and may be restricted by, among other things, the laws of their jurisdiction of organization (which may limit the amount of funds available for the payment of dividends and other distributions to us), the terms of existing and future indebtedness and other agreements of our subsidiaries, the 2015 facility, the 2015 term loan, the terms of the indentures governing the 2023 notes and the 2024 notes and the covenants of any future outstanding indebtedness we or our subsidiaries incur.

**We may be adversely affected by any disruption in our respective information technology systems.**

Our operations are dependent upon our information technology systems, which encompass all of our major business functions. Our ProBuild subsidiary currently maintains multiple ERP systems to manage its operations. We plan to integrate ProBuild's systems with ours over time and have commenced that process. We may encounter significant operational disruptions and higher than expected costs in connection with such integration process, which could have a material adverse effect on our financial condition, operating results and cash flows. Our primary ERP system is a proprietary system that has been highly customized by our computer programmers. Our centralized financial reporting system currently draws data from our ERP systems. We rely upon our information technology systems to manage and replenish inventory, to fill and ship customer orders on a timely basis, and to coordinate our sales activities across all of our products and services. A substantial disruption in our information technology systems for any prolonged time period (arising from, for example, system capacity limits from unexpected increases in our volume of business, outages, or delays in our service) could result in delays in receiving inventory and supplies or filling customer orders and adversely affect our customer service and relationships. Our systems might be damaged or interrupted by natural or man-made events or by computer viruses, physical or electronic break-ins, or similar disruptions affecting the global Internet. There can be no assurance that such delays, problems, or associated costs will not have a material adverse effect on our financial condition, operating results and cash flows.

**We are subject to cybersecurity risks and may incur increasing costs in an effort to minimize those risks.**

Our business employs systems that allow for the secure storage and transmission of customers' proprietary information. Security breaches could expose us to a risk of loss or misuse of this information, litigation and potential liability. We may not have the resources or technical sophistication to anticipate or prevent rapidly evolving types of cyber-attacks. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation and a loss of confidence in our security measures, which could harm our business. The regulatory environment related to information security and privacy is increasingly rigorous, with new and constantly changing requirements applicable to our business, and compliance with those requirements could result in additional costs. Our computer systems have been, and will likely continue to be, subjected to computer viruses or other malicious codes, unauthorized access attempts and cyber- or phishing-attacks. These events could compromise our confidential information, impede or interrupt our business operations, and may result in other negative consequences, including remediation costs, loss of revenue, litigation and reputational damage. To date, we have not experienced a material breach of cybersecurity. As cyber-attacks become more sophisticated we may be required to incur significant costs to strengthen our systems from outside intrusions and/or maintain insurance coverage related to the threat of such attacks. While we have implemented administrative and technical controls and have taken other preventive actions to reduce the risk of cyber incidents and protect our information technology, they may be insufficient to prevent physical and electronic break-ins, cyber-attacks or other security breaches to our computer systems.

**We are subject to payments-related risks that could increase our operating costs, expose us to fraud, subject us to potential liability and potentially disrupt our business.**

We accept payments using a variety of methods, including credit card, debit card, gift cards, direct debit from a customer's bank account, consumer invoicing, and physical bank checks, and we may offer different payment options over time. These payment options subject us to many compliance requirements, including, but not limited to, compliance with payment card association operating rules, including data security rules, certification requirements, rules governing electronic funds transfers and Payment Card Industry Data Security Standards. They also subject us to potential fraud by criminal elements seeking to discover and take advantage of security vulnerabilities that may exist in some of these payment systems. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We rely on third parties to provide payment processing services, including the processing of credit and debit cards, and it could disrupt our business if these companies become unwilling or unable to provide these services to us. If we fail to comply with these rules or requirements, or if our data security systems are breached or compromised, we may be liable for card issuing banks' costs, subject to fines and higher transaction fees, and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments, and our business and operating results could be adversely affected.

**We may be adversely affected by any natural or man-made disruptions to our distribution and manufacturing facilities.**

We currently maintain a broad network of distribution and manufacturing facilities throughout the U.S. Any widespread disruption to our facilities resulting from fire, earthquake, weather-related events, an act of terrorism or any other cause could damage a significant portion of our inventory and could materially impair our ability to distribute our products to customers. Moreover, we could incur significantly higher costs and longer lead times associated with distributing our products to our customers during the time that it takes for us to reopen or replace a damaged facility. In addition, any shortages of fuel or significant fuel cost increases could disrupt our ability to distribute products to our customers. If any of these events were to occur, our financial condition, operating results and cash flows could be materially adversely affected.

**We may be unable to successfully implement our growth strategy, which includes increasing sales of our prefabricated components and other value-added products, pursuing strategic acquisitions, opening new facilities and reducing our outstanding debt.**

Our long-term strategy depends in part on growing our sales of prefabricated components and other value-added products and increasing our market share. If any of these initiatives are not successful, or require extensive investment, our growth may be limited, and we may be unable to achieve or maintain expected levels of growth and profitability.

Our long-term business plan also provides for continued growth through strategic acquisitions and organic growth through the construction of new facilities or the expansion of existing facilities. Failure to identify and acquire suitable acquisition candidates on appropriate terms could have a material adverse effect on our growth strategy. Moreover, reduced operating results during the historically slow economic recovery, our liquidity position, or the requirements of the 2015 facility, the 2015 term loan or the indentures governing the 2023 notes and the 2024 notes, could prevent us from obtaining the capital required to effect new acquisitions or expansions of existing facilities. Our failure to make successful acquisitions or to build or expand needed facilities, including manufacturing facilities, produce saleable product, or meet customer demand in a timely manner could adversely affect our financial condition, operating results, and cash flows. A negative impact on our financial condition, operating results and cash flows, or our decision to invest in strategic acquisitions or new facilities, could adversely affect our ability to reduce our substantial outstanding debt.

In addition, although we have been successful in the past in integrating 33 acquisitions, we may not be able to fully integrate the operations of ProBuild or any future acquired businesses with our own in an efficient and cost-effective manner or without significant disruption to our or ProBuild's existing operations. Moreover, acquisitions, including the ProBuild acquisition, involve significant risks and uncertainties, including uncertainties as to the future financial performance of the acquired business, the achievement of expected synergies, difficulties integrating acquired personnel and corporate cultures into our business, the potential loss of key employees, customers or suppliers, difficulties in integrating different computer and accounting systems, exposure to unforeseen liabilities of acquired companies and the diversion of management attention and resources from existing operations. We may be unable to successfully complete potential acquisitions due to multiple factors, such as issues related to regulatory review of the proposed transactions. We may also be required to incur additional debt in order to consummate acquisitions in the future. Potential new debt may be substantial and may limit our flexibility in using our cash flow from operations. Our failure to fully integrate ProBuild's business or future acquired businesses effectively or to manage other consequences of our acquisitions, including increased indebtedness, could prevent us from remaining competitive and, ultimately, could adversely affect our financial condition, operating results and cash flows.

**Federal, state, local and other regulations could impose substantial costs and/or restrictions on our operations that would reduce our net income.**

We are subject to various federal, state, local and other regulations, including, among other things, regulations promulgated by the Department of Transportation and applicable to our fleet of delivery trucks, work safety regulations promulgated by the Department of Labor's Occupational Safety and Health Administration, employment regulations promulgated by the United States Equal Employment Opportunity Commission, accounting standards issued by the Financial Accounting Standards Board ("FASB") or similar entities, state and local regulations relating to our escrow business, and state and local zoning restrictions and building codes. More burdensome regulatory requirements in these or other areas may increase our general and administrative costs and adversely affect our financial condition, operating results and cash flows. Moreover, failure to comply with the regulatory requirements applicable to our business could expose us to substantial penalties that could adversely affect our financial condition, operating results and cash flows.

**We are subject to potential exposure to environmental liabilities and are subject to environmental regulation.**

We are subject to various federal, state and local environmental laws, ordinances and regulations. Although we believe that our facilities are in material compliance with such laws, ordinances, and regulations, as owners and lessees of real property, we can be held liable for the investigation or remediation of contamination on such properties, in some circumstances, without regard to whether we knew of or were responsible for such contamination. No assurance can be provided that remediation may not be required in the future as a result of spills or releases of petroleum products or hazardous substances, the discovery of unknown environmental conditions, more stringent standards regarding existing residual contamination, or changes in legislation, laws, rules or regulations. More burdensome environmental regulatory requirements may increase our general and administrative costs and adversely affect our financial condition, operating results and cash flows.

**We may be adversely affected by uncertainty in the economy and financial markets, including as a result of terrorism or unrest in the Middle East, Europe or elsewhere.**

Instability in the economy and financial markets, including as a result of terrorism or unrest in the Middle East, Europe or elsewhere, may result in a decrease in housing starts, which would adversely affect our business. In addition, such unrest or related adverse developments, including a retaliatory military strike or terrorist attack, may cause unpredictable or unfavorable economic conditions and could have a material adverse effect on our financial condition, operating results, and cash flows. Any shortages of fuel or significant fuel cost increases related to geopolitical conditions could seriously disrupt our ability to distribute products to our customers. In addition, domestic terrorist attacks may affect our ability to keep our operations and services functioning properly and could have a material adverse effect on our financial condition, operating results and cash flows.

**Some Company Employees are Unionized.**

Approximately 2% of the workforce at our company are members of ten different unions. There can be no assurance that additional employees of our company will not conduct union organization campaigns or become union members in the future.

**The ownership position of affiliates of JLL Partners, Inc. limits other stockholders' ability to influence corporate matters.**

Affiliates of JLL Partners, Inc. ("JLL") owned approximately 21.8% of our outstanding common stock as of December 31, 2016. Two of our eight directors hold positions with affiliates of JLL. Accordingly, JLL has significant influence over our management and affairs and over all matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets. This ownership position limits other stockholders' ability to influence corporate matters and, as a result, we may take actions that some of our stockholders do not view as beneficial. Additionally, JLL is in the business of making investments in companies and may, from time to time, acquire and hold interests in businesses that compete directly or indirectly with us. These entities may also pursue, for their own accounts, acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. Further, certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws may limit your ability to influence corporate matters, and, as a result, we may take actions that some of our stockholders do not view as beneficial.

If JLL were to sell a large portion of its ownership position the Company could experience a Section 382 Ownership Change, which is described more fully in Note 12 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K. If the Company were to experience a Section 382 Ownership change annual limitations would be imposed on certain of the Company's tax attributes, including net operating loss and capital loss carryforwards, and certain other losses, credits, deductions or tax basis.

**The trading price of our common stock has been and may continue to be subject to wide fluctuations.**

Between January 1, 2016 and December 31, 2016, the price of our common stock on the NASDAQ ranged from \$6.50 to \$14.09 per share. Our stock price may fluctuate in response to a number of events and factors, including those described in this "Risk Factors" section. Additionally, our substantial indebtedness may hinder the demand for our common stock, which could have a material adverse effect on the market price of our common stock.

**The price of our common stock is volatile and may decline.**

The market price of our common stock historically has experienced and may continue to experience significant price fluctuations similar to those experienced by the broader stock market in recent years. In addition, the price of our common stock may fluctuate significantly in response to various factors, including:

- actual or anticipated fluctuations in our results of operations;
- announcements by us or our competitors of significant business developments, changes in customer relationships, acquisitions, or expansion plans;
- changes in the prices of products we sell;
- involvement in litigation;
- our sale of common stock or other securities in the future;
- market conditions in our industry;
- changes in key personnel;
- changes in market valuation or earnings of our competitors;

- the trading volume of our common stock;
- changes in the estimation of the future size and growth rate of our markets; and
- general economic and market conditions;

Broad market and industry factors may materially harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted against that company.

If we were involved in any similar litigation we could incur substantial costs and our management's attention and resources could be diverted, which could adversely affect our financial condition, results of operations and cash flows. As a result, it may be difficult for you to resell your shares of common stock in the future.

**Significant sales of our common stock, or the perception that significant sales may occur in the future, could adversely affect the market price of our common stock.**

The sale of substantial amounts of our common stock could adversely affect the price of our common stock. Sales of substantial amounts of our common stock in the public market, and the availability of shares for future sale, including 3.5 million shares of our common stock issuable as of December 31, 2016, upon exercise of outstanding vested and unvested options to acquire shares of our common stock and through the conversion of 2.2 million restricted stock units under our stock incentive plans could adversely affect the prevailing market price of our common stock and could cause the market price of our common stock to remain low for a substantial time. Additional stock grants may also be made under our incentive plans, including our 2014 Incentive Plan, as it may be amended. Further, affiliates of JLL own approximately 21.8% of our outstanding common stock as of December 31, 2016, and may sell shares of our common stock in the future. We cannot foresee the effect of such potential sales on the market, but it is possible that if a significant percentage of such available shares were attempted to be sold within a short period of time, the market for our shares of common stock would be adversely affected. It is also unclear whether or not the market for our common stock could absorb a large number of attempted sales in a short period of time, regardless of the price at which they might be offered. Even if a substantial number of sales do not occur within a short period of time, the mere existence of this "market overhang" could have a negative effect on the market for our common stock and our ability to raise additional capital.

**We do not have any current plan to pay, and are restricted in our ability to pay, any dividends on our common stock, and as a result, your only opportunity to achieve a return on your investment in our common stock is if the price of our common stock increases.**

We anticipate that we will retain all future earnings and other cash resources for the future operation and development of our business. Accordingly, we do not intend to declare or pay regular cash dividends on our common stock in the near future. Payment of any future dividends will be at the discretion of our board of directors after taking into account many factors, including our operating results, financial condition, current and anticipated cash needs and plans for expansion. The declaration and payment of any dividends on our common stock is also restricted by the terms of our outstanding indebtedness.

**Item 1B. *Unresolved Staff Comments***

None.

**Item 2. *Properties***

We have a broad network of distribution and manufacturing facilities in 40 states throughout the U.S. Based on 2016 U.S. Census data, we have operations in 75 of the top 100 U.S. Metropolitan Statistical Areas, as ranked by single family housing permits in 2016.

Distribution centers typically include 10 to 15 acres of outside storage, a 45,000 square foot warehouse, 4,000 square feet of office space, and 15,000 square feet of covered storage. The outside area provides space for lumber storage and a staging area for delivery while the warehouse stores millwork, windows and doors. The distribution centers are usually located in industrial areas with low cost real estate and easy access to freeways to maximize distribution efficiency and convenience. Many of our distribution centers are situated on rail lines for efficient receipt of goods.

Our manufacturing facilities produce trusses, wall panels, engineered wood, stairs, windows, pre-hung doors and custom millwork. In many cases, they are located on the same premises as our distribution facilities. Truss and panel manufacturing facilities

vary in size from 30,000 square feet to 60,000 square feet with 8 to 10 acres of outside storage for lumber and for finished goods. Our window manufacturing facility in Houston, Texas has approximately 200,000 square feet.

We contractually lease 309 facilities and own 91 facilities. These leases typically have an initial operating lease term of 5 to 15 years and most provide options to renew for specified periods of time. A majority of our leases provide for fixed annual rentals. Certain of our leases include provisions for escalating rent, as an example, based on changes in the consumer price index. Most of the leases require us to pay taxes, insurance and common area maintenance expenses associated with the properties. As described in Note 8 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K, 150 of our leased facilities are subject to a sales-lease back transaction that is accounted for in our financial statements as owned assets with offsetting lease financing obligations.

We operate a fleet of approximately 10,700 rolling stock units, which primarily includes forklifts, trailers and approximately 4,600 trucks to deliver products from our distribution and manufacturing centers to our customer's job sites. Through our emphasis on local market flexibility and strategically placed locations, we minimize shipping and freight costs while maintaining a high degree of local market expertise. Through knowledge of local homebuilder needs, customer coordination and rapid restocking ability, we reduce working capital requirements and guard against out-of-stock products. We believe that this reliability is highly valued by our customers and reinforces customer relationships.

### **Item 3. *Legal Proceedings***

We are involved in various claims and lawsuits incidental to the conduct of our business in the ordinary course. We carry insurance coverage in such amounts in excess of our self-insured retention as we believe to be reasonable under the circumstances, but such insurance does not cover all of our liabilities in respect of most claims and lawsuits. We do not believe that the ultimate resolution of these matters will have a material adverse effect on our consolidated financial position, cash flows or operating results.

Although our business and facilities are subject to federal, state and local environmental regulation, environmental regulation does not have a material effect on our operations. We believe that our facilities are in material compliance with such laws and regulations. As owners and lessees of real property, we can be held liable for the investigation or remediation of contamination on such properties, in some circumstances without regard to whether we knew of or were responsible for such contamination. Our current expenditures with respect to environmental investigation and remediation at our facilities are minimal, although no assurance can be provided that more significant remediation may not be required in the future as a result of spills or releases of petroleum products or hazardous substances or the discovery of unknown environmental conditions, or changes in legislation, laws, rules or regulations.

### **Item 4. *Mine Safety Disclosures***

Not applicable.

## PART II

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

Our common stock is traded on the NASDAQ Stock Market LLC under the symbol "BLDR". On February 24, 2017, the closing price of our common stock as reported on the NASDAQ Stock Market LLC was \$12.24. The approximate number of stockholders of record of our common stock on that date was 117, although we believe that the number of beneficial owners of our common stock is substantially greater.

The table below sets forth the high and low sales prices of our common stock for the periods indicated:

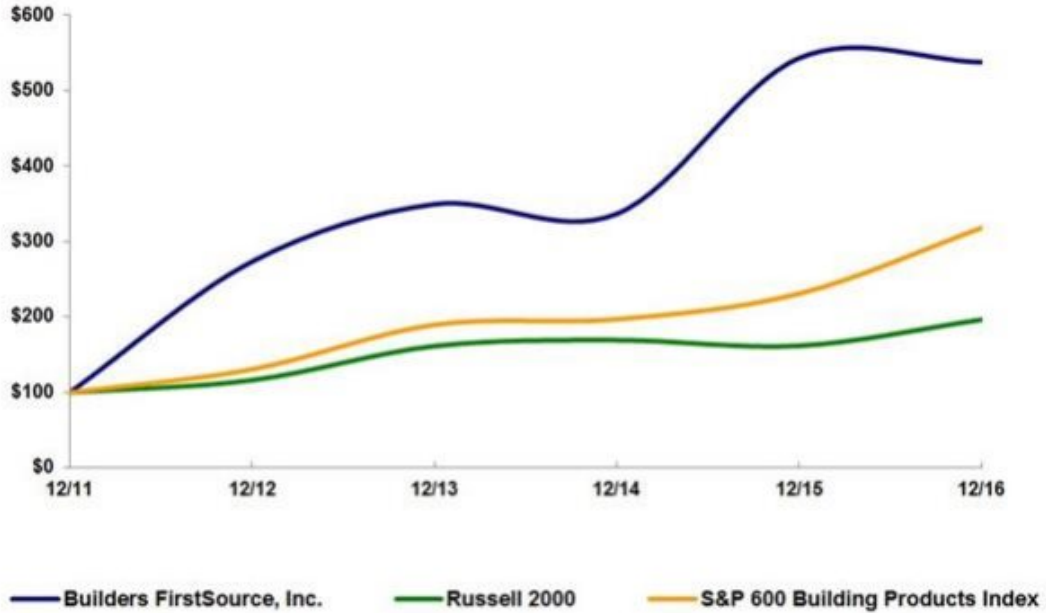
	<u>High</u>	<u>Low</u>
<b>2016</b>		
First quarter	\$ 11.34	\$ 6.50
Second quarter	\$ 12.77	\$ 10.15
Third quarter	\$ 14.09	\$ 10.99
Fourth quarter	\$ 12.28	\$ 9.04
<b>2015</b>		
First quarter	\$ 7.06	\$ 5.71
Second quarter	\$ 14.24	\$ 6.54
Third quarter	\$ 16.69	\$ 11.98
Fourth quarter	\$ 15.72	\$ 10.02

We have not declared or paid cash dividends in the two most recent fiscal years. Any future determination relating to dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including restrictions in our debt instruments, as well as our future earnings, capital requirements, financial condition, prospects and other factors that our board of directors may deem relevant. Our debt agreements currently restrict our ability to pay dividends. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources" contained in Item 7 of this annual report on Form 10-K.



The graph below matches the cumulative 5-Year total return of holders of Builders FirstSource, Inc.'s common stock with the cumulative total returns of the Russell 2000 index and the S&P 600 Building Products index. The graph assumes that the value of the investment in our common stock and in each index (including reinvestment of dividends) was \$100 on December 31, 2011 and tracks it through December 31, 2016.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***  
 Among Builders FirstSource, Inc., the Russell 2000 Index,  
 and S&P 600 Building Products Index



\*\$100 invested on 12/31/11 in stock or index, including reinvestment of dividends.  
 Fiscal year ending December 31.

Copyright© 2017 Russell Investment Group. All rights reserved.

	12/11	12/12	12/13	12/14	12/15	12/16
Builders FirstSource, Inc.	100.00	273.53	349.51	336.76	543.14	537.75
Russell 2000	100.00	116.35	161.52	169.43	161.95	196.45
S&P 600 Building Products Index	100.00	130.78	189.80	197.06	231.02	317.98

*The stock price performance included in this graph is not necessarily indicative of future stock price performance.*

The information regarding securities authorized for issuance under equity compensation plans appears in our definitive proxy statement for our annual meeting of stockholders to be held on May 24, 2017 under the caption "Equity Compensation Plan Information," which information is incorporated herein by reference.

**Item 6. Selected Financial Data**

The following selected consolidated financial data for the years ended December 31, 2016, 2015 and 2014 and as of December 31, 2016 and 2015 were derived from our consolidated financial statements that have been audited by PricewaterhouseCoopers LLP, independent registered public accounting firm, and are included as Item 8 of this annual report on Form 10-K. Selected consolidated financial data as of December 31, 2014 and as of and for the years ended December 31, 2013 and 2012 were derived from our consolidated financial statements that have been audited by PricewaterhouseCoopers LLP, but are not included herein.

The following data should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in Item 7 of this annual report on Form 10-K and with our consolidated financial statements and related notes included as Item 8 of this annual report on Form 10-K.

	Year Ended December 31,				
	2016	2015	2014	2013	2012
	(In thousands, except per share amounts)				
<b>Statement of operations data:</b>					
Sales	\$ 6,367,284	\$ 3,564,425	\$ 1,604,096	\$ 1,489,892	\$ 1,070,676
Gross margin	1,596,748	901,458	356,997	319,920	214,566
Selling, general and administrative expenses	1,360,412	810,703	307,387	272,204	225,706
Net income (loss) (1)(2)	144,341	(22,831)	18,150	(42,691)	(56,856)
Net income (loss) per share — basic	\$ 1.30	\$ (0.22)	\$ 0.19	\$ (0.44)	\$ (0.60)
Net income (loss) per share — diluted	\$ 1.27	\$ (0.22)	\$ 0.18	\$ (0.44)	\$ (0.60)
<b>Balance sheet data (end of period):</b>					
Cash and cash equivalents	\$ 14,449	\$ 65,063	\$ 17,773	\$ 54,696	\$ 131,432
Total assets	2,909,887	2,882,038	574,065	505,436	548,369
Total debt (including current portion)	1,802,052	1,951,671	374,903	343,567	358,483
Stockholders’ equity	309,620	149,195	40,200	15,368	48,096
<b>Other financial data:</b>					
Depreciation and amortization	\$ 109,793	\$ 58,280	\$ 9,519	\$ 9,305	\$ 11,120

- (1) As discussed in Note 12 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K, net income included a reduction to our valuation allowance of \$131.7 million as we released the valuation allowance against our net federal and certain state deferred tax assets for the year ended December 31, 2016. Net loss included a valuation allowance of \$9.7 million against primarily all of our deferred tax assets for the year ended December 31, 2015. Net income included a reduction to our valuation allowance of \$7.2 million due to the utilization of net operating loss carryforwards to reduce taxable income for the year ended December 31, 2014. Net loss included a valuation allowance of \$15.3 million and \$19.6 million against primarily all of our deferred tax assets for the years ended December 31, 2013 and 2012, respectively.
- (2) Net income for the year ended December 31, 2016 includes a loss on debt extinguishment and other financing costs of \$56.9 million resulting from multiple debt transactions executed in the current year. Our 2016 debt transactions are discussed in detail in Note 8 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K. Net loss for the year ended December 31, 2015 includes \$38.6 million of acquisition and transaction related costs associated with the ProBuild acquisition, including \$13.2 million in commitment fees related to bridge and backstop financing facilities incurred in connection with the financing of the ProBuild acquisition. In addition, net loss for the year ended December 31, 2015 also includes \$10.3 million related to non-cash interest expense from the amortization of debt discount and deferred loan costs, and fair value adjustments related to our warrants. Net loss for the year ended December 31, 2013 included a \$39.5 million prepayment penalty.

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

The following discussion of our financial condition and results of operations should be read in conjunction with the selected financial data and the consolidated financial statements and related notes contained in Item 6. Selected Financial Data and Item 8. Financial Statements and Supplementary Data of this annual report on Form 10-K, respectively. See "Risk Factors" contained in Item 1A. Risk Factors of this annual report on Form 10-K and "Cautionary Statement" contained in Item 1. Business of this annual report on Form 10-K for a discussion of the uncertainties, risks and assumptions associated with these statements.

### OVERVIEW

We are a leading supplier of building materials, manufactured components and construction services to professional contractors, sub-contractors, and consumers. Following our acquisition of ProBuild in July 2015, the Company operates 400 locations in 40 states across the United States. We offer an integrated solution to our customers providing manufacturing, supply and installation of a full range of structural and related building products. Our manufactured products include our factory-built roof and floor trusses, wall panels and stairs, vinyl windows, custom millwork and trim, as well as engineered wood that we design, cut, and assemble for each home. We also assemble interior and exterior doors into pre-hung units. Additionally, we supply our customers with a broad offering of professional grade building products not manufactured by us, such as dimensional lumber and lumber sheet goods and various window, door and millwork lines. Our full range of construction-related services includes professional installation, turn-key framing and shell construction, and spans all our product categories.

We group our building products into six product categories:

- *Lumber & Lumber Sheet Goods.* Lumber & lumber sheet goods include dimensional lumber, plywood, and OSB products used in on-site house framing.
- *Windows, Door & Millwork.* Windows & doors are comprised of the manufacturing, assembly, and distribution of windows and the assembly and distribution of interior and exterior door units. Millwork includes interior trim and custom features that we manufacture under the Synboard® brand name.
- *Manufactured Products.* Manufactured products consist of wood floor and roof trusses, steel roof trusses, wall panels, stairs, and engineered wood.
- *Gypsum, Roofing & Insulation.* Gypsum, roofing, & insulation include wallboard, ceilings, joint treatment and finishes.
- *Siding, metal, and concrete.* Siding, metal, and concrete includes vinyl, composite, and wood siding, exterior trim, other exteriors, metal studs and cement.
- *Other Building Products & Services.* Other building products & services are comprised of products such as cabinets and hardware as well as services such as turn-key framing, shell construction, design assistance, and professional installation spanning the majority of our product categories.

Our operating results are dependent on the following trends, events and uncertainties, some of which are beyond our control:

- *Homebuilding Industry.* Our business is driven primarily by the residential new construction market, which is in turn dependent upon a number of factors, including demographic trends, interest rates, consumer confidence, employment rates, foreclosure rates, the availability of skilled construction labor, and the health of the economy and mortgage markets. During the housing downturn, which began in 2006, many homebuilders significantly decreased their starts because of lower demand and an excess of home inventory. The housing market started to strengthen in 2011. According to the U.S. Census Bureau, annual U.S. single-family housing starts were 781,500 in 2016. However, single-family housing starts remain well below the historical average (from 1959 through 2016) of 1.0 million per year. The housing industry is currently experiencing a shortage of skilled construction labor, which we believe is constraining housing activity. Due to the lower levels in housing starts and increased competition for homebuilder business, we have and will continue to experience pressure on our gross margins. In addition to these factors, there has been a trend of consolidation within the building products supply industry. However, our industry remains highly fragmented and competitive and we will continue to face significant competition from local and regional suppliers. We still believe there are several meaningful trends that indicate U.S. housing demand will recover to the historical average in the long term and that the downturn in the housing industry was a trough in the cyclical nature of the residential construction industry. These trends include relatively low interest rates, the aging of housing stock, and normal population growth due to immigration and birthrate exceeding death rate. Industry forecasters, including the National Association of Homebuilders ("NAHB"), expect to see continued improvement in housing demand over the next few years.

- *Targeting Large Production Homebuilders.* Over the past ten years, the homebuilding industry has undergone consolidation, and the larger homebuilders have increased their market share. We expect that trend to continue as larger homebuilders have better liquidity and land positions relative to the smaller, less capitalized homebuilders. Our focus is on maintaining relationships and market share with these customers while balancing the competitive pressures we are facing in servicing large homebuilders with certain profitability expectations. We expect that our ability to maintain strong relationships with the largest builders will be vital to our ability to expand into new markets as well as grow our market share. Additionally, we have been successful in expanding our custom homebuilder base while maintaining acceptable credit standards.
- *Repair and remodel end market.* Following the acquisition of ProBuild, the repair and remodel end market now comprises a larger portion of our business. Although it is influenced by housing starts to a lesser degree than the homebuilding market, the repair and remodel end market is still dependent upon some of the same factors as the homebuilding market, including demographic trends, interest rates, consumer confidence, employment rates, foreclosure rates, and the health of the economy and home financing markets. We expect that our ability to remain competitive in this space as well as grow our market share will depend on our continued ability to provide a high level of customer service coupled with a broad product offering.
- *Use of Prefabricated Components.* Homebuilders are increasingly using prefabricated components in order to realize increased efficiency and improved quality. Shortening cycle time from start to completion is a key imperative of the homebuilders during periods of strong consumer demand. While the conversion of customers to this product offering slowed during the downturn we see the demand for prefabricated components increasing as the residential new construction market continues to strengthen and the availability of skilled construction labor remains limited.
- *Economic Conditions.* Economic changes both nationally and locally in our markets impact our financial performance. The building products supply industry is highly dependent upon new home construction and subject to cyclical market changes. Our operations are subject to fluctuations arising from changes in supply and demand, national and local economic conditions, labor costs and availability, competition, government regulation, trade policies and other factors that affect the homebuilding industry such as demographic trends, interest rates, single-family housing starts, employment levels, consumer confidence, and the availability of credit to homebuilders, contractors, and homeowners. During the downturn mortgage financing and commercial credit for smaller homebuilders was severely constrained and continues to slow a recovery in our industry despite some recent improvement. As the housing industry is dependent upon the economy as well as potential homebuyers' access to mortgage financing and homebuilders' access to commercial credit, it is likely that the housing industry will not fully recover to the historical average until conditions in the economy and the credit markets further improve.
- *Cost of Materials.* Prices of wood products, which are subject to cyclical market fluctuations, may adversely impact operating income when prices rapidly rise or fall within a relatively short period of time. We purchase certain materials, including lumber products, which are then sold to customers as well as used as direct production inputs for our manufactured and prefabricated products. Short-term changes in the cost of these materials, some of which are subject to significant fluctuations, are sometimes passed on to our customers, but our pricing quotation periods may limit our ability to pass on such price changes. We may also be limited in our ability to pass on increases on in-bound freight costs on our products. Our inability to pass on material price increases to our customers could adversely impact our operating results.
- *Controlling Expenses.* Another important aspect of our strategy is controlling costs and striving to be the low-cost building materials supplier in the markets we serve. We pay close attention to managing our working capital and operating expenses. Further, we pay careful attention to our logistics function and its effect on our shipping and handling costs.
- *Expand into Multi-Family and Light Commercial Business.* Our primary focus has been, and continues to be, on single-family residential new construction and the repair and remodel end market. However, we will continue to identify opportunities for profitable growth in the multi-family and light commercial markets.
- *Successful integration of the ProBuild business:* The acquisition of ProBuild has substantially increased the scale of our company. Successfully integrating ProBuild will be critical to achieving our future objectives. Combining our two companies may be more difficult, costly, or time consuming than expected, which could result in the acquisition not achieving its intended results, including the expected operational synergies and cost savings. In addition, as a result of the ProBuild acquisition we have substantially increased indebtedness. Reduction of our outstanding debt will be a key imperative as we work to achieve the intended results of the acquisition.

## RECENT DEVELOPMENTS

During the year ended December 31, 2016, the Company executed several debt transactions which are described in more detail below. These transactions include two debt exchanges, complete extinguishment of our 7.625% senior secured notes due 2021 (“2021 notes”), as well as repricing and partially repaying our \$600.0 million term loan facility due 2022 (“2015 term loan”) and the repurchase of \$50.0 million in aggregate principal amount of our 2023 notes. These transactions have extended our debt maturity profile and reduced our annual cash interest on a go forward basis.

On February 12, 2016, we completed separate privately negotiated note exchange transactions in which \$218.6 million in outstanding aggregate principal amount of our 10.75% senior unsecured notes due 2023 (“2023 notes”) was exchanged for \$207.6 million in aggregate principal amount of our 2021 notes. On February 29, 2016, we completed additional separate privately negotiated note exchange transactions in which \$63.8 million in outstanding aggregate principal amount of our 2023 notes was exchanged for \$60.0 million in aggregate principal amount of our 2021 notes. The additional 2021 notes were issued under the existing indenture dated as of May 29, 2013. These transactions resulted in a \$7.8 million net gain on debt extinguishment, reducing interest expense in the first quarter of 2016.

In May 2016, the Company exercised its contractual right to redeem \$35.0 million in aggregate principal amount of 2021 notes at a price of 103.0%. This transaction resulted in a \$1.7 million loss on debt extinguishment, which increased interest expense in the second quarter of 2016.

In August 2016, the Company issued \$750.0 million in aggregate principal amount of 5.625% senior secured notes due 2024 (“2024 notes”) in a private offering. At the same time the Company also repriced its \$600.0 million term loan facility (“2015 term loan”). This repricing lowered the margin to 3.75% in the case of Eurodollar loans and 2.75% in the case of base rate loans. This reduction represents a 1.25% decrease in the applicable margin for both Eurodollar and base rate loans. The proceeds from the issuance of the 2024 notes were used, together with cash on hand and borrowings on our \$800.0 million senior secured revolving credit facility (“2015 facility”), to fully redeem the \$582.6 million in aggregate outstanding principal amount of 2021 notes, to pay down \$125.9 million of the 2015 term loan and to pay related transaction fees and expenses. We recognized a \$43.9 million loss on extinguishment of the 2021 notes and \$8.2 million in write off of debt discount and debt issuance costs related to the 2015 term loan repricing as components of interest expense in the third quarter of 2016.

In October 2016, we repurchased \$50.0 million in aggregate principal amount of our 2023 notes pursuant to the terms of a cash tender offer at a price of 117.0% of par value plus accrued and unpaid interest. The purchase of the 2023 notes was funded with cash on hand and borrowings under our 2015 facility. This transaction resulted in a \$9.7 million loss on debt extinguishment which was recognized in interest expense in the fourth quarter of 2016. Following this transaction, we have \$367.6 million in 2023 notes outstanding.

On February 23, 2017, we repriced our existing 2015 term loan through an amendment and extension of the term loan credit agreement providing for a \$467.7 million senior secured term loan facility due 2024 (“2024 term loan”). This repricing reduces the interest rate by 0.75% and extends the maturity by 19 months to February 29, 2024.

The transactions described above will allow the Company to reduce its annual cash interest expense by approximately \$37 million going forward.

## CURRENT OPERATING CONDITIONS AND OUTLOOK

Though the level of housing starts remains below the historical average, the homebuilding industry has shown improvement since 2011. According to the U.S. Census Bureau, actual U.S. single-family housing starts for 2016 were 781,500, an increase of 9.4% compared to 2015. U.S single-family units under construction increased 12.4% during this same time period. While the housing industry has strengthened over the past few years, the limited availability of credit to smaller homebuilders and potential homebuyers, as well as the high demand for a limited supply of skilled construction labor and the slow economic recovery, among other factors, have hampered a stronger recovery. A composite of third party sources, including the NAHB, are forecasting 847,000 U.S. single-family housing starts for 2017, which is an increase of 8.4% from 2016. In addition the Home Improvement Research Institute (“HIRI”) is forecasting sales in the professional repair and remodel end market to increase approximately 4.2% in 2017 compared to 2016.

Our net sales for the year ended December 31, 2016 were up 78.6% over the same period last year largely due to the acquisition of ProBuild. Our gross margin percentage decreased by 0.2% during the year ended December 31, 2016 compared to the year ended December 31, 2015. Our gross margin percentage decreased primarily due to the impact of commodity price inflation relative to our short-term customer pricing commitments during the year ended December 31, 2016. However, this decrease was mostly offset by an increase in our gross margin percentage largely attributable to the ProBuild acquisition, the result of ProBuild's higher mix of higher margin repair & remodel and retail sales. We continue to invest in our business to improve our operating efficiency, which has allowed us to better leverage our operating costs against changes in net sales. Our selling, general and administrative expenses, as a percentage of net sales, were 21.4% for the year ended December 31, 2016, a 1.3% decrease from 22.7% in 2015. The decrease in selling, general and administrative expenses, as a percentage of net sales, was largely due to the benefit of synergy cost savings. Synergy cost savings were primarily attributable to reduced pay roll and benefits expense, as well as decreased delivery costs and location consolidations.

We still believe the long-term outlook for the housing industry is positive due to growth in the underlying demographics. We feel we are well-positioned to take advantage of the construction activity in our markets and to increase our market share, which may include strategic acquisitions. We will continue to focus on working capital by closely monitoring the credit exposure of our customers and by working with our vendors to improve our payment terms and pricing on our products. We will also continue to work diligently to achieve the appropriate balance of short-term expense control while maintaining the expertise and capacity to grow the business as market conditions improve. In addition, debt reduction will continue to be a key area of focus for the Company. We want to create long-term shareholder value and avoid taking steps that will limit our ability to compete.

## RESULTS OF OPERATIONS

The following table sets forth the percentage relationship to sales of certain costs, expenses and income items for the years ended December 31:

	2016	2015	2014
Sales	100.0%	100.0%	100.0%
Cost of sales	74.9%	74.7%	77.7%
Gross margin	25.1%	25.3%	22.3%
Selling, general and administrative expenses	21.4%	22.7%	19.2%
Income from operations	3.7%	2.6%	3.1%
Interest expense, net	3.3%	3.1%	1.9%
Income tax expense (benefit)	(1.9)%	0.1%	0.1%
Net income (loss)	2.3%	(0.6)%	1.1%

### 2016 Compared with 2015

*Sales.* Sales for the year ended December 31, 2016 were \$6,367.3 million, a 78.6% increase from sales of \$3,564.4 million for 2015. Net sales increased \$2,659.1 million, or approximately 75%, due to the ProBuild acquisition. Excluding the impact of the ProBuild acquisition, we estimate net sales increased \$143.8 million, or approximately 4% due to increased volume. According to the U.S. Census Bureau, actual U.S. single-family housing starts increased 9.4% and single-family units under construction increased 12.4% in 2016 compared to 2015.

The following table shows sales classified by major product category (dollars in millions):

	2016		2015		% Change
	Sales	% of Sales	Sales	% of Sales	
Lumber & lumber sheet goods	\$ 2,131.4	33.5%	\$ 1,129.7	31.7%	88.7%
Windows, doors & millwork	1,286.2	20.2%	818.1	23.0%	57.2%
Manufactured products	1,097.7	17.2%	635.3	17.8%	72.8%
Gypsum, roofing & insulation	520.0	8.2%	264.9	7.4%	96.3%
Siding, metal & concrete products	622.3	9.8%	319.6	9.0%	94.7%
Other building products & services	709.7	11.1%	396.8	11.1%	78.9%
Total sales	\$ 6,367.3	100.0%	\$ 3,564.4	100.0%	78.6%

Due to the ProBuild acquisition, we achieved increased net sales across all product categories. Our sales classification by product categories has shifted as we diversified our product offerings to support a broader customer base across 40 states through the ProBuild acquisition.

**Gross Margin.** Gross margin increased \$695.3 million to \$1,596.7 million . Of this increase, \$656.8 million is due to the ProBuild acquisition. Our gross margin percentage decreased to 25.1% in 2016 from 25.3% in 2015, a 0.2% decrease. Our gross margin percentage decreased primarily due to the impact of commodity price inflation relative to our short-term customer pricing commitments during the year ended December 31, 2016. However, this decrease was mostly offset by an increase in our gross margin percentage largely attributable to the ProBuild acquisition , the result of ProBuild’s higher mix of higher margin repair & remodel and retail sales .

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses increased \$549.7 million, or 67.8%, largely due to the ProBuild acquisition. Our salaries and benefits expense was \$894.3 million, an increase of \$383.7 million from 2015, largely due to increased full-time equivalent employees following the ProBuild acquisition. Delivery expense increased \$65.9 million, office general and administrative expense increased \$46.5 million, occupancy expense increased \$45.9 million and intangible asset amortization increased \$10.7 million. These increases were primarily a result of the ProBuild acquisition, the related integration activities and increased sales volume. These increases were partially offset by a \$4.2 million decrease in facility closure costs.

As a percentage of net sales, selling, general and administrative expenses decreased from 22.7% in 2015 to 21.4% in 2016 largely due to the benefit of synergy cost savings. Synergy cost savings were primarily attributable to reduced payroll and benefits expense, as well as decreased delivery costs and location consolidations. As a percentage of net sales, salaries and benefits expense decreased 0.3%, office general and administrative expense decreased 0.6% and delivery expense decreased 0.4%. These decreases were partially offset by occupancy expense, as a percentage of net sales, increasing 0.1%.

**Interest Expense, net.** Interest expense was \$214.7 million in 2016, an increase of \$105.5 million from 2015. Of the \$105.5 million increase, \$49.6 million was attributable to increased interest expense associated with our increased debt balances following the ProBuild acquisition financing and subsequent refinancing transactions, \$28.1 million was attributable to losses on debt extinguishment largely due to the payment of redemption premiums on our 2021 and 2023 notes, \$17.6 million was related to increased amortization and write-off of debt discount and debt issuance costs largely due to our debt transactions during the year ended December 31, 2016, and \$14.2 million was due to interest expense primarily related to lease obligations assumed in the ProBuild acquisition. These increases were partially offset by a \$4.6 million decrease in interest expense due to non-cash fair value adjustments related to the exercise of all remaining stock warrants in 2015.

**Income Tax Expense.** We recorded an income tax benefit of \$122.7 million during the year ended December 31, 2016 compared to income tax expense of \$4.4 million during the year ended December 31, 2015. In the third quarter of 2016, we released the valuation allowance against our net federal and some state deferred tax assets. We recorded a reduction of the after-tax, non-cash valuation allowance on our net deferred tax assets of \$131.7 million during the year ended December 31, 2016 compared to an increase of \$9.7 million during the year ended December 31, 2015. Absent the valuation allowance our effective tax rate would have been 41.8% and 28.5% for the years ended December 31, 2016 and 2015, respectively.

#### 2015 Compared with 2014

**Sales.** Sales for the year ended December 31, 2015 were \$3,564.4 million, a 122.2% increase from sales of \$1,604.1 million for 2014. Net sales increased \$1,910.9 million, or 119.1%, due to recent acquisitions, primarily ProBuild. Excluding the impact of acquisitions, net sales increased \$49.4 million, or 8.5% due to increased volume, which was partially offset by a 5.4% decrease due to the impact of commodity price deflation on net sales. According to the U.S. Census Bureau, actual U.S. single-family housing starts increased 10.3% and single-family units under construction increased 11.1% in 2015 compared to 2014.

The following table shows sales classified by major product category (dollars in millions):

	2015		2014		% Change
	Sales	% of Sales	Sales	% of Sales	
Lumber & lumber sheet goods	\$ 1,129.7	31.7%	\$ 535.3	33.4%	111.0%
Windows, doors & millwork	818.1	23.0%	446.4	27.8%	83.3%
Manufactured products	635.3	17.8%	312.0	19.5%	103.6%
Gypsum, roofing & insulation	264.9	7.4%	61.1	3.8%	333.4%
Siding, metal & concrete products	319.6	9.0%	81.9	5.1%	290.3%
Other building products & services	396.8	11.1%	167.4	10.4%	137.0%
<b>Total sales</b>	<b>\$ 3,564.4</b>	<b>100.0%</b>	<b>\$ 1,604.1</b>	<b>100.0%</b>	<b>122.2%</b>

Due to the ProBuild acquisition, we achieved increased net sales across all product categories. Our sales classification by product categories has shifted as we diversified our product offerings to support a broader customer base across 40 states through the ProBuild acquisition. Excluding ProBuild, net sales increased across all product categories, except lumber & lumber sheet goods, which decreased \$12.4 million. This decline in net sales of lumber and lumber sheet goods, excluding ProBuild, was largely due to an 11.1% decrease in market prices for such commodities in 2015 compared to 2014, which was mostly offset by an increase in sales volume.

**Gross Margin.** Gross margin increased \$544.5 million to \$901.5 million. Of this increase, \$493.3 million is due to the ProBuild acquisition. Excluding ProBuild, gross margin increased \$51.2 million. Our gross margin percentage increased to 25.3% in 2015 from 22.3% in 2014, a 3.0% increase. Excluding ProBuild, our gross margin percentage increased 1.7%, primarily due to improved customer pricing relative to our costs and a higher mix of value-added sales from our manufactured products categories in 2015 compared to 2014.

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses increased \$503.9 million, or 164.1%. Excluding ProBuild, our selling, general, and administrative expense increased \$68.0 million or 22.2%. Excluding ProBuild, our salaries and benefits expense was \$218.4 million, an increase of \$27.3 million from 2014, largely due to a 6.2% increase in full-time equivalent employees related to increased sales volume and other recent acquisitions. Office general and administrative expense increased \$31.2 million, primarily due to a \$30.2 million increase in professional service fees largely attributable to acquisition and integration costs related to the ProBuild acquisition. Facility closure costs increased \$3.6 million primarily due to costs associated with location consolidations following the ProBuild acquisition. Intangible asset amortization increased \$1.6 million due to other recent acquisitions. Delivery expense increased \$1.7 million largely due to increased sales volume.

As a percentage of net sales, selling, general and administrative expenses increased from 19.2% in 2014 to 22.7% in 2015. Excluding ProBuild, selling, general and administrative expenses were 22.0% of net sales. As a percentage of net sales, salaries and benefits expense increased 0.9%, office general and administrative expense increased 1.7%, facility closure costs increased 0.2%, intangible asset amortization increased 0.1% and delivery expenses decreased 0.1%. The increase in selling, general and administrative expenses, as a percentage of net sales, was primarily due to the factors discussed above, and to a lesser degree, the negative impact of commodity price deflation on our net sales.

**Interest Expense, net.** Interest expense was \$109.2 million in 2015, an increase of \$78.9 million from 2014. Excluding interest expense attributable to ProBuild, which is primarily related to interest expense associated with lease finance obligations, our interest expense was \$101.0 million, an increase of \$70.7 million. The increase was primarily related to the financing transactions associated with the acquisition of ProBuild. Of the \$70.7 million increase, \$49.5 million was attributable primarily to increased interest expense related to our 2023 notes, 2015 term loan and 2015 facility, \$13.2 million was due to commitment fees related to unutilized bridge and backstop facilities, \$8.3 million was related to non-cash interest expense from the amortization of debt discount and deferred loan costs, and fair value adjustments related to our previously outstanding stock warrants in 2014.

**Income Tax Expense.** We recorded income tax expense of \$4.4 million and \$1.1 million during 2015 and 2014, respectively. We recorded an increase in the after-tax, non-cash valuation allowance on our net deferred tax assets of \$9.7 million in 2015 and a \$7.2 million reduction in the after-tax, non-cash valuation allowance on our net deferred tax assets in 2014. Absent the valuation allowance, our effective tax rate would have been 28.5% and 42.1% for 2015 and 2014, respectively. Absent the valuation allowance the change in our effective rate is largely attributable to permanent differences related to fair value adjustments on our previously outstanding stock warrants and 162(m) limitations.

### Results by Reportable Segment

The following tables show net sales and income before income taxes by reportable segment (dollars in thousands):

	Year ended December 31,									
	Net sales					Income before income taxes				
	2016	% of net sales	2015	% of net sales	% change	2016	% of net sales	2015	% of net sales	% change
Northeast	\$ 1,204,099	19.4%	\$ 626,985	18.4%	92.0%	\$ 35,356	2.9%	\$ 28,862	4.6%	22.5%
Southeast	1,367,933	22.0%	917,022	27.0%	49.2%	37,158	2.7%	14,607	1.6%	154.4%
South	1,704,753	27.4%	1,073,240	31.5%	58.8%	69,846	4.1%	50,878	4.7%	37.3%
West	1,939,206	31.2%	786,476	23.1%	146.6%	72,649	3.7%	35,170	4.5%	106.6%
	<u>\$ 6,215,991</u>	<u>100.0%</u>	<u>\$ 3,403,723</u>	<u>100.0%</u>		<u>\$ 215,009</u>	<u>3.5%</u>	<u>\$ 129,517</u>	<u>3.8%</u>	



	Year ended December 31,									
	Net sales					Income before income taxes				
	2015	% of net sales	2014	% of net sales	% change	2015	% of net sales	2014	% of net sales	% change
Northeast	\$ 626,985	18.4%	\$ 229,998	15.8%	172.6%	\$ 28,862	4.6%	\$ 3,464	1.5%	733.2%
Southeast	917,022	27.0%	672,059	46.0%	36.4%	14,607	1.6%	5,465	0.8%	167.3%
South	1,073,240	31.5%	558,446	38.2%	92.2%	50,878	4.7%	17,804	3.2%	185.8%
West	786,476	23.1%	—	—	—	35,170	4.5%	—	—	—
	<u>\$ 3,403,723</u>	<u>100.0%</u>	<u>\$ 1,460,503</u>	<u>100.0%</u>		<u>\$ 129,517</u>	<u>3.8%</u>	<u>\$ 26,733</u>	<u>1.8%</u>	

As a result of our reorganization following the ProBuild acquisition, we have four reportable segments based on an aggregation of the geographic regions in which we operate. Our reportable segments do not necessarily align with any single region as defined by the U.S Census Bureau.

According to the U.S. Census Bureau, actual single-family housing starts during the year ended December 31, 2016 increased 8.8%, 9.5%, 8.7% and 12.8% in the South region, Northeast region, West region and Midwest region, respectively. For the year ended December 31, 2016, we achieved increased net sales and profitability across all our reportable segments, primarily due to the ProBuild acquisition and sales volume increases.

Excluding the impact of recent acquisitions, net sales for the year ended December 31, 2015 compared to the year ended December 31, 2014 increased 4.5% and 5.9% in our legacy Southeast and South reportable segments, respectively, primarily due to volume increases, which were partially offset by commodity price deflation. According to the U.S Census Bureau, the actual U.S. single-family housing starts increased 10.3% in 2015 as compared to 2014, with single family starts in the South region increasing 12.0% compared to 2014. Excluding ProBuild, net sales for our Northeast reportable segment decreased 2.7% for the year ended December 31, 2015 compared to 2014 due to slower regional sales growth, which was not enough to overcome the impact of commodity price deflation.

## LIQUIDITY AND CAPITAL RESOURCES

Our primary capital requirements are to fund working capital needs and operating expenses, meet required interest and principal payments, and to fund capital expenditures and potential future acquisitions. Our capital resources at December 31, 2016 consist of cash on hand and borrowing availability under our 2015 facility.

Our 2015 facility will be primarily used for working capital, general corporate purposes, and funding acquisitions. In addition, we may use the 2015 facility to facilitate debt repayment and consolidation. Availability under the 2015 facility is determined by a borrowing base. Our borrowing base consists of trade accounts receivable, inventory, other receivables, including progress billings and credit card receivables, and qualified cash that all meet specific criteria contained within the credit agreement, minus agent specified reserves. Net excess borrowing availability is equal to the maximum borrowing amount minus outstanding borrowings and letters of credit.

The following table shows our borrowing base and excess availability as of December 31, 2016 and 2015 (in millions):

	As of	
	December 31, 2016	December 31, 2015
Accounts Receivable Availability	\$ 403.5	\$ 384.5
Inventory Availability	332.0	314.3
Other Receivables Availability	27.9	27.0
Gross Availability	763.4	725.8
Less:		
Agent Reserves	(26.9)	(23.5)
Plus:		
Cash in Qualified Accounts	15.5	55.5
Borrowing Base	752.0	757.8
Aggregate Revolving Commitments	800.0	800.0
Maximum Borrowing Amount (lesser of Borrowing Base and Aggregate Revolving Commitments)	752.0	757.8
Less:		
Outstanding Borrowings	—	(60.0)
Letters of Credit	(84.8)	(79.1)
Net Excess Borrowing Availability on Revolving Facility	<u>\$ 667.2</u>	<u>\$ 618.7</u>

As of December 31, 2016, we had no outstanding borrowings under our 2015 facility and our net excess borrowing availability was \$667.2 million after being reduced by outstanding letters of credit of approximately \$84.8 million. Excess availability must equal or exceed a minimum specified amount, currently \$80.0 million, or we are required to meet a fixed charge coverage ratio of 1:00 to 1:00. We were not in violation of any covenants or restrictions imposed by any of our debt agreements at December 31, 2016.

### **Liquidity**

Our liquidity at December 31, 2016 was \$681.6 million, which consists of net borrowing availability under the 2015 facility and cash on hand. We are expecting continued improvement in the housing industry in 2017. Beyond 2017, it is difficult for us to predict what will happen as our industry is dependent on a number of factors, including national economic conditions, employment levels, the availability of credit for homebuilders and potential home buyers, the level of foreclosures, existing home inventory, and interest rates.

We substantially increased our indebtedness following completion of the ProBuild acquisition in comparison to our indebtedness on a recent historical basis, which increased our interest expense and could have the effect of, among other things, reducing our flexibility to make acquisitions or to respond to changing business and economic conditions. From time to time, based on market conditions and other factors and subject to compliance with applicable laws and regulations, the Company may repurchase or call the 2023 notes or 2024 notes, repay debt, or otherwise enter into transactions regarding its capital structure.

Should the current industry conditions deteriorate or we pursue additional acquisitions, we may be required to raise additional funds through the sale of capital stock or debt in the public capital markets or in privately negotiated transactions. There can be no assurance that any of these financing options would be available on favorable terms, if at all. Alternatives to help supplement our liquidity position could include, but are not limited to, idling or permanently closing additional facilities, adjusting our headcount in response to current business conditions, attempts to renegotiate leases, and divesting of non-core businesses. There are no assurances that these steps would prove successful or materially improve our liquidity position.

### ***Consolidated Cash Flows***

Cash provided by operating activities was \$158.2 million and \$177.0 million in 2016 and 2015, respectively. Our working capital increased \$43.9 million in 2016 compared to a decrease of \$99.0 million in 2015. The change in working capital is largely due to the ProBuild acquisition, as well as increases in receivables and inventory and increased customer demand. These increases were partially offset by increases in accounts payable and accrued liabilities largely due to increased purchases and increased accounts payable days. Cash interest payments increased \$99.5 million in 2016 compared to 2015. The remaining change is due to an increase in cash provided by operations primarily related to increased sales and profitability during the year ended December 31, 2016 as a result of the ProBuild acquisition and higher sales volume. In August 2016, the FASB issued an update to the existing guidance under the *Statement of Cash Flows* topic of the Codification. As a result of the Company's election to early adopt this updated guidance in the fourth quarter of 2016, \$42.9 million in payments of debt extinguishment costs made in 2016 which were previously reflected as operating cash outflows on our 2016 quarterly reports on Form 10-Q are now presented as financing cash outflows. Adoption of this guidance resulted in \$1.1 million from the second quarter of 2016, \$33.3 million from the third quarter of 2016 and \$8.5 million from the fourth quarter of 2016 in payments of debt extinguishment costs being presented as cash outflows from financing activities for the year ended December 31, 2016. The adoption of this guidance had no impact to our statement of cash flows for the years ended December 31, 2015 or 2014. This updated guidance is described more fully in Note 2 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K.

Cash provided by operating activities was \$177.0 million and \$27.5 million in 2015 and 2014, respectively. Our working capital decreased \$99.0 million in 2015 compared to an increase of \$7.8 million in 2014. The decrease in working capital is primarily due to a decrease in accounts receivable and an increase in accrued liabilities. The decrease in accounts receivable is due to increased collections largely attributable to the ProBuild acquisition in the fourth quarter of 2015. The increase in accrued liabilities is largely due to increased interest payable following the ProBuild acquisition financing transactions. The decrease in working capital was partially offset by an increase in cash interest payments of \$26.7 million in 2015 compared to 2014. In addition, during 2015 we had \$13.2 million in one-time cash interest payments attributable to commitment fees related to unutilized bridge and backstop financing facilities. The remaining increase in cash provided by operations is primarily related to increased sales and profitability during 2015 as a result of higher sales volume and the acquisition of ProBuild.

Cash used in investing activities was \$38.3 million and \$1,508.0 million in 2016 and 2015, respectively. The change is primarily due to \$1,462.7 million in cash used for the ProBuild acquisition in 2015. The remaining change is largely due to an increase in proceeds from the sale of property, plant and equipment and a decrease in capital expenditures in 2016 compared to 2015.

Cash used in investing activities increased \$1,413.2 million in 2015 compared to 2014. The change is primarily due to the \$1,462.7 million ProBuild acquisition. In addition, we acquired Timber Tech for \$5.8 million during 2015. In 2014, \$69.3 million of cash was used for acquisitions. Capital expenditures for 2015 were \$43.8 million compared to \$25.7 million in 2014. The increase in capital expenditures primarily relates to purchasing machinery, equipment and vehicles to support sales growth and to increase capacity at existing locations.

Cash used in financing activities was \$170.5 million in 2016 compared to cash provided by financing activities of \$1,378.3 million in 2015. Cash used in financing activities in 2016 was primarily attributable to \$807.5 million in payments of long-term debt, largely due to the extinguishment of our 2021 notes, the partial pay down of the 2015 term loan and 2023 notes. In addition, we repaid \$60.0 million, net, under the 2015 facility, paid \$42.9 million of debt extinguishment costs and \$15.7 million in debt issuance costs. These payments were partially offset by \$750.0 million in proceeds from the 2024 notes issuance.

Cash provided by financing activities was \$1,378.3 million and \$30.4 million for 2015 and 2014, respectively. During 2015 cash provided by financing activities was primarily due to financing activities related to the ProBuild acquisition, including \$700.0 million of proceeds from the issuance of notes, \$594.0 million of proceeds from a new term loan agreement, \$320.0 million of borrowings under the revolving credit facilities, and \$111.3 million of proceeds from the public offering of common stock, net of issuance costs. Slightly offsetting this, we repaid \$290.0 million under the revolving credit facilities during 2015. In addition, we paid \$58.5 million of deferred loan costs in 2015.

### ***Capital Expenditures***

Capital expenditures vary depending on prevailing business factors, including current and anticipated market conditions. Historically, capital expenditures have for the most part remained at relatively low levels in comparison to the operating cash flows generated during the corresponding periods. We expect our 2017 capital expenditures to be approximately \$80-\$90 million primarily related to rolling stock, equipment and facility improvements to support our operations.

## DISCLOSURES OF CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS

The following summarizes our contractual obligations as of December 31, 2016 (in thousands):

Contractual obligations	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Long-term debt	\$ 1,585,258	\$ 4,700	\$ 9,400	\$ 9,400	\$ 1,561,758
Interest on long-term debt(1)	721,603	108,043	215,407	209,036	189,117
Lease finance obligations(2)	356,562	19,009	37,949	37,123	262,481
Capital lease obligations(2)	7,951	3,426	4,436	89	—
Operating leases	283,531	67,213	104,155	55,971	56,192
Total contractual cash obligations	<u>\$ 2,954,905</u>	<u>\$ 202,391</u>	<u>\$ 371,347</u>	<u>\$ 311,619</u>	<u>\$ 2,069,548</u>

- (1) We had no outstanding borrowings under the 2015 facility as of December 31, 2016. Borrowings under the 2015 facility bear interest at a variable rate. Therefore, actual interest may differ from the amounts presented above due to interest rate changes or any future borrowing activity under the 2015 facility. The 2015 term loan also bears interest at a variable rate, therefore actual interest may differ from the amounts presented above due to interest rate changes.
- (2) Future minimum commitments for lease finance obligations and capital lease obligations.

The amounts reflected in the table above for operating leases represent future minimum lease payments under non-cancelable operating leases with an initial or remaining term in excess of one year at December 31, 2016. Purchase orders entered into in the ordinary course of business are excluded from the above table because they are payable within one year. Amounts for which we are liable under purchase orders are reflected on our consolidated balance sheet as accounts payable and accrued liabilities. We plan to lease additional delivery equipment during 2017 to support anticipated sales growth. These operating leases are not included in the table above.

### OTHER CASH OBLIGATIONS NOT REFLECTED IN THE BALANCE SHEET

In accordance with accounting principles generally accepted in the United States, commonly referred to as GAAP, our operating leases are not recorded in our balance sheet. In addition to the lease obligations included in the above table, we have residual value guarantees on certain equipment leases. Under these leases we have the option of (1) purchasing the equipment at the end of the lease term, (2) arranging for the sale of the equipment to a third party, or (3) returning the equipment to the lessor to sell the equipment. If the sales proceeds in either case are less than the residual value, then we are required to reimburse the lessor for the deficiency up to a specified level as stated in each lease agreement. The guarantees under these leases for the residual values of equipment at the end of the respective operating lease periods approximated \$3.9 million as of December 31, 2016.

Based upon the expectation that none of these leased assets will have a residual value at the end of the lease term that is materially less than the value specified in the related operating lease agreement or that we will purchase the equipment at the end of the lease term, we do not believe it is probable that we will be required to fund any amounts under the terms of these guarantee arrangements. Accordingly, no accruals have been recognized for these guarantees.

In addition, the Company is party to certain agreements related to its lease finance obligations which commit the Company to perform certain repairs and maintenance obligations under the leases in a specified manner and timeframe that generally will occur throughout the next year.

### CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Critical accounting policies are those that both are important to the accurate portrayal of a company's financial condition and results, and require subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

In order to prepare financial statements that conform to GAAP, we make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. Certain estimates are particularly sensitive due to their significance to the financial statements and the possibility that future events may be significantly different from our expectations.

We have identified the following accounting policies that require us to make the most subjective or complex judgments in order to fairly present our consolidated financial position and results of operations.

*Vendor Rebates.* Many of our arrangements with our vendors provide for us to receive a rebate of a specified amount payable to us when we achieve any of a number of measures, generally related to the volume of purchases from our vendors. We account for these rebates as a reduction of the prices of the vendor's products, which reduces inventory until we sell the product, at which time these rebates reduce cost of sales. Throughout the year, we estimate the amount of rebates based upon our historical level of purchases. We continually revise these estimates to reflect actual purchase levels.

If market conditions were to change, vendors may change the terms of some or all of these programs. Although these changes would not affect the amounts which we have recorded related to product already purchased, it may impact our gross margins on products we sell or sales earned in future periods.

*Allowance for Doubtful Accounts and Related Reserves.* We maintain an allowance for doubtful accounts for estimated losses due to the failure of our customers to make required payments. We perform periodic credit evaluations of our customers and typically do not require collateral. However, we have, in some cases, required customers to collateralize their debt with us. Consistent with industry practices, we typically require payment from most customers within 30 days. As our business is seasonal in certain regions, our customers' businesses are also seasonal. Sales are lowest in the winter months, and our past due accounts receivable balance as a percentage of total receivables generally increases during this time. Throughout the year, we record estimated reserves based upon our historical write-offs of uncollectible accounts, taking into consideration certain factors, such as aging statistics and trends, customer payment history, independent credit reports, and discussions with customers. We regularly perform a specific analysis of all accounts past due and write off account balances when we have exhausted reasonable collection efforts and determined that the likelihood of collection is remote. We charge these write-offs against our allowance for doubtful accounts. Any future decline in the macroeconomic factors that affect the overall housing industry or our specific customers' business could cause us to revise our estimate of expected losses and increase our allowance for doubtful accounts. In addition, we also establish reserves for credit memos and customer returns.

*Impairment of Long-Lived Assets.* Long-lived assets, including property and equipment and intangible assets with finite lives, are reviewed for possible impairment whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. The carrying amount of a long-lived asset group is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset group. Our long-lived assets and liabilities are grouped at the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. Our facility related long-lived assets are grouped at a geographical location level, which is at a level below our operating segments. All of our other long-lived assets are grouped at a geographical region level, which is the equivalent of our operating segments. Our judgment regarding the existence of impairment indicators is based on market and operational performance. Determining whether impairment has occurred typically requires various estimates and assumptions, including determining which cash flows are directly related to the potentially impaired asset group, the useful life over which cash flows will occur, their amount, and the asset group's residual value, if any. In turn, measurement of an impairment loss requires a determination of fair value, which is based on the best information available.

We use internal cash flow estimates, quoted market prices when available and independent appraisals, as appropriate, to determine fair value. We derive the required cash flow estimates from our historical experience and our internal business plans and apply an appropriate discount rate. These cash flow estimates are over the remaining useful lives of the asset groups. Forecasted housing starts are used to help estimate future revenue. Historical trends are then used to project gross margins and operating expenses based upon various revenue levels. If these projected cash flows are less than the carrying amount, an impairment loss is recognized based on the fair value of the asset group. Due to the uncertainties associated with these projections, actual results could differ from projected results, and further impairment of long-lived assets could be recorded. Future non-cash impairment of long-lived assets would have the effect of decreasing our earnings or increasing our losses in such period, but would not impact our current outstanding debt obligations or compliance with covenants contained in the related debt agreements.

For the year ended December 31, 2016 we recorded asset impairment charges on held-for-use assets of \$2.7 million primarily related to intangible assets associated with a location closure and recorded \$1.9 million related to fair value adjustments on held-for-sale assets during 2016. For the year ended December 31, 2015, we recorded asset impairment charges on held-for-use assets of \$1.4 million related to customer relationship intangible assets associated with a location closure and recorded \$0.7 million related to fair value adjustments on held-for-sale assets during 2015. We recorded no significant asset impairment charges in 2014.

*Goodwill.* Goodwill represents the excess of the amount we paid to acquire businesses over the estimated fair value of tangible assets and identifiable intangible assets acquired, less liabilities assumed. At December 31, 2016, our goodwill balance was \$740.4 million, representing 25.4% of our total assets.

We test goodwill for impairment in the fourth quarter of each year or at any other time when impairment indicators exist by comparing the estimated implied value of a reporting units' goodwill to its book value. Examples of such indicators that could cause us to test goodwill for impairment between annual tests include a significant change in the business climate, unexpected competition or a significant deterioration in market share. We may also consider market capitalization relative to our net assets. Housing starts are a significant sales driver for us. If there is a significant decline or an expected decline in housing starts, this could adversely affect our expectations for a reporting unit and the value of that reporting unit. We did not have any goodwill impairments in 2016, 2015 or 2014.

The process of evaluating goodwill for impairment involves the determination of the fair value of our reporting units. As a result of the reorganization following the ProBuild acquisition, our reporting units are aligned with our nine geographic regions which are also determined to be our operating segments. In evaluating goodwill for impairment, the Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If it is concluded that it is not more likely than not that the fair value of the reporting unit is less than its carrying value, then no further testing of the goodwill is required.

However, if we determine that it is more likely than not that the fair value of the reporting unit is less than its carrying value, then we evaluate goodwill for impairment using a two-step process. The first step is to identify potential impairment by comparing the fair value of a reporting unit to the book value, including goodwill. If the fair value of a reporting unit exceeds the book value, goodwill is not impaired. If the book value exceeds the fair value, the second step of the process is performed to measure the amount of impairment. In step two, the estimated fair value of the reporting unit is allocated to all other assets and liabilities of that reporting unit based on their respective fair values. The excess of the fair value of the reporting unit over the amount allocated to its assets and liabilities is the implied fair value of goodwill. Goodwill impairment is measured as the excess of the carrying value over its implied fair value. The fair value of a reporting unit is estimated based upon the projected discounted cash flow expected to be generated from the reporting unit using a discounted cash flow methodology. Where available and appropriate, comparative market multiples are used to corroborate the results of the discounted cash flow.

In performing our annual impairment tests at December 31, 2016, we developed a range of fair values for our reporting units using a five-year discounted cash flow methodology. Inherent in such fair value determinations are estimates relating to future cash flows, including revenue growth, gross margins, operating expenses and long-term growth rates, and our interpretation of current economic indicators and market conditions and their impact on our strategic plans and operations. Due to the uncertainties associated with such estimates, interpretations and assumptions, actual results could differ from projected results, and further impairment of goodwill could be recorded.

Significant information and assumptions utilized in estimating future cash flows for our reporting units includes projections of market share gains as well as publicly available industry information on projected single-family housing starts and lumber commodity prices which are used to project revenue. Projected gross margins and operating expenses reflect current headcount levels and cost structure and are flexed in future years based upon historical trends at various revenue levels. Long-term growth was based upon terminal value earnings before interest, taxes, depreciation and amortization (EBITDA) multiples of 4.5x for all reporting units to reflect the relevant expected acquisition price. A discount rate of 12.5% was used for all reporting units and is intended to reflect the weighted average cost of capital for a potential market participant and includes all risks of ownership and the associated risks of realizing the stream of projected future cash flows. Decreasing the long-term growth to an EBITDA multiple of 3.5x, or increasing the discount rate by 1.0% to 13.5%, would not have changed the results of our impairment testing.

At December 31, 2016, the fair values of each of our reporting units were substantially in excess of their respective carrying values. The excess (or "cushion") of the implied fair value of goodwill over the carrying value of goodwill for each of our nine reporting units ranged from \$58.0 million to \$238.0 million. Factors that could negatively impact the estimated fair value of our reporting units and potentially trigger additional impairment include, but are not limited to, unexpected competition, lower than expected housing starts, an increase in market participant weighted average cost of capital, increases in material or labor cost, and significant declines in our market capitalization. Future impairment of goodwill would have the effect of decreasing our earnings or increasing our losses in such period, but would not impact our current outstanding debt obligations or compliance with covenants contained in the related debt agreements.

*Deferred Income Taxes.* At December 31, 2016 and 2015, the Company had deferred tax assets, net of deferred tax liabilities, of \$120.1 million and \$127.1 million, respectively, offset by valuation allowances of \$4.8 million and \$136.5 million, respectively. We have \$411.4 million of state net operating loss carry-forwards, which includes \$2.5 million of state tax credit carry-forwards expiring at various dates through 2036. We also have \$226.5 million of federal net operating loss carry-forwards that will expire at various dates through 2036. The federal and state net operating loss carry-forwards include approximately \$23.3 million of gross windfall tax benefits from stock option exercises that have not been recorded as of December 31, 2016. At December 31, 2016, the Company needed to generate approximately \$287.6 million of pre-tax income in future periods to realize its federal deferred tax assets.

We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. In accordance with the *Income Taxes* topic of the Accounting Standards Codification (“Codification”), we assess whether it is more likely than not that some or all of our deferred tax assets will not be realized. Significant judgment is required in estimating valuation allowances for deferred tax assets and in making this determination, we consider all available positive and negative evidence. In the Company’s evaluation of its ability to realize its deferred tax assets, we gave more significant weight to evidence that was objective in nature as compared to subjective evidence. Also, more significant weight was given to evidence that relates to the Company’s current financial performance. The realization of a deferred tax asset ultimately depends on the existence of sufficient taxable income in the applicable carryback or carryforward periods. We consider the nature, frequency, and severity of current and cumulative losses, as well as historical and forecasted financial results, the overall business environment, our industry’s historic cyclicity, the reversal of existing deferred tax liabilities, and tax planning strategies in our assessment. Changes in our estimates of future taxable income and tax planning strategies will affect our estimate of the realization of the tax benefits of these tax carryforwards.

We recorded a full valuation allowance in 2008 due to our cumulative three-year loss position at that time, compounded by the negative industry-wide business trends and outlook. At December 31, 2015, the Company had given significant weight to the negative objective evidence of the historically weak housing market conditions during the housing downturn that contributed to our three-year cumulative pre-tax loss position when reporting a valuation allowance of \$136.5 million against our deferred income tax assets, representing a valuation allowance against substantially all of our net deferred income tax assets.

In the second quarter of 2016, we moved from a cumulative loss position over the previous three years to a cumulative income position for the first time since we established the full valuation allowance in 2008. We continued to maintain a cumulative income position over the previous three years into the third quarter of 2016. In the Company’s evaluation at September 30, 2016, we gave the most significant weight to this objective positive evidence related to its recent financial results. Additionally, even conservative projections of the Company’s estimated future annual pre-tax income would indicate realization of all of its federal net operating losses well in advance of the expiration of the Company’s NOL carryforwards and it would also absorb all federal deductible temporary differences as they reverse in future years. The Company considered, at a lower weighting, the subjective positive evidence that it expects to increase its pre-tax income in future years as the homebuilding industry continues to recover and strengthen as currently projected by a composite of third-party sources, including the NAHB. Therefore, at September 30, 2016, with this positive historical evidence and the projection of future profitability, management determined that there was sufficient positive evidence to conclude that it is more likely than not that we would realize our net federal and certain state deferred tax assets, resulting in \$117.6 million and \$3.2 million benefit being recognized in our provision for income taxes for the third and fourth quarter of 2016, respectively.

Prior to the quarter ended June 30, 2016, the Company had given significant weight to the negative objective evidence of its three-year cumulative pre-tax loss position as a result of losses incurred in prior years during the housing downturn. As of June 30, 2016 and September 30, 2016, the Company had generated positive cumulative pre-tax income for the past three years and therefore, the prior year losses were weighted less than the recent positive financial results in the Company’s evaluation at September 30, 2016. Other negative subjective evidence, such as the cyclical, slower-than-anticipated housing market recovery, was considered at a lower weighting because the Company’s recent financial performance has been achieved in this environment.

As of December 31, 2016, we have certain states where we are not currently projecting future taxable income levels that would be sufficient to utilize the carryover net operating losses and as such continue to maintain a valuation allowance against certain of these state deferred tax assets. We will continue to assess quarterly whether it is more likely than not that some or all of these state deferred tax assets will be realizable in the future. Changes in the positive and negative evidence, including differences in the Company’s future operating results as compared to the estimates utilized in the determination of the valuation allowance, could result in changes in the Company’s estimate of the valuation allowance related to its tax benefits for state net operating loss carryforwards.

In 2016 we recorded a reduction to the valuation allowance of \$131.7 million against our net deferred tax assets as we released valuation allowances on our net deferred tax assets as noted above. In 2015, we recorded a valuation allowance of \$9.7 million related to our continuing operations. In 2014, we reduced our valuation allowance by \$7.2 million due to the utilization of net operating losses against federal and state taxable income.

We base our estimate of deferred tax assets and liabilities on current tax laws and rates. In certain cases, we also base our estimate on business plan forecasts and other expectations about future outcomes. Changes in existing tax laws or rates could affect our actual tax results, and future business results may affect the amount of our deferred tax liabilities or the valuation of our deferred tax assets over time. Due to uncertainties in the estimation process, particularly with respect to changes in facts and circumstances in future reporting periods, as well as the residential homebuilding industry’s cyclicity and sensitivity to changes in economic conditions, it is possible that actual results could differ from the estimates used in previous analyses.

Accounting for deferred taxes is based upon estimates of future results. Differences between the anticipated and actual outcomes of these future results could have a material impact on our consolidated results of operations or financial position.

*Insurance.* We are insured for general liability, auto liability and workers' compensation exposures, subject to deductible amounts. The expected liability for unpaid claims, including incurred but not reported losses, is determined using the assistance of a third-party actuary and is reflected on our balance sheet as an accrued liability. The amount recoverable from our insurance provider is reflected as an other asset. Our accounting policy includes an internal evaluation and adjustment of our reserve for all insured losses on a quarterly basis. On a quarterly basis, we engage an external actuarial professional to independently assess and estimate the total liability outstanding, which is compared to the actual reserve balance at that time and adjusted accordingly.

*Stock-Based Compensation.* Calculating stock-based compensation expense requires the input of subjective assumptions. We determine the fair value of each restricted stock unit grant subject to market conditions using the Monte Carlo simulation model. Specific inputs to the model include the expected volatilities of our common stock and the expected volatilities of the common stocks of the constituents of the Company's peer group, dividend yield and risk-free rate.

The expected volatilities are based on the historical volatilities of our common stock and the common stocks of the constituents of the Company's peer group over the most recent period equal to the measurement period. The expected dividend yield is based on our history of not paying regular dividends in the past and our current intention to not pay regular dividends in the foreseeable future. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant and has a term equal to the measurement period.

## **RECENTLY ISSUED ACCOUNTING STANDARDS**

Information regarding recent accounting pronouncements is discussed in Note 2 to the consolidated financial statements included in Item 8 of this annual report on Form 10-K.

### **Item 7A. *Quantitative and Qualitative Disclosures about Market Risk***

We may experience changes in interest expense if changes in our debt occur. Changes in market interest rates could also affect our interest expense. Our 2023 notes and our 2024 notes bear interest at a fixed rate, therefore, our interest expense related to these notes would not be affected by an increase in market interest rates. Borrowings under the 2015 facility and the 2015 term loan bear interest at either a base rate or eurodollar rate, plus, in each case, an applicable margin. At December 31, 2016, a 1.0% increase in interest rates on the 2015 term loan would, subject to the interest rate floor specified in the agreement, result in approximately \$3.6 million in additional interest expense annually. At December 31, 2016, a 1.0% increase in interest rates on the 2015 facility would result in no additional interest expense annually as we had no outstanding borrowings. The 2015 facility also assesses variable commitment and outstanding letter of credit fees based on quarterly average loan utilization.

We purchase certain materials, including lumber products, which are then sold to customers as well as used as direct production inputs for our manufactured products that we deliver. Short-term changes in the cost of these materials and the related in-bound freight costs, some of which are subject to significant fluctuations, are sometimes, but not always, passed on to our customers. Our delayed ability to pass on material price increases to our customers can adversely impact our operating results.



**Item 8. Financial Statements and Supplementary Data**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

<a href="#">Report of Independent Registered Public Accounting Firm</a>	41
<a href="#">Consolidated Statements of Operations and Comprehensive Income (Loss) for the years ended December 31, 2016, 2015 and 2014</a>	42
<a href="#">Consolidated Balance Sheets at December 31, 2016 and 2015</a>	43
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2016, 2015 and 2014</a>	44
<a href="#">Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2016, 2015 and 2014</a>	45
<a href="#">Notes to Consolidated Financial Statements</a>	46

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Builders FirstSource, Inc.

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations and comprehensive income (loss), stockholders' equity and cash flows present fairly, in all material respects, the financial position of Builders FirstSource, Inc. and its subsidiaries at December 31, 2016 and December 31, 2015, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2016 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Dallas, Texas  
March 1, 2017

**BUILDERS FIRSTSOURCE, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**

	Years Ended December 31,		
	2016	2015	2014
	(In thousands, except per share amounts)		
Sales	\$ 6,367,284	\$ 3,564,425	\$ 1,604,096
Cost of sales	4,770,536	2,662,967	1,247,099
Gross margin	1,596,748	901,458	356,997
Selling, general and administrative expenses	1,360,412	810,703	307,387
Income from operations	236,336	90,755	49,610
Interest expense, net	214,667	109,199	30,349
Income (loss) before income taxes	21,669	(18,444)	19,261
Income tax expense (benefit)	(122,672)	4,387	1,111
Net income (loss)	\$ 144,341	\$ (22,831)	\$ 18,150
Comprehensive income (loss)	\$ 144,341	\$ (22,831)	\$ 18,150
<i>Net income (loss) per share:</i>			
Basic	\$ 1.30	\$ (0.22)	\$ 0.19
Diluted	\$ 1.27	\$ (0.22)	\$ 0.18
<i>Weighted average common shares outstanding:</i>			
Basic	110,754	103,190	98,050
Diluted	113,585	103,190	100,522

The accompanying notes are an integral part of these consolidated financial statements.

**BUILDERS FIRSTSOURCE, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2016	2015
	(In thousands, except per share amounts)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 14,449	\$ 65,063
Accounts receivable, less allowances of \$11,571 and \$8,049 at December 31, 2016 and 2015, respectively	569,208	528,544
Other receivables	55,781	57,778
Inventories, net	541,771	513,045
Other current assets	34,772	29,899
Total current assets	1,215,981	1,194,329
Property, plant and equipment, net	656,101	734,329
Assets held for sale	4,361	5,585
Goodwill	740,411	739,625
Intangible assets, net	159,373	189,604
Deferred income taxes	115,320	2,035
Other assets, net	18,340	16,531
Total assets	<u>\$ 2,909,887</u>	<u>\$ 2,882,038</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Checks outstanding	\$ 35,606	\$ 46,833
Accounts payable	409,759	365,347
Accrued liabilities	293,115	293,905
Current maturities of long-term debt and lease obligations	16,217	29,153
Total current liabilities	754,697	735,238
Long-term debt and lease obligations, net of current maturities, debt discount, and debt issuance costs	1,785,835	1,922,518
Deferred income taxes	—	11,502
Other long-term liabilities	59,735	63,585
Total liabilities	2,600,267	2,732,843
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, \$0.01 par value, 10,000 shares authorized; zero shares issued and outstanding at December 31, 2016 and 2015	—	—
Common stock, \$0.01 par value, 200,000 shares authorized; 111,564 and 109,726 shares issued and outstanding at December 31, 2016 and 2015, respectively	1,115	1,097
Additional paid-in capital	527,868	511,802
Accumulated deficit	(219,363)	(363,704)
Total stockholders' equity	309,620	149,195
Total liabilities and stockholders' equity	<u>\$ 2,909,887</u>	<u>\$ 2,882,038</u>

The accompanying notes are an integral part of these consolidated financial statements.

**BUILDERS FIRSTSOURCE, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years Ended December 31,		
	2016	2015	2014
	(In thousands)		
Cash flows from operating activities:			
Net income (loss)	\$ 144,341	\$ (22,831)	\$ 18,150
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	109,793	58,280	9,519
Asset impairments	4,616	2,114	—
Amortization of deferred loan costs	6,863	18,630	2,432
Amortization of debt discount	639	299	—
Loss on extinguishment of debt	55,776	—	—
Payment of original issue discount	(1,259)	—	—
Accretion of lease finance obligations	813	—	—
Fair value adjustment of stock warrants	—	4,563	(456)
Deferred income taxes	(124,787)	3,287	524
Bad debt expense	1,390	2,285	(274)
Stock compensation expense	10,549	6,848	6,157
Net gain on sales of assets	(4,952)	(801)	(114)
Changes in assets and liabilities, net of assets acquired and liabilities assumed:			
Receivables	(45,942)	74,089	1,113
Inventories	(33,965)	46,854	(9,103)
Other current assets	(4,873)	(6,320)	(4,791)
Other assets and liabilities	(1,641)	5,314	(660)
Accounts payable and checks outstanding	36,585	(45,286)	(5,410)
Accrued liabilities	4,281	29,709	10,406
Net cash provided by operating activities	<u>158,227</u>	<u>177,034</u>	<u>27,493</u>
Cash flows from investing activities:			
Purchases of property, plant and equipment	(42,662)	(43,811)	(25,716)
Proceeds from sale of property, plant and equipment	8,305	4,275	213
Cash used for acquisitions, net	(3,970)	(1,468,511)	(69,337)
Net cash used in investing activities	<u>(38,327)</u>	<u>(1,508,047)</u>	<u>(94,840)</u>
Cash flows from financing activities:			
Borrowings under revolving credit facility	907,000	320,000	30,000
Payments under revolving credit facility	(967,000)	(290,000)	—
Proceeds from issuance of notes	750,000	700,000	—
Proceeds from term loan	—	594,000	—
Repayments of long-term debt and other loans	(807,517)	(4,213)	(67)
Payments of debt extinguishment costs	(42,869)	—	—
Payments of loan costs	(15,663)	(58,525)	(34)
Proceeds from public offering of common stock, net of issuance costs	—	111,309	—
Exercise of stock options	6,627	6,718	1,831
Repurchase of common stock	(1,092)	(986)	(1,306)
Net cash provided by (used in) financing activities	<u>(170,514)</u>	<u>1,378,303</u>	<u>30,424</u>
Net increase (decrease) in cash and cash equivalents	(50,614)	47,290	(36,923)
Cash and cash equivalents at beginning of period	65,063	17,773	54,696
Cash and cash equivalents at end of period	<u>\$ 14,449</u>	<u>\$ 65,063</u>	<u>\$ 17,773</u>

**Supplemental disclosure of non-cash activities**

For the years ended December 31, 2016 and 2015 the Company retired assets subject to lease finance obligations of \$38.1 million and \$1.4 million and extinguished the related lease finance obligation of \$41.2 million and \$1.5 million, respectively. There were no retirements of assets subject to lease finance obligations or extinguishment of lease finance obligations for the year ended December 31, 2014.

The Company purchased equipment which was financed through capital lease obligations of \$8.1 million and \$1.6 million in the years ended December 31, 2016 and 2015, respectively. There were no purchases of equipment financed through capital lease obligations for the year ended December 31, 2014.

The accompanying notes are an integral part of these consolidated financial statements.

**BUILDERS FIRSTSOURCE, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**

	Common Stock Shares	Common Stock Amount	Additional Paid in Capital (In thousands)	Accumulated Deficit	Total
Balance at December 31, 2013	97,905	\$ 973	\$ 373,418	\$ (359,023)	\$ 15,368
Vesting of restricted stock	—	6	(6)	—	—
Stock compensation expense	—	—	6,157	—	6,157
Exercise of stock options	492	5	1,826	—	1,831
Repurchase of common stock	(171)	(2)	(1,304)	—	(1,306)
Net income	—	—	—	18,150	18,150
Balance at December 31, 2014	98,226	982	380,091	(340,873)	40,200
Issuance of common stock from public offering, net of issuance costs	9,200	92	111,217	—	111,309
Vesting of restricted stock units	495	5	(5)	—	—
Stock compensation expense	—	—	6,848	—	6,848
Exercise of stock options	1,388	14	6,704	—	6,718
Exercise of stock warrants	569	6	7,931	—	7,937
Repurchase of common stock	(152)	(2)	(984)	—	(986)
Net loss	—	—	—	(22,831)	(22,831)
Balance at December 31, 2015	109,726	1,097	511,802	(363,704)	149,195
Vesting of restricted stock units	505	5	(5)	—	—
Stock compensation expense	—	—	10,549	—	10,549
Exercise of stock options	1,496	15	6,612	—	6,627
Repurchase of common stock	(163)	(2)	(1,090)	—	(1,092)
Net income	—	—	—	144,341	144,341
Balance at December 31, 2016	111,564	\$ 1,115	\$ 527,868	\$ (219,363)	\$ 309,620

The accompanying notes are an integral part of these consolidated financial statements.

## BUILDERS FIRSTSOURCE, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### **1. Description of the Business**

Builders FirstSource, Inc., a Delaware corporation formed in 1998, is a leading supplier of building materials, manufactured components and construction services to professional contractors, sub-contractors, and consumers. Following our acquisition of ProBuild Holdings LLC (“ProBuild”) in July 2015, the company operates locations in 40 states across the United States.

In this annual report, references to the “Company,” “we,” “our,” “ours” or “us” refer to Builders FirstSource, Inc. and its consolidated subsidiaries (including ProBuild as of July 31, 2015), unless otherwise stated or the context otherwise requires.

#### **2. Summary of Significant Accounting Policies**

##### ***Principles of Consolidation***

The consolidated financial statements present the results of operations, financial position, and cash flows of Builders FirstSource, Inc. and its wholly-owned subsidiaries. All intercompany transactions have been eliminated in consolidation.

##### ***Accounting Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles (“GAAP”) in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could materially differ from those estimates.

Estimates are used when accounting for items such as revenue, vendor rebates, allowance for returns, discounts and doubtful accounts, employee compensation programs, depreciation and amortization periods, income taxes, inventory values, insurance programs, goodwill, other intangible assets and long-lived assets.

##### ***Sales Recognition***

We recognize sales of building products upon delivery to the customer. For contracts with service elements, sales are generally recognized on the completed contract method as these contracts are usually completed within 30 days with the percentage of completion method applied on a limited basis to certain contracts. Percentage of completion revenue represents less than 2% of our consolidated sales for each year presented. Contract costs include all direct material and labor, equipment costs and those indirect costs related to contract performance. Provisions for estimated losses on uncompleted contracts are recognized in the period in which such losses are determined. Prepayments for materials or services are deferred until such materials have been delivered or services have been provided. All sales recognized are net of allowances for discounts and estimated returns, based on historical experience. We present all sales tax on a net basis in our consolidated financial statements. The Company records sales incentives provided to customers as a reduction of revenue.

##### ***Cash and Cash Equivalents & Checks Outstanding***

Cash and cash equivalents consist of cash on hand and all highly liquid investments with an original maturity date of three months or less. Also included in cash and cash equivalents are proceeds due from credit card transactions that generally settle within two business days. We maintain cash at financial institutions in excess of federally insured limits. Further, we maintain various banking relationships with different financial institutions. Accordingly, when there is a negative book cash balance resulting from outstanding checks that had not yet been paid by any single financial institution; they are reflected in checks outstanding on the accompanying consolidated balance sheets.

##### ***Financial Instruments***

We use financial instruments in the normal course of business as a tool to manage our assets and liabilities. We do not hold or issue financial instruments for trading purposes.

We issued detachable warrants in 2011, which were measured at fair value on a recurring basis until exercised in 2015 as discussed in Note 8.

### Accounts Receivable

We extend credit to qualified professional homebuilders and contractors, in many cases on a non-collateralized basis. Accounts receivable potentially expose us to concentrations of credit risk. Because our customers are dispersed among our various markets, our credit risk to any one customer or state economy is not significant.

Our customer mix is a balance of large national homebuilders, regional homebuilders, local homebuilders and repair and remodeling contractors. For the year ended December 31, 2016, our top 10 customers accounted for approximately 16.8% of our sales, and no single customer accounted for more than 5% of sales.

The allowance for doubtful accounts is based on management's assessment of the amount which may become uncollectible in the future and is estimated using specific review of problem accounts, overall portfolio quality, current economic conditions that may affect the borrower's ability to pay, and historical experience. Accounts receivable are written off when deemed uncollectible. Other receivables consist primarily of vendor rebates receivable.

We also establish reserves for credit memos and customer returns. The reserve balance was \$5.6 million and \$3.8 million at December 31, 2016 and 2015, respectively. The activity in this reserve was not significant for each year presented.

Accounts receivable consisted of the following at December 31:

	2016	2015
	(In thousands)	
Accounts Receivable	\$ 580,779	\$ 536,593
Less: allowances for returns and doubtful accounts	11,571	8,049
Accounts receivable, net	<u>\$ 569,208</u>	<u>\$ 528,544</u>

The following table shows the changes in our allowance for doubtful accounts:

	2016	2015	2014
	(In thousands)		
Balance at January 1,	\$ 4,245	\$ 1,734	\$ 2,413
Additions	1,390	2,285	(274)
Deductions (write-offs, net of recoveries)	287	226	(405)
Balance at December 31,	<u>\$ 5,922</u>	<u>\$ 4,245</u>	<u>\$ 1,734</u>

### Inventories

Inventories consist principally of materials purchased for resale, including lumber, sheet goods, windows, doors and millwork, as well as certain manufactured products and are stated at the lower of cost or market. Cost is determined using the weighted average method, the use of which approximates the first-in, first-out method. We accrue for shrink based on the actual historical shrink results of our most recent physical inventories adjusted, if necessary, for current economic conditions. These estimates are compared with actual results as physical inventory counts are taken and reconciled to the general ledger.

During the year, we monitor our inventory levels by market and record provisions for excess inventories based on slower moving inventory. We define potential excess inventory as the amount of inventory on hand in excess of the historical usage, excluding special order items purchased in the last six months. We then apply our judgment as to forecasted demand and other factors, including liquidation value, to determine the required adjustments to net realizable value. Our inventories are generally not susceptible to technological obsolescence.

Our arrangements with vendors provide for rebates of a specified amount of consideration, payable when certain measures, generally related to a stipulated level of purchases, have been achieved. We account for estimated rebates as a reduction of the prices of the vendor's inventory until the product is sold, at which time such rebates reduce cost of sales in the accompanying consolidated statements of operations and comprehensive loss. Throughout the year we estimate the amount of the rebates based upon the expected level of purchases. We continually revise these estimates based on actual purchase levels.

We source products from a large number of suppliers. No materials purchased from any single supplier represented more than 7% of our total materials purchased in 2016.



### ***Shipping and Handling Costs***

Handling costs incurred in manufacturing activities are included in cost of sales. All other shipping and handling costs are included in selling, general and administrative expenses in the accompanying consolidated statements of operations and comprehensive income (loss) and totaled \$269.8 million, \$171.9 million and \$79.7 million in 2016, 2015 and 2014, respectively.

### ***Income Taxes***

We account for income taxes utilizing the liability method described in the *Income Taxes* topic of the FASB Accounting Standards Codification (“Codification”). Deferred income taxes are recorded to reflect consequences on future years of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which differences are expected to affect taxable earnings. We record a valuation allowance to reduce deferred tax assets if it is more likely than not that some portion or all of the deferred tax assets will not be realized.

### ***Warranty Expense***

We have warranty obligations with respect to most manufactured products; however, the liability for the warranty obligations is not significant as a result of third-party inspection and acceptance processes.

### ***Debt Issuance Costs and Debt Discount***

Loan costs are capitalized upon the issuance of long-term debt and amortized over the life of the related debt. Debt issuance costs associated with term debt are presented as a reduction to long-term debt. Debt issuance costs associated with revolving debt arrangements are presented as a component of other assets. Debt issuance costs incurred in connection with revolving debt arrangements are amortized using the straight-line method. Debt issuance costs incurred in connection with term debt are amortized using the effective interest method. Debt discount is amortized over the life of the related debt using the effective interest method. Amortization of debt issuance costs and the debt discount are included in interest expense. Upon changes to our debt structure, we evaluate debt issuance costs in accordance with the *Debt* topic of the Codification. We adjust debt issuance costs as necessary based on the results of this evaluation, as discussed in Note 8.

### ***Property, Plant and Equipment***

Property, plant and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the assets. The estimated lives of the various classes of assets are as follows:

Buildings and improvements	20 to 40 years
Machinery and equipment	3 to 10 years
Furniture and fixtures	3 to 5 years
Leasehold improvements	The shorter of the estimated useful life or the remaining lease term

Major additions and improvements are capitalized, while maintenance and repairs that do not extend the useful life of the property are charged to expense as incurred. Gains or losses from dispositions of property, plant and equipment are recorded in the period incurred. We also capitalize certain costs of computer software developed or obtained for internal use, including interest, provided that those costs are not research and development, and certain other criteria are met. Internal use computer software costs are included in machinery and equipment and generally depreciated using the straight-line method over the estimated useful lives of the assets, generally three years.

We periodically evaluate the commercial and strategic operation of the land, related buildings and improvements of our facilities. In connection with these evaluations, some facilities may be consolidated, and others may be sold or leased. Nonoperating assets primarily related to land and building real estate assets associated with location closures that are actively being marketed for sale within a year are classified as assets held for sale and recorded at fair value, usually the quoted market price obtained from an independent third-party less the cost to sell. Until the assets are sold, an estimate of the fair value is reassessed at each reporting period. Net gains or losses related to the sale of real estate and equipment or impairment adjustments related to assets held for sale are recorded as selling, general and administrative expenses.

### Long-Lived Assets

We evaluate our long-lived assets, other than goodwill, for impairment when events or changes in circumstances indicate, in our judgment, that the carrying value of such assets may not be recoverable. The determination of whether or not impairment exists is based on our estimate of undiscounted future cash flows before interest attributable to the assets as compared to the net carrying value of the assets. If impairment is indicated, the amount of the impairment recognized is determined by estimating the fair value of the assets based on estimated discounted future cash flows and recording a provision for loss if the carrying value is greater than estimated fair value. The net carrying value of assets identified to be disposed of in the future is compared to their estimated fair value, usually the quoted market price obtained from an independent third-party less the cost to sell, to determine if impairment exists. Until the assets are disposed of, an estimate of the fair value is reassessed when related events or circumstances change. Asset impairment charges are presented in the consolidated statements of operations and comprehensive income (loss) for the respective years.

### Insurance

We have established insurance programs to cover certain insurable risks consisting primarily of physical loss to property, business interruptions resulting from such loss, workers' compensation, employee healthcare, and comprehensive general and auto liability. Third party insurance coverage is obtained for exposures above predetermined deductibles as well as for those risks required to be insured by law or contract. Provisions for losses are developed from valuations that rely upon our past claims experience, which considers both the frequency and settlement of claims. We discount our workers' compensation liability based upon estimated future payment streams at our risk-free rate. Our total insurance reserve balances were \$80.4 million and \$84.3 million as of December 31, 2016 and 2015, respectively. Of these balances \$43.6 million and \$40.3 million were recorded as other long-term liabilities as of December 31, 2016 and 2015, respectively. Included in these reserve balances as of December 31, 2016 and 2015, were approximately \$9.4 million and \$9.9 million, respectively, of claims that exceeded stop-loss limits and are expected to be recovered under insurance policies which are also recorded as other receivables and other assets in the accompanying consolidated balance sheets.

### Net Income (Loss) per Common Share

Net income (loss) per common share, or earnings per share ("EPS"), is calculated in accordance with the *Earnings per Share* topic of the Codification which requires the presentation of basic and diluted EPS. Basic EPS is computed using the weighted average number of common shares outstanding during the period. Diluted EPS is computed using the weighted average number of common shares outstanding during the period, plus the dilutive effect of potential common shares.

The table below presents a reconciliation of weighted average common shares used in the calculation of basic and diluted EPS for the years ended December 31:

	2016	2015	2014
	(In thousands)		
Weighted average shares for basic EPS	110,754	103,190	98,050
Dilutive effect of options, warrants, and RSUs	2,831	—	2,472
Weighted average shares for diluted EPS	113,585	103,190	100,522

Our restricted stock shares include rights to receive dividends that are not subject to the risk of forfeiture even if the underlying restricted stock shares on which the dividends were paid do not vest. In accordance with the *Earnings Per Share* topic of the Codification, unvested share-based payment awards that contain non-forfeitable rights to dividends are deemed participating securities and should be considered in the calculation of basic EPS. Since the restricted stock shares do not include an obligation to share in losses, they will be included in our basic EPS calculation in periods of net income and excluded from our basic EPS calculation in periods of net loss. Accordingly, there were 13,000 restricted stock shares excluded from the computation of basic EPS in 2015 because we generated a net loss. There were 27,000 restricted stock shares included in our basic EPS calculation for 2014 as we generated net income. There were no outstanding restricted stock shares as of December 31, 2016.

For the purpose of computing diluted EPS, weighted average shares outstanding have been adjusted for common shares underlying 3,515,000 options to purchase common stock and 2,177,000 restricted stock units ("RSUs") for 2016. Options to purchase 4,998,000 shares of common stock and 1,516,000 RSUs were not included in the computation of diluted EPS for 2015 because their effect was anti-dilutive. Incremental shares attributable to average warrants outstanding during 2015 were not included in the computation of diluted EPS for 2015 as their effect was anti-dilutive. There were no warrants outstanding at December 31, 2016 as all of the remaining warrants were exercised in April 2015. Weighted average shares outstanding have been adjusted for common shares underlying 6,246,000 options, 700,000 warrants, and 1,855,000 RSUs for 2014. In addition, \$0.5 million of income due to fair value adjustments related to the warrants was excluded from net income in the computation of diluted EPS for 2014.

## **Goodwill and Other Intangible Assets**

### *Intangibles subject to amortization*

We recognize an acquired intangible asset apart from goodwill whenever the intangible asset arises from contractual or other legal rights, or whenever it can be separated or divided from the acquired entity and sold, transferred, licensed, rented, or exchanged, either individually or in combination with a related contract, asset or liability. Impairment losses are recognized if the carrying value of an intangible asset subject to amortization is not recoverable from expected future cash flows and its carrying amount exceeds its estimated fair value.

### *Goodwill*

We recognize goodwill as the excess cost of an acquired entity over the net amount assigned to assets acquired and liabilities assumed. Goodwill is tested for impairment on an annual basis and between annual tests whenever impairment is indicated. This annual test takes place as of December 31 each year. Impairment losses are recognized whenever the implied fair value of goodwill is less than its carrying value.

### **Stock-based Compensation**

We have four stock-based employee compensation plans, which are described more fully in Note 10. We issue new common stock shares upon exercises of stock options, grants of restricted stock, and vesting of RSUs.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions for the year ended December 31:

	<u>2016</u>	<u>2015</u>	<u>2014</u>
Expected life	6.0 years	6.0 years	5.8 years
Expected volatility	60.88%	75.2%	92.1%
Expected dividend yield	0.00%	0.00%	0.00%
Risk-free rate	1.41%	1.75%	1.83%

The expected life represents the period of time the options are expected to be outstanding. We used the simplified method for determining the expected life assumption due to limited historical exercise experience on our stock options. The expected volatility is based on the historical volatility of our common stock over the most recent period equal to the expected life of the option. The expected dividend yield is based on our history of not paying regular dividends in the past and our current intention to not pay regular dividends in the foreseeable future. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant and has a term equal to the expected life of the options.

The fair value of RSU awards subject to market conditions is estimated on the date of grant using the Monte Carlo simulation model with the following weighted average assumptions for the year ended December 31:

	<u>2016</u>
Expected volatility (company)	53.6%
Expected volatility (peer group median)	17.3%
Correlation between the company and peer group median	0.47
Expected dividend yield	0.00%
Risk-free rate	1.29%

The expected volatilities are based on the historical volatilities of our common stock and the common stocks of the constituents of the Company's peer group over the most recent period equal to the measurement period. The expected dividend yield is based on our history of not paying regular dividends in the past and our current intention to not pay regular dividends in the foreseeable future. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant and has a term equal to the measurement period. We did not grant any RSUs subject to market conditions in 2015 or 2014.

## Fair Value

The *Fair Value Measurements and Disclosures* topic of the Codification provides a framework for measuring the fair value of assets and liabilities and establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The fair value hierarchy can be summarized as follows:

Level 1 — unadjusted quoted prices for identical assets or liabilities in active markets accessible by us

Level 2 — inputs that are observable in the marketplace other than those inputs classified as Level 1

Level 3 — inputs that are unobservable in the marketplace and significant to the valuation

If a financial instrument uses inputs that fall in different levels of the hierarchy, the instrument will be categorized based upon the lowest level of input that is significant to the fair value calculation. The only financial instruments measured at fair value on a recurring basis were our warrants as discussed in Note 8.

As of December 31, 2016 and 2015 the Company does not have any financial instruments which are measured at fair value on a recurring basis. We have elected to report the value of our 10.75% senior unsecured notes due 2023 (“2023 notes”), 5.625% senior secured notes due 2024 (“2024 notes”), and \$600.0 million term loan facility due 2022 (“2015 term loan”) at amortized cost. The fair values of the 2023 notes, the 2024 notes and the 2015 term loan at December 31, 2016 were approximately \$421.8 million, \$758.0 million and \$471.2 million, respectively, and were determined using Level 2 inputs based on market prices.

## Supplemental Cash Flow Information

Supplemental cash flow information was as follows for the years ended December 31:

	2016	(In thousands)	2015	2014
Cash payments for interest	\$ 197,384		\$ 55,028	\$ 28,338
Cash payments for income taxes		2,875	1,409	456

## Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity (net assets) of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. It consists of net income (loss) and other gains and losses affecting stockholders’ equity that, under GAAP, are excluded from net income. We had no items of other comprehensive income (loss) for the years ended December 31, 2016, 2015, and 2014.

## Recently Issued Accounting Pronouncements

In January 2017, the Financial Accounting Standards Board (“FASB”) issued an update to the existing guidance under the *Intangibles-Goodwill and Other* topic of the Accounting Standards Codification (“Codification”) to simplify the accounting for goodwill impairment. The guidance removes Step 2 of the goodwill impairment test, which requires a hypothetical purchase price allocation. A goodwill impairment will now be the amount by which a reporting unit’s carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. All of the other goodwill impairment guidance will remain largely unchanged, including the option to perform a qualitative assessment to determine if a quantitative impairment test is necessary. This update is effective for annual and any interim goodwill impairment tests in fiscal years beginning after December 15, 2019. Early adoption of this guidance is permitted for annual or interim goodwill tests performed after January 1, 2017. This guidance will be applied on a prospective basis following adoption.

In January 2017, the FASB issued an update to the existing guidance under the *Business Combinations* topic of the Codification. This update revises the definition of a business. Under this guidance when substantially all of the assets acquired is concentrated in a single asset (or group of similar assets) the assets acquired would not be considered a business. If this initial screen is met the need for further assessment is eliminated. If this screen is not met in order to be considered a business an acquisition would have to include an input and a substantive process that together significantly contribute to the ability to create outputs. This update is effective for public companies for annual and interim reporting periods beginning after December 15, 2017. Early adoption of this guidance is permitted. This guidance requires prospective application following adoption.

In August 2016, the FASB issued an update to the existing guidance under the *Statement of Cash Flows* topic of the Codification. This update clarifies the classification of certain transactions in the statement of cash flows. This update requires application using a retrospective transition method. This update is effective for public companies for annual and interim reporting periods beginning after December 15, 2017. Early adoption is permitted, provided that all of the amendments in this update are adopted in the same period. As a result of the Company's election to early adopt this updated guidance in the fourth quarter of 2016, \$42.9 million in payments of debt extinguishment costs made in 2016 which were previously reflected as operating cash outflows on our 2016 quarterly reports on Form 10-Q are now presented as financing cash outflows. Adoption of this guidance resulted in \$1.1 million from the second quarter of 2016, \$33.3 million from the third quarter of 2016 and \$8.5 million from the fourth quarter of 2016 in payments of debt extinguishment costs being presented as cash outflows from financing activities for the year ended December 31, 2016. The adoption of this guidance had no impact to our statement of cash flows for the years ended December 31, 2015 or 2014.

In March 2016, the FASB issued an update to the existing guidance under the *Compensation-Stock Compensation* topic of the Codification. This update simplifies several aspects of accounting for stock compensation including accounting for income taxes, classification of awards as liabilities or equity, forfeitures and classification on the statement of cash flows. This update is effective for public companies for annual and interim reporting periods beginning after December 15, 2016. Early adoption is permitted with adjustments reflected as of the beginning of the fiscal year of adoption. The various aspects of this guidance require prospective, retrospective, or modified retrospective application. This guidance will be effective for the Company in the first quarter of 2017. As of December 31, 2016 the Company had approximately \$23.3 million of unrecognized gross windfall benefits. Upon adoption the Company will recognize any previously unrecorded windfall benefits on a modified retrospective basis through a cumulative-effect adjustment to the beginning balance of our accumulated deficit. Following adoption any windfalls or shortfalls will be recognized as a component of income tax expense in the period they occur. Additionally, the Company will elect to recognize the effect of pre-vesting forfeitures as they actually occur rather than estimating forfeitures each period. Any differential between the amount of compensation cost previously recorded and the amount that would have been recorded without assuming forfeitures will be recognized on a modified retrospective basis through a cumulative-effect adjustment to the beginning balance of our accumulated deficit.

In February 2016, the FASB issued an update to the existing guidance under *Leases* topic of the Codification. Under the new guidance, lessees will be required to recognize the following for all leases, with the exception of short-term leases, at the commencement date: (1) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis; and (2) a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. This update requires a modified retrospective transition as of the beginning of the earliest comparative period presented in the financial statements. This update is effective for public companies for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted. We are currently evaluating the impact of this guidance on our financial statements.

In July 2015, the FASB issued an update to the existing guidance under the *Inventory* topic of the Codification. This update changes the subsequent measurement of inventory from lower of cost or market to lower of cost and net realizable value. This guidance is effective for interim and annual reporting periods beginning after December 15, 2016. Early adoption of this guidance is permitted as of the beginning of an interim or annual reporting period. This guidance requires prospective application. We do not expect the adoption of this guidance to have an impact on our financial statements.

In August 2014, the FASB issued an update to the existing guidance under the *Presentation of Financial Statements* topic of the Codification. This update requires management to perform interim and annual assessments on whether there are conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year of the date the financial statements are issued and to provide related disclosures, if required. This new guidance is effective for the annual period ending after December 15, 2016, and for annual and interim periods thereafter. As such, the Company adopted this guidance for the annual reporting period ending December 31, 2016. The adoption of this guidance did not have an impact on our financial statements.

In May 2014, the FASB issued an update to the existing guidance under the *Revenue Recognition* topic of the Codification which is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This new guidance was originally effective for annual reporting periods beginning after December 15, 2016. However, in July 2015 the FASB approved an optional one year deferral of the effective date to annual reporting periods beginning after December 15, 2017. Early adoption is permitted; however, this guidance cannot be adopted earlier than the original effective date. The Company does not intend to adopt this guidance early, therefore it will be effective for us beginning on January 1, 2018. This guidance allows either full retrospective or modified retrospective methods of adoption. Subsequent to issuance of the original update the FASB issued several updates amending this new guidance. In April 2016, the FASB issued an update clarifying issues related to identifying performance obligations and licensing. In May 2016, the FASB issued an update regarding the assessment of collectability criteria, presentation of sales taxes, measurement of noncash consideration and transition guidance for completed contracts and contract modifications. While we are still evaluating the impact of these updates on our financial statements, we anticipate this guidance will primarily impact our contracts with service elements and certain classifications within the statement of operations.

### **3. Acquisitions**

On June 30, 2014 the Company acquired certain assets and the operations of Slone Lumber Company, Inc. (“Slone”) for \$8.7 million in cash (including certain adjustments). Based in Houston, Texas, Slone is a full-line building materials supplier. Slone’s product offerings include lumber, engineered beams, interior and exterior door units, moulding, trim, and cabinets. Slone also offers installation services on exterior doors, shutters, and cabinets.

On July 31, 2014 the Company acquired certain assets and the operations of West Orange Lumber Company, Inc. (“West Orange”) for \$9.8 million in cash (including certain adjustments). Based in Groveland, Florida, West Orange supplies lumber, roof and floor trusses, custom windows and doors, as well as installation services, to both residential homebuilders and commercial contractors in central Florida.

On August 6, 2014 the Company acquired certain assets and the operations of Truss Rite, LLC (“Truss Rite”) for \$14.6 million in cash (including certain adjustments). Based in Sherman, Texas Truss Rite primarily manufactures wood roof and floor trusses for large multi-family and commercial projects throughout Texas and parts of Oklahoma. Truss Rite predominately serves developers and general contractors in the multi-family residential housing sector.

On October 1, 2014 the Company acquired certain assets and the operations of Trim Tech of Austin, Inc. (“Trim Tech”) for \$19.4 million in cash (including certain adjustments). Trim Tech is based in Hutto, Texas, which is approximately 30 miles north of downtown Austin. Trim Tech is a turn-key supplier of custom cabinets, interior and exterior doors, stair parts, and custom millwork and molding.

On December 22, 2014 the Company acquired certain assets and the operations of Empire Truss, Ltd. (“Empire”) for \$16.8 million in cash (including certain adjustments). Empire is a Texas-based manufacturer of custom designed roof trusses and floor trusses, and a distributor of engineered wood products with its primary operations located in Huntsville, Texas, approximately 65 miles north of downtown Houston. Empire’s primary focus is on multi-family and light commercial customers.

On February 9, 2015, the Company acquired certain assets and the operations of Timber Tech Texas, Inc. and its affiliates (“Timber Tech”) for \$5.8 million in cash (including certain adjustments). Timber Tech is based in Cibolo, Texas, which is approximately 25 miles northeast of downtown San Antonio. Timber Tech is a manufacturer of roof trusses, floor trusses, wall panels and sub-components, as well as a supplier of glue laminated timber and veneer lumber beams.

On July 31, 2015, the Company acquired all of the operating affiliates of ProBuild through the purchase of all issued and outstanding equity interests in ProBuild for \$1.63 billion in cash, subject to certain adjustments. The purchase price was funded by the net proceeds received from the financing transactions described in Note 8. Previously headquartered in Denver, Colorado, ProBuild is one of the nation’s largest professional building materials suppliers. As a result of the ProBuild acquisition, the Company has a greater diversification of products and services and a significantly improved geographic footprint.

These acquisitions were accounted for by the acquisition method, and accordingly the results of operations were included in the Company’s consolidated financial statements from the acquisition date. The purchase price was allocated to the assets acquired based on estimated fair values at the acquisition date, with the excess of purchase price over the estimated fair value of the net assets acquired recorded as goodwill. The fair value of acquired intangible assets of \$184.5 million, primarily related to tradenames, customer relationships and lease contract intangibles, was estimated by applying an income approach. That measure is based on significant Level 3 inputs not observable in the market. Key assumptions developed based on the Company’s historical experience, future projections and comparable market data include future cash flows, long-term growth rates, royalty rates, attrition rates and discount rates.

We incurred acquisition related costs of \$20.9 million and \$0.6 million related to these acquisitions during the years ended December 31, 2015 and 2014, respectively. These costs include due diligence costs and transaction costs to complete the acquisitions, and have been recognized in selling, general and administrative expense in the accompanying condensed consolidated statements of operations and comprehensive income (loss). We did not incur any acquisition costs related to these acquisitions during the year ended December 31, 2016.

The following table summarizes the aggregate fair values of the assets acquired and liabilities assumed for ProBuild and all other acquisitions, net of cash (in thousands) for the year ended:

	2015		2014
	ProBuild	All Other	All Other
Accounts receivable	\$ 470,105	\$ 306	\$ 9,544
Other receivables	34,718	—	—
Inventory	411,160	1,095	5,417
Other current assets	12,101	—	—
Property, plant and equipment	658,540	3,961	8,580
Assets held for sale	10,911	—	—
Goodwill (Note 5)	602,690	(2,839)	28,581
Intangible assets (Note 6)	184,509	3,311	17,467
Other assets	2,016	—	34
Total assets acquired	2,386,750	5,834	69,623
Checks outstanding	(32,378)	—	—
Current maturities of long term debt and lease obligations	(25,456)	—	—
Accounts payable	(339,673)	—	—
Accrued liabilities	(210,436)	(37)	(286)
Other long-term liabilities	(53,703)	—	—
Long-term debt and lease obligations, net of current maturities	(262,390)	—	—
Total liabilities assumed	(924,036)	(37)	(286)
Total net assets acquired	\$ 1,462,714	\$ 5,797	\$ 69,337

All of the goodwill and intangible assets recognized from the ProBuild and all other acquisitions are expected to be deductible for tax purposes, with the goodwill recognized from these acquisitions being amortized ratably over a 15 year period. The ProBuild acquisition was treated as an asset purchase for tax purposes.

The operating results of the acquisitions have been included in the consolidated statements of operations and comprehensive income (loss) from their acquisition dates through December 31, 2016. Net sales and net income attributable to ProBuild were approximately \$4,520 million and \$190 million, respectively for the year ended December 31, 2016. Net sales and net income attributable to ProBuild were approximately \$1,860 million and \$50 million, respectively, for the period of August 1, 2015 through December 31, 2015. Net income attributable to ProBuild does not include an allocation of the additional interest expense incurred by the Company as a result of the ProBuild acquisition financing transactions. Net sales and net income attributable to the other acquisitions are not material, individually or in the aggregate.

The following table reflects the pro forma operating results for the Company which gives effect to the acquisition of ProBuild as if it had occurred on January 1, 2014. The pro forma results are based on assumptions that the Company believes are reasonable under the circumstances. The pro forma results are not necessarily indicative of future results. The pro forma financial information includes the historical results of the Company and ProBuild adjusted for certain items, which are described below, and does not include the effects of any synergies or cost reduction initiatives related to the acquisition of ProBuild. Pro forma information for the other acquisitions is not presented as it is not material, individually or in the aggregate.

	Year Ended December 31,	
	2015	2014
	(pro forma)	
	(in thousands, except per share amounts)	
Net sales	\$ 6,066,792	\$ 6,082,819
Net loss	\$ (10,433)	\$ (127,880)
Basic net loss per share	\$ (0.10)	\$ (1.19)
Diluted net loss per share	\$ (0.10)	\$ (1.19)

Pro forma net loss for the years ended December 31, 2015 and 2014 reflects adjustments primarily related to depreciation and amortization, the conversion from last-in, first-out to first-in, first out inventory valuation, and interest expense. Pro forma net loss for 2015 was adjusted to exclude transaction-related expenses of \$46.9 million (\$34.6 million incurred by the Company and \$12.3 million incurred by ProBuild). Pro forma net loss for 2014 was adjusted to include these transaction-related expenses.

### ***Alaska Truss Acquisition***

On May 13, 2016, the Company acquired certain assets and the operations of Alaska Truss Manufacturing, LLC and ATM, LLC (collectively “Alaska Truss”) for cash of \$4.0 million and \$1.0 million of other consideration, subject to certain adjustments. Of the total consideration, \$3.4 million was allocated to tangible assets acquired, primarily property, plant and equipment, \$0.8 million was allocated to intangible assets and \$0.8 million was allocated to goodwill.

Based in Chugiak, Alaska, Alaska Truss supplies roof trusses to both residential and commercial contractors throughout the greater Anchorage area. Acquisition costs related to Alaska Truss were not material in the year ended December 31, 2016. Pro forma results of operations are not presented as this acquisition is not material.

### **4. Property, Plant and Equipment**

Property, plant and equipment consisted of the following at December 31:

	<u>2016</u>		<u>2015</u>
	<u>(In thousands)</u>		
Land	\$ 195,064	\$	214,302
Buildings and improvements	331,498		338,566
Machinery and equipment	329,529		314,446
Furniture and fixtures	56,571		47,456
Construction in progress	12,771		7,828
Property, plant and equipment	925,433		922,598
Less: accumulated depreciation	269,332		188,269
Property, plant and equipment, net	<u>\$ 656,101</u>	<u>\$</u>	<u>734,329</u>

Depreciation expense was \$87.2 million, \$46.3 million and \$8.5 million, of which \$9.5 million, \$5.3 million and \$2.5 million was included in cost of sales, in 2016, 2015, and 2014, respectively.

Included in property, plant and equipment are certain assets held under capital leases and lease finance obligations. These assets are recorded at the present value of minimum lease payments and include land, buildings and equipment. Amortization charges associated with assets held under capital leases and lease finance obligations are included in depreciation expense. The following balances held under capital lease and lease finance obligations, net of accumulated amortization of \$9.2 million and \$4.9 million at December 31, 2016 and 2015, respectively, are included on the accompanying combined balance sheet:

	<u>2016</u>		<u>2015</u>
	<u>(In thousands)</u>		
Land	\$ 119,287	\$	124,987
Buildings and improvements	151,862		183,390
Machinery and equipment	11,012		14,168
	<u>\$ 282,161</u>	<u>\$</u>	<u>322,545</u>



## 5. Goodwill

The following table sets forth the changes in the carrying amount of goodwill by reportable segment for the years ended December 31, 2016 and 2015 (in thousands):

	Northeast	Southeast	South	West	Total
Balance as of January 1, 2015					
Goodwill	\$ 13,609	\$ 49,591	\$ 121,210	\$ —	\$ 184,410
Accumulated impairment losses	(494)	(615)	(43,527)	—	(44,636)
	13,115	48,976	77,683	—	139,774
Acquisitions and other purchase price adjustments	83,493	11,100	208,452	296,806	599,851
Balance as of December 31, 2015					
Goodwill	\$ 97,102	\$ 60,691	\$ 329,662	\$ 296,806	\$ 784,261
Accumulated impairment losses	(494)	(615)	(43,527)	—	(44,636)
	96,608	60,076	286,135	296,806	739,625
Acquisitions and other purchase price adjustments	—	—	—	786	786
Balance as of December 31, 2016					
Goodwill	\$ 97,102	\$ 60,691	\$ 329,662	\$ 297,592	\$ 785,047
Accumulated impairment losses	(494)	(615)	(43,527)	—	(44,636)
	<u>\$ 96,608</u>	<u>\$ 60,076</u>	<u>\$ 286,135</u>	<u>\$ 297,592</u>	<u>\$ 740,411</u>

In 2016, the change in the carrying amount of goodwill is attributable to our acquisition of Alaska Truss. In 2015, the change in the carrying amount of goodwill is attributable to our acquisitions of ProBuild and Timber Tech. The amount allocated to goodwill is attributable to the assembled workforce of the acquired companies as well as the diversification of products and services, the significantly improved geographic footprint, and the synergies expected to arise as a result of these acquisitions.

We closely monitor trends in economic factors and their effects on operating results to determine if an impairment trigger was present that would warrant a reassessment of the recoverability of the carrying amount of goodwill prior to the required annual impairment test in accordance with the *Intangibles – Goodwill and Other* topic of the Codification.

The process of evaluating goodwill for impairment involves the determination of fair value of our reporting units. Inherent in such fair value determinations are certain judgments and estimates relating to future cash flows, including our interpretation of current economic indicators and market valuations and assumptions about our strategic plans with regard to our operations. Due to the uncertainties associated with such estimates, actual results could differ from such estimates resulting in further impairment of goodwill.

In performing our impairment analysis, we developed a range of fair values for our reporting units using a discounted cash flow methodology. The discounted cash flow methodology establishes fair value by estimating the present value of the projected future cash flows to be generated from the reporting unit. The discount rate applied to the projected future cash flows to arrive at the present value is intended to reflect all risks of ownership and the associated risks of realizing the stream of projected future cash flows. The discounted cash flow methodology uses our projections of financial performance for a five-year period. The most significant assumptions used in the discounted cash flow methodology are the discount rate, the terminal value and the expected future revenues, gross margins and operating expenses, which vary among reporting units. Significant assumptions used in our financial projections include housing starts, lumber commodity prices, and market share gains.

We recorded no goodwill impairment charges in 2016, 2015, and 2014.

## 6. Intangible Assets

The following table presents intangible assets as of December 31:

	2016		2015	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
	(In thousands)			
Customer relationships	\$ 149,046	\$ (33,023)	\$ 148,910	\$ (12,968)
Non-compete agreements	1,379	(375)	766	(170)
Trade names	51,361	(13,286)	51,361	(4,155)
Favorable lease intangibles	6,408	(2,137)	6,408	(548)
Total intangible assets	<u>\$ 208,194</u>	<u>\$ (48,821)</u>	<u>\$ 207,445</u>	<u>\$ (17,841)</u>
Unfavorable lease obligations (included in Accrued liabilities and Other long-term liabilities)	<u>\$ (19,597)</u>	<u>\$ 8,746</u>	<u>\$ (19,547)</u>	<u>\$ 2,072</u>

In connection with the acquisition of ProBuild, we recorded intangible assets of \$184.5 million, which includes \$50.1 million of trade names, \$128.0 million of customer relationships and \$6.4 million of favorable lease intangibles. We also recorded \$19.5 million of unfavorable lease obligations. The weighted average useful lives of the acquired assets are 9.7 years for trade names, 13.5 years for customer relationships, and 10.0 years for both the favorable and unfavorable lease intangibles.

During the years ended December 31, 2016, 2015, and 2014, we recorded amortization expense in relation to the above-listed intangible assets of \$22.6 million, \$11.9 million, and \$1.1 million, respectively. In addition, as a result of the facility closure activities following the ProBuild acquisition, we recorded impairment charges of \$1.7 million and \$1.4 million against our intangible assets during the years ended December 31, 2016 and 2015, respectively. We recognized these impairment charges in selling, general, and administrative expense in the accompanying consolidated statement of operations and comprehensive income (loss). The following table presents the estimated amortization expense for these intangible assets for the years ending December 31 (in thousands):

2017	\$ 21,869
2018	18,651
2019	17,748
2020	14,817
2021	11,935
Thereafter	63,502
Total future net intangible amortization expense	<u>\$ 148,522</u>

## 7. Accrued Liabilities

Accrued liabilities consisted of the following at December 31:

	2016		2015	
	(In thousands)			
Accrued payroll and other employee related expenses	\$ 127,485	\$ 120,138		
Accrued business taxes	30,177	29,054		
Self-insurance reserves	36,817	44,085		
Accrued interest	28,570	33,712		
Facility closure reserves	3,910	5,228		
Customer obligations	38,448	38,173		
Unfavorable lease obligations (Note 6)	4,921	5,096		
Other	22,787	18,419		
Total accrued liabilities	<u>\$ 293,115</u>	<u>\$ 293,905</u>		

## 8. Long-Term Debt

Long-term debt and lease obligations consisted of the following (in thousands):

	December 31, 2016	December 31, 2015
2021 notes	\$ —	\$ 350,000
2023 notes	367,608	700,000
2024 notes	750,000	—
2015 facility	—	60,000
2015 term loan	467,650	598,625
Lease finance obligations	238,539	280,909
Capital lease obligations (Note 9)	7,427	8,159
	<u>1,831,224</u>	<u>1,997,693</u>
Unamortized debt discount and debt issuance costs	(29,172)	(46,022)
	<u>1,802,052</u>	<u>1,951,671</u>
Less: current maturities of long-term debt and lease obligations	16,217	29,153
Long-term debt and lease obligations, net of current maturities	<u>\$ 1,785,835</u>	<u>\$ 1,922,518</u>

### *ProBuild Acquisition Financing*

As described in Note 3, we acquired all of the operating affiliates of ProBuild on July 31, 2015 through the purchase of all issued and outstanding equity interests of ProBuild for \$1.63 billion in cash, subject to certain adjustments. The purchase price was funded with the net cash proceeds from (i) the sale of \$700.0 million in aggregate principal amount of 10.75% senior unsecured notes due 2023 (the “2023 notes”), (ii) entry into a \$600.0 million term loan credit agreement (the “2015 term loan”) provided by a syndicate of financial institutions led by Deutsche Bank AG, New York Branch, as administrative and collateral agent, (iii) a \$295.0 million draw on an amended and restated \$800.0 million senior secured revolving credit facility (the “2015 facility”) provided by a syndicate of financial institutions led by SunTrust Bank as administrative and collateral agent, and (iv) a public offering of 9.2 million new shares of our common stock at an offering price of \$12.80 per share (the “equity offering”).

In connection with the financing transactions described above, we incurred approximately \$65.0 million of various third-party fees and expenses. Of these costs, \$18.1 million were allocated to the 2023 notes, \$16.0 million were allocated to the 2015 term loan, \$11.2 million were allocated to the 2015 facility and \$6.5 million were allocated to the equity offering. The costs allocated to the 2023 notes and the 2015 term loan were recorded as reductions to long-term debt and are being amortized over their respective terms using the effective interest method. The costs allocated to the 2015 facility were recorded as other assets and are being amortized over its term on a straight-line basis. The costs allocated to the equity offering were recorded as a reduction to additional paid-in capital. In addition, \$13.2 million in costs relate to commitment fees paid for bridge and backstop financing facilities entered into in connection with these financing transactions, neither of which was utilized. As such, these fees were recorded as interest expense in the third quarter of 2015. At the closing of these transactions, there were approximately \$3.0 million in unamortized debt issuance costs associated with our previous revolving credit facility, of which approximately \$0.9 million were recorded as interest expense in the third quarter of 2015. The remaining \$2.1 million in unamortized costs associated with our previous revolving credit facility are being amortized over the term of the 2015 facility.

### *2016 Debt Transactions*

During the year ended December 31, 2016, the Company executed several debt transactions which are described in more detail below. These transactions include two debt exchanges, complete extinguishment of our 7.625% senior secured notes due 2021 (the “2021 notes”), repricing and partially repaying our 2015 term loan and a cash tender offer in which we further reduced the aggregate principal amount of outstanding 2023 notes. These transactions have extended our debt maturity profile and reduced our annual cash interest on a go forward basis.

### *Note Exchange Transactions*

On February 12, 2016, we completed separate privately negotiated note exchange transactions in which \$218.6 million in aggregate principal amount of our 2023 notes was exchanged for \$207.6 million in aggregate principal amount of our previously outstanding 2021 notes. On February 29, 2016, we completed additional separate privately negotiated note exchange transactions in which \$63.8 million in aggregate principal amount of our 2023 notes was exchanged for \$60.0 million in aggregate principal amount of our previously outstanding 2021 notes.

The note exchange transactions were considered to be debt extinguishments. As such, we recognized a net gain of \$7.8 million which was recorded as an offset to interest expense in the accompanying consolidated statements of operations and comprehensive income (loss) for the year ended December 31, 2016. Of this \$7.8 million gain, \$14.8 million was attributable to the reduction in outstanding principal which was partially offset by the write-off of \$7.0 million of unamortized debt issuance costs as associated with the 2023 notes which were extinguished in the exchange transactions.

In connection with issuance of the 2021 notes in the exchange transactions, we incurred \$4.9 million of various third-party fees and expenses. These costs were previously recorded as a reduction to long-term debt and were subsequently written off to interest expense in the third quarter of 2016 in connection with the extinguishment of the 2021 notes as described in the “2016 Refinancing Transactions” section below.

#### ***Note Redemption Transaction***

In May 2016, the Company exercised its contractual right to redeem \$35.0 million in aggregate principal amount of 2021 notes at a price of 103.0%, plus accrued and unpaid interest. The redemption transaction was considered to be a debt extinguishment. As such, we recognized a loss of \$1.7 million which was recorded as a component of interest expense in the accompanying consolidated statements of operations and comprehensive income (loss) for the year ended December 31, 2016. Of this \$1.7 million loss, \$1.1 million was attributable to the payment of the redemption premium and \$0.6 million was attributable to the write-off of unamortized debt issuance costs associated with the redeemed notes.

#### ***2016 Refinancing Transactions***

In August 2016, we completed a private offering of \$750.0 million in aggregate principal amount of 5.625% senior secured notes due 2024 (“2024 notes”) at an issue price equal to 100% of their face value. At the same time the Company also repriced its 2015 term loan. This repricing lowered the applicable margin to 3.75% in the case of Eurodollar loans and 2.75% in the case of base rate loans. This reduction represents a 1.25% decrease in the applicable margin for both Eurodollar and base rate loans. In connection with the repricing, the mandatory quarterly principal repayments were reduced from \$1.375 million to \$1.175 million. All other material terms of the 2015 term loan remain unchanged.

The proceeds from the issuance of the 2024 notes were used, together with cash on hand and borrowings on the 2015 facility, to fully redeem the \$582.6 million in aggregate outstanding principal amount of 2021 notes, to pay down \$125.9 million of the 2015 term loan and to pay related transaction fees and expenses.

The redemption of the 2021 notes was considered to be a debt extinguishment. As such, we recognized a loss of \$43.9 million which was recorded as a component of interest expense in the accompanying consolidated statements of operations and comprehensive income (loss) for the year ended December 31, 2016. Of this \$43.9 million loss, \$33.3 million was attributable to the payment of the redemption premium and \$10.6 million was attributable to the write-off of unamortized debt issuance costs associated with the redeemed notes. In addition, in connection with the repricing and pay down of the 2015 term loan we recognized \$8.2 million in interest expense in the third quarter of 2016 related to the write-off of unamortized debt discount and debt issuance costs.

In connection with the issuance of the 2024 notes and the 2015 term loan repricing, we incurred approximately \$12.0 million of various third-party fees and expenses. Of these costs \$10.5 million were allocated to the 2024 notes and have been recorded as a reduction to long-term debt. These costs are being amortized over the contractual life of the 2024 notes using the effective interest method. The remaining \$1.5 million in costs incurred were allocated to the 2015 term loan. Of this \$1.5 million, \$1.2 million was recorded to interest expense in the third quarter of 2016. The remaining \$0.3 million of new third-party costs together with \$10.9 million in remaining unamortized debt discount and debt issuance costs have been recorded as a reduction of long-term debt and are being amortized over the remaining contractual life of the 2015 term loan using the effective interest method.

#### ***Tender Offer***

In October 2016, we purchased \$50.0 million in aggregate principal amount of our 2023 notes pursuant to the terms of a cash tender offer at a price of 117.0% of par value plus accrued and unpaid interest. The purchase of the 2023 notes was funded with cash on hand and borrowings under our 2015 facility.

The tender offer transaction was considered to be a debt extinguishment. As such, we recognized a loss on extinguishment of \$9.7 million which was recorded as a component of interest expense in the accompanying consolidated statements of operations and comprehensive income (loss) for the year ended December 31, 2016. Of this loss, approximately \$8.5 million was attributable to the purchase premium paid to the lenders and \$1.2 million was attributable to the write-off of unamortized debt issuance costs associated with the redeemed notes. In addition to the loss described above, we incurred approximately \$0.1 million in third party costs which were recorded to selling, general, and administrative expense in the fourth quarter of 2016.

### ***Senior Unsecured Notes due 2023***

As of December 31, 2016, we have \$367.6 million outstanding in aggregate principal amount of the 2023 notes that mature on August 15, 2023. The 2023 notes were sold in a private offering at an issue price equal to 100% of their face value. Interest accrues on the 2023 notes at a rate of 10.75% per annum and is payable semi-annually on March 1 and September 1 of each year, commencing on March 1, 2016.

The terms of the notes are governed by an indenture and a supplemental indenture, each dated as of July 31, 2015, among the Company, the guarantors named therein and Wilmington Trust, National Association, as trustee (the "trustee"). Pursuant to the indenture and supplemental indenture, the company's significant operating subsidiaries serve as guarantors of the 2023 notes. The 2023 notes are the Company's senior unsecured obligations and will rank equally with all of its existing and future senior unsecured debt and will be senior to all of its existing and future subordinated debt.

The indenture contains certain restrictive covenants, which among other things, limit the ability of the Company to incur additional debt, issue preferred stock, create liens, pay dividends, make certain investments, sell certain assets, enter into certain types of transactions with affiliates, and effect mergers and consolidations. At any time prior to August 15, 2018, the Company may redeem the 2023 notes in whole or in part at a redemption price equal to 100% of the principal amount of the 2023 notes plus a premium as specified in the indenture. At any time on or after August 15, 2018, the Company may redeem the 2023 notes at the redemption prices set forth in the indenture plus accrued and unpaid interest. In addition, the Company may redeem up to 40% of the aggregate principal amount of the 2023 notes with the net cash proceeds of one or more equity offerings, as described in the indenture, at a price equal to 110.75% of the principal amount thereof, plus accrued and unpaid interest. In the event of a change in control, we may be required to repurchase all or part of the 2023 notes at a price equal to 101% of the principal amount thereof, plus accrued and unpaid interest.

### ***2015 Term Loan Credit Agreement***

As of December 31, 2016, we have \$467.7 million outstanding under the 2015 term loan, which matures on July 31, 2022. The 2015 term loan, which was issued at 99%, bears interest, at our option, at either a eurodollar rate or a base rate, plus, in each case an applicable margin. The margin will be 3.75% per annum in the case of eurodollar rate loans and 2.75% per annum in the case of base rate loans. The 2015 term loan has mandatory principal repayments of \$1.175 million which are payable in March, June, September, and December of each year provided that each such payment is subject to reduction as a result of certain prepayments of the loans in accordance with the loan documentation. The weighted average interest rate of the term loan was 5.6% during the year ended December 31, 2016.

### ***2015 Senior Secured Revolving Credit Facility***

The 2015 facility provides for an \$800.0 million revolving credit line to be used for working capital and general corporate purposes. The available borrowing capacity, or borrowing base, is derived from a percentage of the Company's eligible receivables and inventory, as defined by the agreement, subject to certain reserves. As of December 31, 2016, the net borrowing availability under the 2015 facility is \$667.2 million after being reduced by outstanding letters of credit of \$84.8 million. During the year ended December 31, 2016, we borrowed \$907.0 million and repaid \$967.0 million at a weighted average interest rate of 2.5%. There were no outstanding borrowings under the 2015 facility as of December 31, 2016. The 2015 facility matures on July 31, 2020.

Borrowings under the 2015 facility bear interest, at our option, at either a eurodollar rate or a base rate, plus, in each case an applicable margin. The applicable margin ranges from 1.25% to 1.75% per annum in the case of eurodollar rate loans and 0.25% to 0.75% per annum in the case of base rate loans. The margin in either case is based on a measure of availability under the 2015 facility. A variable commitment fee, currently 0.375% per annum, is charged on the unused amount of the revolver based on quarterly average loan utilization. Letters of credit under the 2015 facility are assessed at a rate equal to the applicable eurodollar margin, currently 1.5%, as well as a fronting fee at a rate of 0.125% per annum. These fees are payable quarterly in arrears at the end of March, June, September, and December.

All obligations under the 2015 term loan and 2015 facility will be guaranteed jointly and severally by the Company and all other subsidiaries that guarantee the 2024 notes. All obligations and the guarantees of those obligations will be secured by substantially all of the assets of the Company and the guarantors subject to certain exceptions and permitted liens, including (i) with respect to the 2015 term loan, a first-priority security interest in such assets that constitute Notes Collateral (as defined below) and a second priority security interest in such assets that constitute ABL Collateral (as defined below), and (ii) with respect to the 2015 facility, a first-priority security interest in such assets that constitute ABL Collateral and a second-priority security interest in such assets that constitute Notes Collateral.

“ABL Collateral” includes substantially all presently owned and after-acquired accounts receivable, inventory, rights of unpaid vendors with respect to inventory, deposit accounts, commodity accounts, securities accounts and lock boxes, investment property, cash and cash equivalents, and general intangibles, books and records, supporting obligations and documents and related letters of credit, commercial tort claims or other claims related to and proceeds of each of the foregoing. “Notes Collateral” includes all collateral which is not ABL collateral.

The 2015 term loan and the 2015 facility contain restrictive covenants which, among other things, limit the Company’s ability to incur additional indebtedness, incur liens, engage in mergers or other fundamental changes, sell certain assets, pay dividends, make acquisitions or investments, prepay certain indebtedness, change the nature of our business, and engage in certain transactions with affiliates. In addition, the 2015 facility also contains a financial covenant requiring the satisfaction of a minimum fixed charge ratio of 1.00 to 1.00 in the event that the Company does not meet a minimum measure of availability, currently the larger of \$80.0 million or 10% of the maximum borrowing amount under the 2015 facility.

#### ***Senior Secured Notes due 2024***

As of December 31, 2016 we have \$750.0 million outstanding in aggregate principal amount of the 2024 notes which mature on September 1, 2024. Interest accrues on the 2024 notes at a rate of 5.625% per annum and is payable semi-annually on March 1 and September 1 of each year, commencing on March 1, 2017.

The terms of the 2024 notes are governed by the indenture, dated as of August 22, 2016 (the “Indenture”), among the Company, the guarantors named therein (the “Guarantors”) and Wilmington Trust, National Association, as trustee (the “Trustee”) and notes collateral agent (the “Notes Collateral Agent”). The 2024 notes, subject to certain exceptions, are guaranteed, jointly and severally, on a senior secured basis, by certain of our direct and indirect wholly owned subsidiaries. All obligations under the 2024 notes, and the guarantees of those obligations, are secured by substantially all of the assets of the Company and the Guarantors subject to certain exceptions and permitted liens, including a first-priority security interest in such assets that constitute Notes Collateral (as defined above) and a second-priority security interest in such assets that constitute ABL Collateral (as defined above).

The Notes Collateral Agent became a party to the ABL/Bond Intercreditor Agreement, dated as of May 29, 2013, among SunTrust Bank, as agent under the Company’s 2015 facility, the Wilmington Trust, National Association, the Company and the Guarantors, and the Pari Passu Intercreditor Agreement, dated as of July 31, 2015, among Deutsche Bank AG New York Branch, as term collateral agent under the Company’s 2015 term loan, Wilmington Trust, National Association, the Company and the Guarantors. These documents govern all arrangements in respect of the priority of the security interests in the ABL Collateral and the Notes Collateral among the parties to the Indenture, the 2015 facility and the 2015 term loan. The 2024 notes constitute senior secured obligations of the Company and Guarantors, rank senior in right of payment to all future debt of the Company and Guarantors that is expressly subordinated in right of payment to the 2024 notes, and rank equally in right of payment with all existing and future liabilities of the Company and Guarantors that are not so subordinated, including the 2015 facility.

The Indenture contains restrictive covenants that limit the ability of the Company and its restricted subsidiaries to, among other things, incur additional debt or issue preferred stock; create liens; create restrictions on the Company’s subsidiaries’ ability to make payments to the Company; pay dividends and make other distributions in respect of the Company’s and its subsidiaries’ capital stock; make certain investments or certain other restricted payments; guarantee indebtedness; designate unrestricted subsidiaries; sell certain kinds of assets; enter into certain types of transactions with affiliates; and effect mergers and consolidations.

At any time prior to September 1, 2019, the Company may redeem the 2024 notes in whole or in part at a redemption price equal to 100% of the principal amount of the 2024 notes plus the “applicable premium” set forth in the Indenture. At any time on or after September 1, 2019, the Company may redeem the 2024 notes at the redemption prices set forth in the Indenture, plus accrued and unpaid interest, if any, to the redemption date. At any time and from time to time during the 36-month period following August 22, 2016 (“the Closing Date”), the Company may redeem up to 10% of the aggregate principal amount of the 2024 notes during each twelve-month period commencing on the Closing Date at a redemption price of 103% of the aggregate principal amount thereof plus accrued and unpaid interest to the redemption date. In addition, at any time prior to September 1, 2019, the Company may redeem up to 40% of the aggregate principal amount of the 2024 notes with the net cash proceeds of one or more equity offerings, as described in the Indenture, at a price equal to 105.625% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date. If the Company experiences certain change of control events, holders of the 2024 notes may require it to repurchase all or part of their 2024 notes at 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the repurchase date.

As of December 31, 2016 we were not in violation of any covenants or restrictions imposed by any of our debt agreements.

Future maturities of long-term debt as of December 31, 2016 were as follows (in thousands):

Year ending December 31,		
2017	\$	4,700
2018		4,700
2019		4,700
2020		4,700
2021		4,700
Thereafter		1,561,758
Total long-term debt (including current maturities)	\$	<u>1,585,258</u>

### **Warrants**

Our previous term loan included detachable warrants that allowed for the purchase of up to 1.6 million shares of our common stock at a price of \$2.50 per share. In April 2015, the remaining 0.7 million of outstanding, detachable warrants were exercised. The warrants were considered to be derivative financial instruments and were classified as liabilities. As such, they were measured at fair value on a recurring basis. Our share price and, to a lesser extent, the historical volatility of our common stock were the primary factors in the changes to our fair value measurements related to the warrants. All other inputs being equal, an increase or decrease in our share price or volatility resulted in an increase or decrease in the fair value of our warrants and an increase or decrease in interest expense.

Non-cash fair value adjustments related to our derivative financial instrument recorded as interest expense in the consolidated statements of operations and comprehensive income (loss) for the years ended December 31 (in thousands) were as follows:

Derivative Not Designated as Hedging Instruments	Location of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Income		
		2016	2015	2014
Warrants	Interest expense, net	—	(4,563)	456

We used the income approach to value our warrants by using the Black-Scholes option-pricing model. Using this model, the risk-free interest rate was based on the U.S. Treasury yield curve in effect on the valuation date. The expected life was based on the period of time until the expiration of the warrants. Expected volatility was based on the historical volatility of our common stock over the most recent period equal to the expected life of the warrants. The expected dividend yield was based on our history of not paying regular dividends in the past.

These techniques incorporated Level 1 and Level 2 inputs. Significant inputs to the derivative valuation for the warrants were observable in the active markets and are classified as Level 2 in the hierarchy.

### ***Lease Finance Obligations***

As a result of the ProBuild acquisition, the Company is party to 150 individual property lease agreements with a single lessor as of December 31, 2016. These lease agreements have initial terms ranging from nine to fifteen years (expiring from 2016 through 2021) and renewal options in five-year increments providing for up to approximately 30-year remaining total lease terms. A related agreement between the lessor and the Company gives the Company the right to acquire a limited number of the leased facilities at fair market value. As a result of these purchase rights, the Company treats all of the properties that it leases from this lessor as a financing arrangement. The Company is also party to certain additional agreements with the same lessor which commit the Company to perform certain repair and maintenance obligations under the leases in a specified manner and timeframe.

In 2006, we completed construction on a new multi-purpose facility. Based on the evaluation of the construction project in accordance with the *Leases* topic of the Codification, we were deemed the owner of the facility during the construction period. Effectively, a sale and leaseback of the facility occurred when construction was completed and the lease term began. This transaction did not qualify for sale-leaseback accounting. As a result the Company treats the lease of this facility as a financing arrangement.

As of December 31, 2016, lease finance obligations consist of \$238.5 million, with cash payments of \$23.8 million for the year ended December 31, 2016. These lease finance obligations are included on the consolidated balance sheet as a component of long-term debt and lease obligations. The related assets are recorded as components of property, plant, and equipment on the consolidated balance sheet.

Future minimum commitments for lease finance obligations as of December 31, 2016 were as follows (in thousands):

Year ending December 31,		
2017	\$	19,009
2018		18,974
2019		18,975
2020		18,893
2021		18,230
Thereafter		262,481
Total	\$	<u>356,562</u>

### **9. Capital Lease Obligations**

The Company leases certain property and equipment under capital leases expiring through 2020. These leases require monthly payments of principal and interest, imputed at various interest rates. Future minimum lease payments as of December 31, 2016 are as follows (in thousands):

Years ending December 31,		
2017	\$	3,426
2018		2,045
2019		2,391
2020		89
Thereafter		—
Total minimum lease payments		<u>7,951</u>
Less: amount representing interest		(524)
Present value of net minimum payments		<u>7,427</u>
Less: current portion		(3,130)
Long-term capital lease obligations, net of current portion	\$	<u>4,297</u>



## **10 . Employee Stock-Based Compensation**

### ***2014 Incentive Plan***

Under our 2014 Incentive Plan (“2014 Plan”), the Company is authorized to grant awards in the form of incentive stock options, non-qualified stock options, restricted stock shares, restricted stock units, other common stock-based awards and cash-based awards. In May 2016, our shareholders approved an amendment to our 2014 Plan that increased the number of shares of common stock reserved for the grant of awards under the 2014 Plan from 5.0 million shares to 8.5 million shares, subject to adjustment as provided by the 2014 Plan. All 8.5 million shares under the Plan may be made subject to options, stock appreciation rights (“SARs”), or stock-based awards. Stock options and SARs granted under the 2014 Plan may not have a term exceeding 10 years from the date of grant. The 2014 Plan also provides that all awards will become fully vested and/or exercisable upon a change in control (as defined in the 2014 Plan) if those awards (i) are not assumed or equitably substituted by the surviving entity or (ii) have been assumed or equitably substituted by the surviving entity, and the grantee’s employment is terminated under certain circumstances. Other specific terms for awards granted under the 2014 Plan shall be determined by our Compensation Committee (or the board of directors if so determined by the board of directors). Awards granted under the 2014 Plan generally vest ratably over a three to four year period. As of December 31, 2016, 6.0 million shares were available for issuance under the 2014 Plan.

### ***2007 Incentive Plan***

Under our 2007 Incentive Plan (“2007 Plan”), the Company is authorized to grant awards in the form of incentive stock options, non-qualified stock options, restricted stock, other common stock-based awards and cash-based awards. In January 2010, our shareholders approved an amendment to our 2007 Plan which increased the number of shares of common stock that may be granted pursuant to awards under the 2007 Plan from 2.5 million shares to 7.0 million shares. The maximum number of common shares reserved for the grant of awards under the 2007 Plan is 7.0 million, subject to adjustment as provided by the 2007 Plan. No more than 7.0 million shares may be made subject to options or SARs granted under the 2007 Plan, and no more than 3.5 million shares may be made subject to stock-based awards other than options or SARs. Stock options and SARs granted under the 2007 Plan may not have a term exceeding 10 years from the date of grant. The 2007 Plan also provides that all awards will become fully vested and/or exercisable upon a change in control (as defined in the 2007 Plan). Other specific terms for awards granted under the 2007 Plan shall be determined by our Compensation Committee (or the board of directors if so determined by the board of directors). Historically, awards granted under the 2007 Plan generally vest ratably over a three to four-year period. As of December 31, 2016, 94,000 shares were available for issuance under the 2007 Plan, 94,000 of which may be made subject to stock-based awards other than options or SARs.

### ***2005 Equity Incentive Plan***

Under our 2005 Equity Incentive Plan (“2005 Plan”), we were authorized to grant stock-based awards in the form of incentive stock options, non-qualified stock options, restricted stock and other common stock-based awards. Stock options and SARs granted under the 2005 Plan could not have a term exceeding 10 years from the date of grant. The 2005 Plan also provided that all awards become fully vested and/or exercisable upon a change in control (as defined in the 2005 Plan). Historically, awards granted under the 2005 Plan generally vest ratably over a three-year period. As of June 27, 2015, no further grants will be made under the 2005 Plan.

### ***1998 Stock Incentive Plan***

Under the Builders FirstSource, Inc. 1998 Stock Incentive Plan (“1998 Plan”), we were authorized to issue shares of common stock pursuant to awards granted in various forms, including incentive stock options, non-qualified stock options and other stock-based awards. The 1998 Plan also authorized the sale of common stock on terms determined by our board of directors. Stock options granted under the 1998 Plan generally cliff vest after a period of seven to nine years with certain option grants subject to acceleration if certain financial targets were met. The expiration date is generally 10 years subsequent to date of issuance. As of January 1, 2005, no further grants will be made under the 1998 Plan.

### Stock Options

The following table summarizes our stock option activity:

	Options (In thousands)	Weighted Average Exercise Price	Weighted Average Remaining Years	Aggregate Intrinsic Value (In thousands)
Outstanding at December 31, 2015	4,998	\$ 5.19		
Granted	63	\$ 6.59		
Exercised	(1,496)	\$ 4.43		
Forfeited	(50)	\$ 7.49		
Outstanding at December 31, 2016	<u>3,515</u>	\$ 5.51	5.4	\$ 19,184
Exercisable at December 31, 2016	<u>2,489</u>	\$ 4.71	4.6	\$ 15,592

The outstanding options at December 31, 2016 include options to purchase 203,000 shares under the 2014 plan, 2,342,000 shares granted under the 2007 Plan, 554,000 shares granted under the 2005 Plan and 416,000 shares granted under the 1998 Plan. As of December 31, 2016, options to purchase 35,000 shares under the 2014 Plan, 1,759,000 shares under the 2007 Plan, 279,000 shares under the 2005 Plan and 416,000 shares under the 1998 Plan were exercisable. The weighted average grant date fair value of options granted during the years ended December 31, 2016, 2015 and 2014 were \$3.71, \$4.20 and \$5.71, respectively. The total intrinsic value of options exercised during the years ended December 31, 2016, 2015, and 2014 were \$11.6 million, \$12.8 million and \$2.0 million, respectively. We realized no excess tax benefits for stock options exercised during the years ended December 31, 2016, 2015 and 2014. Vesting of all of our stock options is contingent solely on continuous employment over the requisite service period.

Outstanding and exercisable stock options at December 31, 2016 were as follows (shares in thousands):

Range of Exercise Prices	Outstanding			Exercisable	
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Years	Shares	Weighted Average Exercise Price
\$3.15	416	\$ 3.15	6.1	416	\$ 3.15
\$3.19 - \$3.72	1,189	\$ 3.20	3.1	1,189	\$ 3.20
\$6.35 - \$6.70	286	\$ 6.50	6.3	117	\$ 6.60
\$7.15- \$7.67	1,624	\$ 7.63	6.7	767	\$ 7.59
\$3.15 - \$7.67	<u>3,515</u>	\$ 5.51	5.4	<u>2,489</u>	\$ 4.71

### Restricted Stock Shares

The following table summarizes restricted stock activity for the year ended December 31, 2016 (shares in thousands):

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2015	13	\$ 3.72
Granted	—	\$ —
Vested	(13)	\$ 3.72
Forfeited	—	\$ —
Nonvested at December 31, 2016	<u>—</u>	\$ —

### Restricted Stock Units

The outstanding restricted stock units (“RSUs”) at December 31, 2016 include 1,864,000 units granted under the 2014 Plan and 313,000 units granted under the 2007 Plan.

The following table summarizes activity for RSUs subject solely to service conditions for the year ended December 31, 2016 (shares in thousands):

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2015	1,516	\$ 7.49
Granted	705	\$ 10.68
Vested	(505)	\$ 7.69
Forfeited	(59)	\$ 8.14
Nonvested at December 31, 2016	<u>1,657</u>	<u>\$ 8.77</u>

The weighted average grant date fair value of RSUs for which vesting is subject solely to service conditions granted during the years ended December 31, 2016, 2015 and 2014 were \$10.68, \$7.26, and \$7.48, respectively.

The following table summarizes activity for RSUs subject to both performance and service conditions for the year ended December 31, 2016 (shares in thousands):

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2015	—	\$ —
Granted	265	\$ 10.96
Vested	—	\$ —
Forfeited	(5)	\$ 11.09
Nonvested at December 31, 2016	<u>260</u>	<u>\$ 10.95</u>

The weighted average grant date fair value of RSUs for which vesting is subject to both performance and service conditions granted during the year ended December 31, 2016 was \$10.96. There were no RSUs granted in 2015 or 2014 which were subject to both performance and service conditions.

The following table summarizes activity for RSUs subject to both market and service conditions for the year ended December 31, 2016 (shares in thousands):

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2015	—	\$ —
Granted	265	\$ 7.58
Vested	—	\$ —
Forfeited	(5)	\$ 7.72
Nonvested at December 31, 2016	<u>260</u>	<u>\$ 7.58</u>

The weighted average grant date fair value of RSUs for which vesting is subject to both market and service conditions granted during the year ended December 31, 2016 was \$7.58. There were no RSUs granted in 2015 or 2014 which were subject to both market and service conditions.

Our results of operations include stock compensation expense of \$10.5 million (\$6.3 million net of taxes), \$6.9 million (\$6.9 million net of taxes) and \$6.2 million (\$6.2 million net of taxes) for the years ended December 31, 2016, 2015 and 2014, respectively. The total fair value of options vested during the years ended December 31, 2016, 2015, and 2014 were \$2.8 million, \$2.7 million and \$3.0 million, respectively. The total fair value of restricted stock vested during the years ended December 31, 2016, 2015 and 2014 were \$49,600, \$49,600 and \$2.0 million, respectively. The total fair value of RSUs vested during the years ended December 31, 2016 and 2015 were \$3.9 million and \$3.7 million, respectively. There were no RSUs which vested in 2014.

As of December 31, 2016, there was \$14.1 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plans. That cost is expected to be recognized over a weighted-average period of 1.6 years.

## 11. Facility Closure Costs

When we close certain facilities, primarily related to location consolidation initiatives, we recognize expense related to the minimum future lease obligations over the remaining lease terms on closed facilities, net of estimated sub-rental income as well as employee severance costs. These expenses are recorded in selling, general, and administrative expense in the accompanying consolidated statement of operations and comprehensive income (loss).

An analysis of our facility closure reserves for the periods reflected is as follows:

	2014	Additions	Assumed in Acquisition	Payments	2015	Additions	Payments	2016
	(In thousands)							
Facility and other exit costs, net of estimated sub-lease rental income	\$ 1,147	\$ 2,836	\$ 12,494	\$ (3,942)	\$ 12,535	\$ 464	\$ (4,776)	\$ 8,223
Employee severance and termination benefits	—	1,434	—	(1,181)	253	117	(358)	12
<b>Total facility closure reserve</b>	<u>\$ 1,147</u>	<u>\$ 4,270</u>	<u>\$ 12,494</u>	<u>\$ (5,123)</u>	<u>\$ 12,788</u>	<u>\$ 581</u>	<u>\$ (5,134)</u>	<u>\$ 8,235</u>

The Company assumed \$12.5 million of exit cost reserves as part of the ProBuild acquisition during 2015. The facility and other exit cost reserves of \$8.2 million at December 31, 2016, of which \$4.3 million is recorded as other long-term liabilities, are primarily related to future minimum lease payments on vacated facilities.

As plans to close facilities are developed and executed, assets that can be used at other facilities are transferred and assets to be abandoned or sold are written down to their net realizable value, including any long-lived assets. In situations where multiple facilities serve the same market we may temporarily close, or idle, facilities with plans to reopen these facilities once demand returns to the market. In these situations, finite lived assets continue to be depreciated and assessed for impairment. Should conditions in our markets worsen, or recovery take significantly longer than forecasted, we may temporarily idle or permanently close additional facilities, at which time we may incur additional facility closure costs or asset impairment charges. Future non-cash impairment charges would have the effect of decreasing our earnings or increasing our losses in such period, but would not impact our current outstanding debt obligations or compliance with covenants contained in the related debt agreements. We continuously monitor economic conditions in all of our markets and changes in market conditions may warrant future closings or idling of facilities. In addition, as we continue the integration of ProBuild we may close or idle other facilities.

## 12. Income Taxes

The components of income tax expense (benefit) included in continuing operations were as follows for the years ended December 31:

	2016	2015	2014
	(In thousands)		
<b>Current:</b>			
Federal	\$ —	\$ —	\$ —
State	2,115	1,100	587
	<u>2,115</u>	<u>1,100</u>	<u>587</u>
<b>Deferred:</b>			
Federal	(110,720)	2,530	457
State	(14,067)	757	67
	<u>(124,787)</u>	<u>3,287</u>	<u>524</u>
<b>Income tax expense (benefit)</b>	<u>\$ (122,672)</u>	<u>\$ 4,387</u>	<u>\$ 1,111</u>

Temporary differences, which give rise to deferred tax assets and liabilities, were as follows as of December 31:

	2016	2015
	(In thousands)	
Deferred tax assets related to:		
Accrued expenses	\$ 13,100	\$ 6,786
Insurance reserves	15,128	7,156
Facility closure reserves	564	429
Stock-based compensation expense	7,429	7,284
Accounts receivable	5,023	1,358
Inventories	24,628	8,200
Operating loss and credit carryforwards	87,610	110,425
Goodwill and other intangible assets	—	9,176
Other	—	4,494
	<u>153,482</u>	<u>155,308</u>
Valuation allowance	(4,821)	(136,548)
Total deferred tax assets	<u>148,661</u>	<u>18,760</u>
Deferred tax liabilities related to:		
Prepaid expenses	(3,799)	(6,344)
Goodwill and other intangible assets	(15,956)	(11,502)
Property, plant and equipment	(13,058)	(10,381)
Other	(528)	—
Total deferred tax liabilities	<u>(33,341)</u>	<u>(28,227)</u>
Net deferred tax asset (liability)	<u>\$ 115,320</u>	<u>\$ (9,467)</u>

A reconciliation of the statutory federal income tax rate to our effective rate for continuing operations is provided below for the years ended December 31:

	2016	2015	2014
Statutory federal income tax rate	35.0%	35.0%	35.0%
State income taxes, net of federal income tax	6.1	8.3	5.2
Valuation allowance	(607.9)	(52.1)	(36.5)
Permanent difference – 162(m) limitation	0.6	(5.4)	0.7
Permanent difference – Warrant mark to market	—	(8.6)	(0.8)
Permanent difference – Other	(0.8)	(0.9)	2.0
Other	0.9	0.1	—
	<u>(566.1)%</u>	<u>(23.6)%</u>	<u>5.6%</u>

Section 382 of the Internal Revenue Code imposes annual limitations on the utilization of net operating loss (“NOL”) carryforwards, other tax carryforwards, and certain built-in losses upon an ownership change as defined under that section. In general terms, an ownership change may result from transactions that increase the aggregate ownership of certain stockholders in the Company’s stock by more than 50 percentage points over a three year testing period (“Section 382 Ownership Change”). If the Company were to experience a Section 382 Ownership Change, an annual limitation would be imposed on certain of the Company’s tax attributes, including NOL and capital loss carryforwards, and certain other losses, credits, deductions or tax basis.

At December 31, 2016 and 2015, the Company had deferred tax assets, net of deferred tax liabilities, of \$120.1 million and \$127.1 million, respectively, offset by valuation allowances of \$4.8 million and \$136.5 million, respectively. We have \$411.4 million of state net operating loss carry-forwards, which includes \$2.5 million of state tax credit carry-forwards expiring at various dates through 2036. We also have \$226.5 million of federal net operating loss carry-forwards that will expire at various dates through 2036. The federal and state net operating loss carry-forwards include approximately \$23.3 million of gross windfall tax benefits from stock option exercises that have not been recorded as of December 31, 2016. At December 31, 2016, the Company needed to generate approximately \$287.6 million of pre-tax income in future periods to realize its federal deferred tax assets.

We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. In accordance with the *Income Taxes* topic of the Codification, we assess whether it is more likely than not that some or all of our deferred tax assets will not be realized. Significant judgment is required in estimating valuation allowances for deferred tax assets and in making this determination, we consider all available positive and negative evidence. In the Company's evaluation of its ability to realize its deferred tax assets, we gave more significant weight to evidence that was objective in nature as compared to subjective evidence. Also, more significant weight was given to evidence that relates to the Company's current financial performance. The realization of a deferred tax asset ultimately depends on the existence of sufficient taxable income in the applicable carryback or carryforward periods. We consider the nature, frequency, and severity of current and cumulative losses, as well as historical and forecasted financial results, the overall business environment, our industry's historic cyclicity, the reversal of existing deferred tax liabilities, and tax planning strategies in our assessment. Changes in our estimates of future taxable income and tax planning strategies will affect our estimate of the realization of the tax benefits of these tax carryforwards.

We recorded a full valuation allowance in 2008 due to our cumulative three-year loss position at that time, compounded by the negative industry-wide business trends and outlook. At December 31, 2015, the Company had given significant weight to the negative objective evidence of the historically weak housing market conditions during the housing downturn that contributed to our three-year cumulative pre-tax loss position when reporting a valuation allowance of \$136.5 million against our deferred income tax assets, representing a valuation allowance against substantially all of our net deferred income tax assets.

In the second quarter of 2016, we moved from a cumulative loss position over the previous three years to a cumulative income position for the first time since we established the full valuation allowance in 2008. We continued to maintain a cumulative income position over the previous three years into the third quarter of 2016. In the Company's evaluation at September 30, 2016, we gave the most significant weight to this objective positive evidence related to its recent financial results. Additionally, even conservative projections of the Company's estimated future annual pre-tax income would indicate realization of all of its federal net operating losses well in advance of the expiration of the Company's NOL carryforwards and it would also absorb all federal deductible temporary differences as they reverse in future years. The Company considered, at a lower weighting, the subjective positive evidence that it expects to increase its pre-tax income in future years as the homebuilding industry continues to recover and strengthen as currently projected by a composite of third-party sources, including the NAHB. Therefore, at September 30, 2016, with this positive historical evidence and the projection of future profitability, management determined that there was sufficient positive evidence to conclude that it is more likely than not that we would realize our net federal and certain state deferred tax assets, resulting in a \$117.6 million and \$3.2 million benefit being recognized in our provision for income taxes for the third and fourth quarter of 2016, respectively.

Prior to the quarter ended June 30, 2016, the Company had given significant weight to the negative objective evidence of its three-year cumulative pre-tax loss position as a result of losses incurred in prior years during the housing downturn. As of June 30, 2016 and September 30, 2016, the Company had generated positive cumulative pre-tax income for the past three years and therefore, the prior year losses were weighted less than the recent positive financial results in the Company's evaluation at September 30, 2016. Other negative subjective evidence, such as the cyclical, slower-than-anticipated housing market recovery, was considered at a lower weighting because the Company's recent financial performance has been achieved in this environment.

As of December 31, 2016, we have certain states where we are not currently projecting future taxable income levels that would be sufficient to utilize the carryover net operating losses and as such continue to maintain a valuation allowance against certain of these state deferred tax assets. We will continue to assess quarterly whether it is more likely than not that some or all of these state deferred tax assets will be realizable in the future. Changes in the positive and negative evidence, including differences in the Company's future operating results as compared to the estimates utilized in the determination of the valuation allowance, could result in changes in the Company's estimate of the valuation allowance related to its tax benefits for state net operating loss carryforwards.

In 2016 we recorded a reduction to the valuation allowance of \$131.7 million against our net deferred tax assets as we released valuation allowances on our net deferred tax assets as noted above. In 2015, we recorded a valuation allowance of \$9.7 million related to our continuing operations. In 2014, we reduced our valuation allowance by \$7.2 million due to the utilization of net operating losses against federal and state taxable income.

We base our estimate of deferred tax assets and liabilities on current tax laws and rates. In certain cases, we also base our estimate on business plan forecasts and other expectations about future outcomes. Changes in existing tax laws or rates could affect our actual tax results, and future business results may affect the amount of our deferred tax liabilities or the valuation of our deferred tax assets over time. Due to uncertainties in the estimation process, particularly with respect to changes in facts and circumstances in future reporting periods, as well as the residential homebuilding industry's cyclicity and sensitivity to changes in economic conditions, it is possible that actual results could differ from the estimates used in previous analyses.

Accounting for deferred taxes is based upon estimates of future results. Differences between the anticipated and actual outcomes of these future results could have a material impact on our consolidated results of operations or financial position.

The following table shows the changes in our valuation allowance:

	2016	2015	2014
	(In thousands)		
Balance at January 1,	\$ 136,548	\$ 133,183	\$ 143,682
Additions charged to expense:			
Continuing operations	—	9,679	—
Discontinued operations	—	—	131
Reductions credited to expense:			
Continuing operations	(131,727)	—	(7,178)
Discontinued operations	—	(55)	—
Deductions	—	(6,259)	(3,452)
Balance at December 31,	<u>\$ 4,821</u>	<u>\$ 136,548</u>	<u>\$ 133,183</u>

We accrue interest and penalties on our uncertain tax positions as a component of our provision for income taxes. We accrued no significant interest and penalties in 2016, 2015 or 2014. We had a total of \$0.3 million and \$0.3 million accrued for interest and penalties for our uncertain tax positions as of December 31, 2016 and 2015, respectively.

The following table shows the changes in the amount of our uncertain tax positions (exclusive of the effect of interest and penalties):

	2016	2015	2014
	(In thousands)		
Balance at January 1,	\$ 208	\$ 378	\$ 950
Tax positions taken in prior periods:			
Gross increases	18	—	2
Gross decreases	—	—	—
Tax positions taken in current period:			
Gross increases	23	12	13
Settlements with taxing authorities	—	—	—
Lapse of applicable statute of limitations	(0)	(182)	(587)
Balance at December 31,	<u>\$ 249</u>	<u>\$ 208</u>	<u>\$ 378</u>

The balance for uncertain tax positions was \$0.2 million as of December 31, 2016 excluding penalties and interest.

We are subject to U.S. federal income tax as well as income tax of multiple state jurisdictions. Based on completed examinations and the expiration of statutes of limitations, we have concluded all U.S. federal income tax matters for years through 2012. We report in 41 states with various years open to examination.

### 13. Employee Benefit Plans

As a result of the ProBuild acquisition we maintain two active defined contribution 401(k) plans. Our employees are eligible to participate in the plans subject to certain employment eligibility provisions. Participants can contribute up to 15% of their annual compensation, subject to federally mandated maximums. Participants are immediately vested in their own contributions. We match a certain percentage of the contributions made by participating employees, subject to IRS limitations. Our matching contributions are subject to a pro-rata five-year vesting schedule. We recognized expense of \$4.6 million, \$6.5 million and \$0.4 million in 2016, 2015 and 2014, respectively, for contributions to the plan.

Through the ProBuild acquisition, the Company acquired a defined benefit plan, the ProBuild Retirement Plan, which was terminated as of January 30, 2015. The Company has made all remaining plan benefit distributions and the plan was fully terminated and settled as of December 31, 2015.

The Company contributes to multiple collectively bargained union retirement plans including multiemployer plans. The Company does not administer the multiemployer plans, and contributions are determined in accordance with the provisions of negotiated labor contracts. The risks of participating in multiemployer plans are different from single-employer plans. Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers. If a participating employer stops contributing to a multiemployer plan, the unfunded obligations of that multiemployer plan may be borne by the remaining participating employers. If the Company chooses to stop participating in a multiemployer plan, the Company may be required to pay that plan an amount (“withdrawal liability”) based on the plan’s formula and the underfunded status of the plan attributable to the Company. Contributions to the plans for the years ended December 31, 2016 and 2015 were not significant.

#### **14. Commitments and Contingencies**

We lease certain land, buildings and equipment used in operations. These leases are generally accounted for as operating leases with initial terms ranging from one to 20 years and they generally contain renewal options. Certain operating leases are subject to contingent rentals based on various measures, primarily consumer price index increases. We also lease certain properties from related parties, including current employees and non-affiliate stockholders. Total rent expense under operating leases was approximately \$68.7 million, \$43.6 million and \$25.4 million for the years ended December 31, 2016, 2015, and 2014, respectively.

In addition, we have residual value guarantees on certain equipment leases. Under these leases we have the option of (a) purchasing the equipment at the end of the lease term, (b) arranging for the sale of the equipment to a third party, or (c) returning the equipment to the lessor to sell the equipment. If the sales proceeds in any case are less than the residual value, we are required to reimburse the lessor for the deficiency up to a specified level as stated in each lease agreement. If the sales proceeds exceed the residual value, we are entitled to all of such excess amounts. The guarantees under these leases for the residual values of equipment at the end of the respective operating lease periods approximated \$3.9 million as of December 31, 2016. Based upon the expectation that none of these leased assets will have a residual value at the end of the lease term that is materially less than the value specified in the related operating lease agreement or that we will purchase the equipment at the end of the lease term, we do not believe it is probable that we will be required to fund any amounts under the terms of these guarantee arrangements. Accordingly, no accruals have been recognized for these guarantees.

Future minimum commitments for noncancelable operating leases with initial or remaining lease terms in excess of one year are as follows:

	<u>Related Party</u>	<u>Total*</u>
	(In thousands)	
Year ending December 31,		
2017	\$ 1,010	\$ 67,213
2018	336	57,619
2019	350	46,536
2020	360	33,056
2021	375	22,915
Thereafter	1,019	56,192
	<u>\$ 3,450</u>	<u>\$ 283,531</u>

\* Includes related party future minimum commitments for noncancelable operating leases.

As of December 31, 2016, we had outstanding letters of credit totaling \$84.8 million under our 2015 facility that principally support our self-insurance programs.

Beginning in the fourth quarter, the Company has seen an increased occurrence of known and threatened construction defect legal claims primarily in two states. While these claims are generally covered under the Company’s existing insurance programs to the extent any loss exceeds the deductible, there is a reasonable possibility of loss that is not able to be estimated at this time because (i) many of the proceedings are in the discovery stage, (ii) the outcome of future litigation is uncertain, and/or (iii) the complex nature of the claims. Although the Company cannot estimate a reasonable range of loss based on currently available information, the resolution of these matters could have an adverse effect on the Company’s financial position, results of operations or cash flows.

We are a party to various legal proceedings in the ordinary course of business. Although the ultimate disposition of these proceedings cannot be predicted with certainty, management believes the outcome of any claim that is pending or threatened, either individually or on a combined basis, will not have a material adverse effect on our consolidated financial position, cash flows or



results of operations. However, there can be no assurances that future adverse judgments and costs would not be material to our results of operations or liquidity for a particular period.

## 15. Segment and Product Information

We offer an integrated solution to our customers providing manufacturing, supply, and installation of a full range of structural and related building products. We provide a wide variety of building products and services directly to homebuilder customers. We manufacture floor trusses, roof trusses, wall panels, stairs, millwork, windows, and doors. We also provide a full range of construction services. These product and service offerings are distributed across 400 locations operating in 40 states across the United States, which have been reorganized into nine geographical regions following the ProBuild acquisition. Centralized financial and operational oversight, including resource allocation and assessment of performance on an income (loss) from continuing operations before income taxes basis, is performed by our CEO, whom we have determined to be our chief operating decision maker (“CODM”).

As a result of the reorganization following the ProBuild acquisition, the Company has nine operating segments aligned with its nine geographical regions (Regions 1 through 9). While all of our operating segments have similar nature of products, distribution methods and customers, certain of our operating segments have been aggregated due to also containing similar economic characteristics, resulting in the following composition of reportable segments:

- Regions 1 and 2 have been aggregated to form the “Northeast” reportable segment
- Regions 3 and 5 have been aggregated to form the “Southeast” reportable segment
- Regions 4 and 6 have been aggregated to form the “South” reportable segment
- Region 7, 8 and 9 have been aggregated to form the “West” reportable segment

In addition to our reportable segments, our consolidated results include corporate overhead, other various operating activities that are not internally allocated to a geographical region nor separately reported to the CODM, and certain reconciling items primarily related to allocations of corporate overhead and rent expense, which have collectively been presented as “All Other”. The accounting policies of the segments are consistent with those described in Note 2, except for noted reconciling items.

The following tables present Net sales, Income (loss) before income taxes and certain other measures for the reportable segments, reconciled to consolidated total operations, for the years ended December 31, (in thousands):

Reportable segments	2016			
	Net Sales	Depreciation & Amortization	Interest	Income (loss) before income taxes
Northeast	\$ 1,204,099	\$ 18,220	\$ 18,660	\$ 35,356
Southeast	1,367,933	11,384	19,956	37,158
South	1,704,753	22,139	22,331	69,846
West	1,939,206	33,775	27,143	72,649
<b>Total reportable segments</b>	<b>6,215,991</b>	<b>85,518</b>	<b>88,090</b>	<b>215,009</b>
All other	151,293	24,275	126,577	(193,340)
<b>Total consolidated</b>	<b>\$ 6,367,284</b>	<b>\$ 109,793</b>	<b>\$ 214,667</b>	<b>\$ 21,669</b>

Reportable segments	2015			
	Net Sales	Depreciation & Amortization	Interest	Income (loss) before income taxes
Northeast	\$ 626,985	\$ 4,201	\$ 7,508	\$ 28,862
Southeast	917,022	5,296	14,598	14,607
South	1,073,240	10,649	12,707	50,878
West	786,476	5,824	6,118	35,170
<b>Total reportable segments</b>	<b>3,403,723</b>	<b>25,970</b>	<b>40,931</b>	<b>129,517</b>
All other	160,702	32,310	68,268	(147,961)
<b>Total consolidated</b>	<b>\$ 3,564,425</b>	<b>\$ 58,280</b>	<b>\$ 109,199</b>	<b>\$ (18,444)</b>

Reportable segments	2014			
	Net Sales	Depreciation & Amortization	Interest	Income (loss) before income taxes
Northeast	\$ 229,998	\$ 1,068	\$ 3,634	\$ 3,464
Southeast	672,059	2,743	11,925	5,465
South	558,446	2,621	7,666	17,804
West	—	—	—	—
<b>Total reportable segments</b>	<b>1,460,503</b>	<b>6,432</b>	<b>23,225</b>	<b>26,733</b>
All other	143,593	3,087	7,124	(7,472)
<b>Total consolidated</b>	<b>\$ 1,604,096</b>	<b>\$ 9,519</b>	<b>\$ 30,349</b>	<b>\$ 19,261</b>

Asset information by segment is not reported internally or otherwise reviewed by the CODM nor does the company earn revenues or have long-lived assets located in foreign countries. The Company's net sales by product category for the periods indicated were as follows (in thousands):

Sales by product category were as follows for the years ended December 31:

	2016	2015	2014
	(In thousands)		
Lumber & lumber sheet goods	\$ 2,131,394	\$ 1,129,684	\$ 535,279
Windows, doors & millwork	1,286,151	818,131	446,433
Manufactured products	1,097,665	635,338	311,994
Gypsum, roofing & insulation	520,007	264,894	61,114
Siding, metal & concrete products	622,344	319,618	81,894
Other building & product services	709,723	396,760	167,382
<b>Total sales</b>	<b>\$ 6,367,284</b>	<b>\$ 3,564,425</b>	<b>\$ 1,604,096</b>

In the above presentation of the Company's net sales by product category, prior periods have been revised to reflect a re-categorization of certain product sales within the respective product categories to be consistent with how management views the business after further refinement from the ongoing evaluations following the ProBuild acquisition. Install labor sales are reflected in the "Other building products & services" category.

#### 16. Related Party Transactions

Floyd F. Sherman, our chief executive officer, and Brett Milgrim, a member of the Company's board of directors, serve on the board of directors for PGT, Inc.. We purchased windows from PGT, Inc. totaling \$11.4 million, \$9.3 million and \$6.3 million in 2016, 2015 and 2014, respectively. We had accounts payable to PGT, Inc. in the amounts of \$1.4 million and \$1.1 million as of December 31, 2016 and 2015, respectively.

In 2016, 2015 and 2014, we paid approximately \$0.7 million, \$1.0 million and \$0.9 million, respectively, in rental expense to employees or our non-affiliate stockholders for leases of land and buildings.

Transactions between the Company and other related parties occur in the ordinary course of business. However, the Company carefully monitors and assesses related party relationships. Management does not believe that any of these transactions with related parties had a material impact on the Company's results for the years ended December 31, 2016, 2015 or 2014.

## 17. Unaudited Quarterly Financial Data

The following tables summarize the consolidated quarterly results of operations for 2016 and 2015 (in thousands, except per share amounts):

	2016			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Net sales	\$ 1,397,114	\$ 1,677,300	\$ 1,745,958	\$ 1,546,912
Gross margin	349,748	418,331	437,094	391,575
Net income (loss)	(16,980) (1)	29,441 (2)	125,469 (3)	6,411 (4)
Net income (loss) per share				
Basic	\$ (0.15) (1)	\$ 0.27 (2)	\$ 1.13 (3)	\$ 0.06 (4)
Diluted	\$ (0.15) (1)	\$ 0.26 (2)	\$ 1.10 (3)	\$ 0.06 (4)

	2015			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Net sales	\$ 370,986	\$ 461,521	\$ 1,276,063	\$ 1,455,855
Gross margin	83,733	110,614	324,774	382,337
Net income (loss)	(7,070) (5)	3,576 (6)	(8,757) (7)	(10,580) (8)
Net income (loss) per share				
Basic	\$ (0.07) (5)	\$ 0.04 (6)	\$ (0.08) (7)	\$ (0.10) (8)
Diluted	\$ (0.07) (5)	\$ 0.03 (6)	\$ (0.08) (7)	\$ (0.10) (8)

- (1) Includes a gain on debt extinguishment of \$7.8 million as discussed in Note 8 and a valuation allowance of \$5.1 million as discussed in Note 12.
- (2) Includes a loss on debt extinguishment of \$1.7 million as discussed in Note 8 and a valuation allowance of \$(16.0) million as discussed in Note 12.
- (3) Includes a loss on debt extinguishment and financing costs of \$53.3 million as discussed in Note 8 and a valuation allowance of \$(117.6) million as discussed in Note 12.
- (4) Includes a loss on debt extinguishment of \$9.7 million as discussed in Note 8 and a valuation allowance of \$(3.2) million as discussed in Note 12.
- (5) Includes acquisition costs of \$5.5 million as discussed in Note 3, fair value adjustments for the warrants of \$0.2 million as discussed in Note 8 and a valuation allowance of \$3.1 million as discussed in Note 12.
- (6) Includes acquisition costs of \$6.4 million as discussed in Note 3, fair value adjustments for the warrants of \$4.7 million as discussed in Note 8 and a valuation allowance of \$(1.3) million as discussed in Note 12.
- (7) Includes acquisition costs of \$8.8 million as discussed in Note 3, financing costs of \$13.2 million as discussed in Note 8 and a valuation allowance of \$1.1 million as discussed in Note 12.
- (8) Includes acquisition costs of \$0.2 million as discussed in Note 3 and a valuation allowance of \$6.8 million as discussed in Note 12.

Earnings per share is computed independently for each of the quarters presented; therefore, the sum of the quarterly earnings per share may not equal the annual earnings per share.

In the below presentation of the Company's net sales by product category, prior quarterly periods for 2016 and 2015 have been revised to reflect a re-categorization of certain product sales within the respective product categories to be consistent with how management views the business after further refinement from the ongoing evaluations following the ProBuild acquisition. Install labor sales are reflected in the "Other building products & services" category.

Sales by product category were as follows (in thousands):

	<b>Three Months Ended</b>			
	<b>March 31, 2016</b>	<b>June 30, 2016</b>	<b>September 30, 2016</b>	<b>December 31, 2016</b>
Lumber & lumber sheet goods	\$ 461,415	\$ 560,877	\$ 592,770	\$ 516,332
Windows, doors & millwork	296,668	329,424	337,155	322,904
Manufactured products	236,233	286,446	301,563	273,423
Gypsum, roofing & insulation	112,302	138,662	145,618	123,425
Siding, metal & concrete products	131,966	168,070	176,557	145,751
Other building products & services	158,530	193,821	192,295	165,077
Net Sales	<u>\$ 1,397,114</u>	<u>\$ 1,677,300</u>	<u>\$ 1,745,958</u>	<u>\$ 1,546,912</u>

	<b>Three Months Ended</b>			
	<b>March 31, 2015</b>	<b>June 30, 2015</b>	<b>September 30, 2015</b>	<b>December 31, 2015</b>
Lumber & lumber sheet goods	\$ 117,927	\$ 144,974	\$ 409,492	\$ 457,291
Windows, doors & millwork	108,796	129,215	268,029	312,091
Manufactured products	74,307	98,634	223,258	239,139
Gypsum, roofing & insulation	13,690	17,394	108,045	125,765
Siding, metal & concrete products	18,595	25,152	127,930	147,941
Other building products & services	37,671	46,152	139,309	173,628
Net Sales	<u>\$ 370,986</u>	<u>\$ 461,521</u>	<u>\$ 1,276,063</u>	<u>\$ 1,455,855</u>

#### **18. Subsequent Event**

On February 23, 2017, we repriced our existing 2015 term loan through an amendment and extension of the term loan credit agreement providing for a \$467.7 million senior secured term loan facility due 2024 (“2024 term loan”). This repricing reduces the interest rate by 0.75% and extends the maturity by 19 months to February 29, 2024.

The 2024 term loan bears interest based on either a eurodollar or base rate (a rate equal to the highest of an agreed commercially available benchmark rate, the federal funds effective rate plus 0.50% or the eurodollar rate plus 1.0%, as selected by the Company) plus, in each case, an applicable margin. The applicable margin in the 2024 term loan is (x) 3% in the case of Eurodollar rate loans and (y) 2% in the case of base rate loans. These rates represents a 0.75% reduction from the 2015 term loan. Deutsche Bank AG New York Branch continues to serve as administrative agent and collateral agent under the 2024 term loan.

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

None.

### **Item 9A. Controls and Procedures**

*Disclosure Controls Evaluation and Related CEO and CFO Certifications.* Our management, with the participation of our principal executive officer (“CEO”) and principal financial officer (“CFO”) conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this annual report.

Certifications of our CEO and our CFO, which are required in accordance with Rule 13a-14 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), are attached as exhibits to this annual report. This “Controls and Procedures” section includes the information concerning the controls evaluation referred to in the certifications, and it should be read in conjunction with the certifications for a more complete understanding of the topics presented.

*Limitations on the Effectiveness of Controls.* We do not expect that our disclosure controls and procedures will prevent all errors and all fraud. A system of controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the system are met. Because of the limitations in all such systems, no evaluation can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. Furthermore, the design of any system of controls and procedures is 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, regardless of how unlikely. Because of these inherent limitations in a cost-effective system of controls and procedures, misstatements or omissions due to error or fraud may occur and not be detected.

*Scope of the Controls Evaluation.* The evaluation of our disclosure controls and procedures included a review of their objectives and design, the Company’s implementation of the controls and procedures and the effect of the controls and procedures on the information generated for use in this annual report. In the course of the evaluation, we sought to identify whether we had any data errors, control problems or acts of fraud and to confirm that appropriate corrective action, including process improvements, were being undertaken if needed. This type of evaluation is performed on a quarterly basis so that conclusions concerning the effectiveness of our disclosure controls and procedures can be reported in our quarterly reports on Form 10-Q. Many of the components of our disclosure controls and procedures are also evaluated by our internal audit department, our legal department and by personnel in our finance organization. The overall goals of these various evaluation activities are to monitor our disclosure controls and procedures on an ongoing basis, and to maintain them as dynamic systems that change as conditions warrant.

*Conclusions regarding Disclosure Controls.* Based on the required evaluation of our disclosure controls and procedures, our CEO and CFO have concluded that, as of December 31, 2016, we maintained disclosure controls and procedures that were effective in providing reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

*Management’s Report on Internal Control Over Financial Reporting.* Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles (“GAAP”). Internal control over financial reporting includes policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with existing policies or procedures may deteriorate.

Under the supervision and with the participation of our management, including our CEO and CFO, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework set forth in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework set forth in *Internal Control — Integrated Framework (2013)*, our management concluded that our internal control over financial reporting was effective as of December 31, 2016.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2016, has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

*Changes in Internal Control over Financial Reporting.* During the quarter ended December 31, 2016, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

On February 23, 2017, we repriced our existing 2015 term loan with Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and the lenders and financial institutions party thereto, pursuant to an amendment and extension of the term loan credit agreement providing for a \$467.7 million senior secured term loan facility due 2024 ("2024 term loan"). This repricing reduces the interest rate by 0.75% and extends the maturity by 19 months to February 29, 2024.

The 2024 term loan bears interest based on either a eurodollar or base rate (a rate equal to the highest of an agreed commercially available benchmark rate, the federal funds effective rate plus 0.50% or the eurodollar rate plus 1.0%, as selected by the Company) plus, in each case, an applicable margin. The applicable margin in the 2024 term loan is (x) 3% in the case of Eurodollar rate loans and (y) 2% in the case of base rate loans. These rates represents a 0.75% reduction from the 2015 term loan.

## PART III

### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item appears in our definitive proxy statement for our annual meeting of stockholders to be held May 24, 2017 under the captions “Proposal 1 — Election of Directors,” “Continuing Directors,” “Information Regarding the Board and Its Committees,” “Corporate Governance,” “Section 16(a) Beneficial Ownership Reporting Compliance,” and “Executive Officers of the Registrant,” which information is incorporated herein by reference.

#### **Code of Business Conduct and Ethics**

Builders FirstSource, Inc. and its subsidiaries endeavor to do business according to the highest ethical and legal standards, complying with both the letter and spirit of the law. Our board of directors approved a Code of Business Conduct and Ethics that applies to our directors, officers (including our principal executive officer, principal financial officer and controller) and employees. Our Code of Business Conduct and Ethics is administered by a compliance committee made up of representatives from our legal, human resources, finance and internal audit departments.

Our employees are encouraged to report any suspected violations of laws, regulations and the Code of Business Conduct and Ethics, and all unethical business practices. We provide continuously monitored hotlines for anonymous reporting by employees.

Our board of directors has also approved a Supplemental Code of Ethics for the Chief Executive Officer, President, and Senior Financial Officers of Builders FirstSource, Inc., which is administered by our general counsel.

Both of these policies are listed as exhibits to this annual report on Form 10-K and can be found in the “investors” section of our corporate Web site at: [www.bldr.com](http://www.bldr.com).

Stockholders may request a free copy of these policies by contacting the Corporate Secretary, Builders FirstSource, Inc., 2001 Bryan Street, Suite 1600, Dallas, Texas 75201, United States of America.

In addition, within four business days of:

- Any amendment to a provision of our Code of Business Conduct and Ethics or our Supplemental Code of Ethics for Chief Executive Officer, President and Senior Financial Officers of Builders FirstSource, Inc. that applies to our chief executive officer, our chief financial officer or controller; or
- The grant of any waiver, including an implicit waiver, from a provision of one of these policies to one of these officers that relates to one or more of the items set forth in Item 406(b) of Regulation S-K.

We will provide information regarding any such amendment or waiver (including the nature of any waiver, the name of the person to whom the waiver was granted and the date of the waiver) on our Web site at the Internet address above, and such information will be available on our Web site for at least a 12-month period. In addition, we will disclose any amendments and waivers to our Code of Business Conduct and Ethics or our Supplemental Code of Ethics for Chief Executive Officer, President and Senior Financial Officers of Builders FirstSource, Inc. as required by the listing standards of the NASDAQ Stock Market LLC.

### **Item 11. Executive Compensation**

The information required by this item appears in our definitive proxy statement for our annual meeting of stockholders to be held May 24, 2017 under the captions “Executive Compensation and Other Information,” “Information Regarding the Board and its Committees — Compensation of Directors,” and “Compensation Committee Interlocks and Insider Participation,” which information is incorporated herein by reference.

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

The information required by this item appears in our definitive proxy statement for our annual meeting of stockholders to be held on May 24, 2017 under the caption “Ownership of Securities” and “Equity Compensation Plan Information,” which information is incorporated herein by reference.

**Item 13. *Certain Relationships and Related Transactions, and Director Independence***

The information required by this item appears in our definitive proxy statement for our annual meeting of stockholders to be held May 24, 2017 under the caption “Election of Directors and Management Information,” “Information Regarding the Board and its Committees,” and “Certain Relationships and Related Party Transactions,” which information is incorporated herein by reference.

**Item 14. *Principal Accountant Fees and Services***

The information required by this item appears in our definitive proxy statement for our annual meeting of stockholders to be held May 24, 2017 under the caption “Proposal 4 — Ratification of Selection of Independent Registered Public Accounting Firm — Fees Paid to PricewaterhouseCoopers LLP,” which information is incorporated herein by reference.



## PART IV

### Item 15. Exhibits and Financial Statement Schedules

- (a) (1) See the index to consolidated financial statements provided in Item 8 for a list of the financial statements filed as part of this report.
- (2) Financial statement schedules are omitted because they are either not applicable or not material.
- (3) The following documents are filed, furnished or incorporated by reference as exhibits to this report as required by Item 601 of Regulation S-K.

<b>Exhibit Number</b>	<b>Description</b>
3.1	Amended and Restated Certificate of Incorporation of Builders FirstSource, Inc. (incorporated by reference to Exhibit 3.1 to Amendment No. 4 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on June 6, 2005, File Number 333-122788)
3.2	Amended and Restated By-Laws of Builders FirstSource, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on March 5, 2007, File Number 0-51357)
4.1	Registration Rights Agreement, dated as of January 21, 2010, among Builders FirstSource, Inc., JLL Partners Fund V, L.P., and Warburg Pincus Private Equity IX, L.P. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on January 22, 2010, File Number 0-51357)
4.2	Indenture, dated as of July 31, 2015, among Builders FirstSource, Inc., the guarantors party thereto, and Wilmington Trust, National Association, as trustee (form of Note included therein) (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 6, 2015, File Number 0-51357)
4.3	Supplemental Indenture to the Indenture dated as of July 31, 2015, dated as of July 31, 2015, among Builders FirstSource, Inc., the guarantors party thereto, and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 6, 2015, File Number 0-51357)
4.4	Indenture, dated as of August 22, 2016, among Builders FirstSource, Inc., the guarantors party thereto, and Wilmington Trust, National Association, as trustee and notes collateral agent (form of Note included therein) (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 23, 2016, File Number 0-51357)
10.1	Term Loan Credit Agreement, dated as of July 31, 2015, among Builders FirstSource, Inc., Deutsche Bank AG, New York Branch, as administrative agent and collateral agent, and the lenders and financial institutions party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)
10.2	First Amendment to Credit Agreement, dated as of August 22, 2016, by and among Builders FirstSource, Inc., Deutsche Bank AG New York Branch, as administrative agent, and the lenders and financial institutions party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 23, 2016, File Number 0-51357)
10.3*	Second Amendment to Credit Facility, dated as of February 23, 2017, by and among Builders FirstSource, Inc., Deutsche Bank AG New York Branch, as administrative agent, and the lenders and financial institutions party thereto
10.4	Amended and Restated Senior Secured Revolving Credit Facility, dated as of July 31, 2015, among Builders FirstSource, Inc., SunTrust Bank, as administrative agent and collateral agent, and the lenders and financial institutions party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)

Exhibit Number	Description
10.5	ABL/Bond Intercreditor Agreement, dated as of May 29, 2013, among Builders FirstSource, Inc. and certain of its subsidiaries, as grantors, SunTrust Bank, as ABL agent, and Wilmington Trust, National Association, as notes collateral agent (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on June 3, 2013, File Number 0-51357)
10.6	Collateral Agreement, dated as of July 31, 2015, among the Company, certain of its subsidiaries, and Deutsche Bank AG, New York Branch (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)
10.7	Amended and Restated ABL Collateral Agreement, dated as of July 31, 2015, among the Company, certain of its subsidiaries, and SunTrust Bank (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)
10.8	Notes Collateral Agreement, dated as of August 22, 2016, among Builders FirstSource, Inc., certain of its subsidiaries, and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 23, 2016, File Number 0-51357)
10.9	Guarantee Agreement, dated as of July 31, 2015, among the guarantors party thereto and Deutsche Bank AG, New York Branch (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)
10.10	Amended and Restated ABL Guarantee Agreement, dated as of July 31, 2015, among the Guarantors (as defined therein) and SunTrust Bank (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K, filed with the Securities Exchange Commission on August 6, 2015, File Number 0-51357)
10.11	Lease and Master Agreement Guaranty, dated as of July 31, 2015, by the Company in favor of LN Real Estate LLC (incorporated by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed with the Securities and Exchange Commission on November 9, 2015, File Number 0-51357)
10.12+	Builders FirstSource, Inc. 1998 Stock Incentive Plan, as amended, effective March 1, 2004 (incorporated by reference to Exhibit 10.4 to Amendment No. 1 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on April 27, 2005, File Number 333-122788)
10.13+	Amendment No. 7 to the Builders FirstSource, Inc. 1998 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Annual Report on Form 10-K for the year ended December 31, 2006, filed with the Securities and Exchange Commission on March 12, 2007, File Number 0-51357)
10.14+	2004 Form of Builders FirstSource, Inc. 1998 Stock Incentive Plan Nonqualified Stock Option Agreement (incorporated by reference to Exhibit 10.5 to Amendment No. 1 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on April 27, 2005, File Number 333-122788)
10.15+	Builders FirstSource, Inc. 2005 Equity Incentive Plan (incorporated by reference to Exhibit 10.14 to Amendment No. 4 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on June 6, 2005, File Number 333-122788)
10.16+	2006 Form of Builders FirstSource, Inc. 2005 Equity Incentive Plan Nonqualified Stock Option Agreement (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 17, 2006, File Number 0-51357)
10.17+	2007 Form of Builders FirstSource, Inc. 2005 Equity Incentive Plan Nonqualified Stock Option Agreement for Employee Directors (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on March 5, 2007, File Number 0-51357)
10.18+	Builders FirstSource, Inc. 2007 Incentive Plan (incorporated by reference to Annex D of the Company's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on December 15, 2009, File Number 0-51357)
10.19+	2008 Form of Builders FirstSource, Inc. 2007 Incentive Plan Nonqualified Stock Option Agreement (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, filed with the Securities and Exchange Commission on May 1, 2008, File Number 0-51357)

Exhibit Number	Description
10.20+	2008 Form of Builders FirstSource, Inc. 2007 Incentive Plan Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, filed with the Securities and Exchange Commission on May 1, 2008, File Number 0-51357)
10.21+	2010 Form of Builders FirstSource, Inc. 2007 Incentive Plan Nonqualified Stock Option Agreement for Employee Directors (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009, filed with the Securities and Exchange Commission on March 4, 2010, File Number 0-51357)
10.22+	2014 Form of Builders FirstSource, Inc. 2007 Incentive Plan Restricted Stock Unit Award Certificate (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, filed with the Securities and Exchange Commission on August 1, 2014, File Number 0-51357)
10.23+	2014 Form of Builders FirstSource, Inc. 2007 Incentive Plan Director Restricted Stock Unit Award Certificate (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, filed with the Securities and Exchange Commission on November 5, 2014, File Number 0-51357)
10.24+	Builders FirstSource, Inc. 2014 Incentive Plan (incorporated herein by reference to Appendix A of the Company's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on April 11, 2014, File Number 0-51357)
10.25+	Amendment to the Builders FirstSource, Inc. 2014 Incentive Plan (incorporated by reference to Appendix A of the Company's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on April 14, 2016, File Number 0-51357)
10.26+	2014 Form of Builders FirstSource, Inc. 2014 Incentive Plan Restricted Stock Unit Award Certificate (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, filed with the Securities and Exchange Commission on August 1, 2014, File Number 0-51357)
10.27+	2015 Form of Builders FirstSource, Inc. 2014 Incentive Plan Non-Statutory Stock Option Award Certificate (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014, filed with the Securities and Exchange Commission on March 3, 2015, File Number 0-51357)
10.28+	2016 Form of Builders FirstSource, Inc. 2014 Incentive Plan Restricted Stock Unit Award Certificate (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, filed with the Securities and Exchange Commission on May 6, 2016, File Number 0-51357)
10.29*+	Builders FirstSource, Inc. Amended and Restated Director Compensation Policy
10.30+	Builders FirstSource, Inc. Form of Director Indemnification Agreement (incorporated by reference to Exhibit 10.13 to Amendment No. 3 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on May 26, 2005, File Number 333-122788)
10.31+	Employment Agreement, dated September 1, 2001, between Builders FirstSource, Inc. and Floyd F. Sherman (incorporated by reference to Exhibit 10.9 to Amendment No. 1 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on April 27, 2005, File Number 333-122788)
10.32+	Amendment to Employment Agreement, dated June 1, 2005, between Builders FirstSource, Inc. and Floyd F. Sherman (incorporated by reference to Exhibit 10.15 to Amendment No. 4 to the Registration Statement of the Company on Form S-1, filed with the Securities and Exchange Commission on June 6, 2005, File Number 333-122788)
10.33+	Second Amendment to Employment Agreement, dated October 29, 2008, between Builders FirstSource, Inc. and Floyd F. Sherman (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on March 2, 2009, File Number 0-51357)
10.34+	Employment Agreement, dated February 23, 2010, between Builders FirstSource, Inc. and M. Chad Crow (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 26, 2010, File Number 0-51357)
10.35+	Employment Agreement, dated January 15, 2004, between Builders FirstSource, Inc. and Morris E. Tolly (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 2007, filed with the Securities and Exchange Commission on March 5, 2008, File Number 0-51357)

Exhibit Number	Description
10.36+	Amendment to Employment Agreement, dated October 29, 2008, between Builders FirstSource, Inc. and Morris E. Tolly (incorporated by reference to Exhibit 10.31 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on March 2, 2009, File Number 0-51357)
10.37+	Employment Agreement, dated January 15, 2004, between Builders FirstSource, Inc. and Donald F. McAleenan (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005, filed with the Securities Exchange Commission on November 2, 2005, File Number 0-51357)
10.38+	Amendment to Employment Agreement, dated October 29, 2008, between Builders FirstSource, Inc. and Donald F. McAleenan (incorporated by reference to Exhibit 10.33 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on March 2, 2009, File Number 0-51357)
10.39*+	Employment Agreement, dated November 14, 2014, between Builders FirstSource, Inc. and Peter M. Jackson
14.1	Builders FirstSource, Inc. Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005, filed with the Securities and Exchange Commission on March 13, 2006, File Number 0-51357)
14.2	Builders FirstSource, Inc. Supplemental Code of Ethics (incorporated by reference to Exhibit 14.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005, filed with the Securities and Exchange Commission on March 13, 2006, File Number 0-51357)
21.1	Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015, filed with the Securities and Exchange Commission on March 11, 2016, File Number 0-51357)
23.1*	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
24.1*	Power of Attorney (included as part of signature page)
31.1*	Certification of Chief Executive Officer pursuant to 17 CFR 240.13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, signed by Floyd F. Sherman as Chief Executive Officer
31.2*	Certification of Chief Financial Officer pursuant to 17 CFR 240.13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, signed by Peter M. Jackson as Chief Financial Officer
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, signed by Floyd F. Sherman as Chief Executive Officer and Peter M. Jackson as Chief Financial Officer
101*	The following financial information from Builders FirstSource, Inc.'s Form 10-K filed on March 1, 2017, formatted in eXtensible Business Reporting Language ("XBRL"): (i) Consolidated Statements of Operations and Comprehensive Income (Loss) for the years ended December 31, 2016, 2015, and 2014, (ii) Consolidated Balance Sheets at December 31, 2016 and 2015, (iii) Consolidated Statements of Cash Flows for the years ended December 31, 2016, 2015, and 2014, (iv) Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2016, 2015, and 2014, and (v) the Notes to Consolidated Financial Statements.

\* Filed herewith

\*\* Builders FirstSource, Inc. is furnishing, but not filing, the written statement pursuant to Title 18 United States Code 1350, as added by Section 906 of the Sarbanes-Oxley Act of 2002, of Floyd F. Sherman, our Chief Executive Officer, and Peter M. Jackson, our Chief Financial Officer.

+ Indicates a management contract or compensatory plan or arrangement

(b) A list of exhibits filed, furnished or incorporated by reference with this Form 10-K is provided above under Item 15(a)(3) of this report. **Builders FirstSource, Inc. will furnish a copy of any exhibit listed above to any stockholder without charge upon written request to Donald F. McAleenan, Senior Vice President and General Counsel, 2001 Bryan Street, Suite 1600, Dallas, Texas 75201.**

(c) Not applicable

**Item 16. *Form 10-K Summary***

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

March 1, 2017

### **BUILDERS FIRSTSOURCE, INC.**

/s/ FLOYD F. SHERMAN

\_\_\_\_\_  
Floyd F. Sherman  
Chief Executive Officer  
(Principal Executive Officer)

The undersigned hereby constitute and appoint Donald F. McAleenan and his substitutes our true and lawful attorneys-in-fact with full power to execute in our name and behalf in the capacities indicated below any and all amendments to this report and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and hereby ratify and confirm all that such attorney-in-fact or his substitutes shall lawfully do or cause to be done by virtue thereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ FLOYD F. SHERMAN</u> Floyd F. Sherman	Chief Executive Officer and Director (Principal Executive Officer)	March 1, 2017
<u>/s/ PETER M. JACKSON</u> Peter M. Jackson	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	March 1, 2017
<u>/s/ JAMI COULTER</u> Jami Coulter	Vice President and Chief Accounting Officer (Principal Accounting Officer)	March 1, 2017
<u>/s/ PAUL S. LEVY</u> Paul S. Levy	Chairman and Director	March 1, 2017
<u>/s/ CLEVELAND A. CHRISTOPHE</u> Cleveland A. Christophe	Director	March 1, 2017
<u>/s/ DANIEL AGROSKIN</u> Daniel Agroskin	Director	March 1, 2017
<u>/s/ ROBERT C. GRIFFIN</u> Robert C. Griffin	Director	March 1, 2017
<u>/s/ KEVIN J. KRUSE</u> Kevin J. Kruse	Director	March 1, 2017
<u>/s/ BRETT N. MILGRIM</u> Brett N. Milgrim	Director	March 1, 2017
<u>/s/ CRAIG A. STEINKE</u> Craig A. Steinke	Director	March 1, 2017

**SECOND AMENDMENT TO CREDIT AGREEMENT**

This SECOND AMENDMENT dated as of February 23, 2017 (this “Second Amendment”) to the Credit Agreement referred to below by and among Builders FirstSource, Inc., a Delaware corporation (the “Borrower”), the Lenders party hereto (as defined below) and Deutsche Bank AG New York Branch, as administrative agent (in such capacity, the “Administrative Agent”).

**RECITALS**

WHEREAS, the Borrower, the several Lenders (as defined in the Credit Agreement) from time to time parties thereto and the Administrative Agent, have entered into that certain Amended and Restated Term Loan Credit Agreement dated as of August 22, 2016 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Credit Agreement”);

WHEREAS, pursuant to and in accordance with Section 2.21 of the Credit Agreement, the Borrower has requested that the Credit Agreement be amended and restated into the form of the Second Amended and Restated Credit Agreement (as defined below) so as to, among other things, provide for a new tranche of term loans thereunder (the “Refinancing Term Loans”), which term loans would refinance the Term Loans outstanding under the Credit Agreement immediately prior to the effectiveness of this Second Amendment (the “Existing Term Loans”), in part through an exchange, and which, except as modified hereby, would have the same terms as the Existing Term Loans under the Credit Agreement;

WHEREAS, each Lender holding Existing Term Loans (collectively, the “Existing Term Lenders”) that executes and delivers a consent to this Second Amendment in the form of the “Lender Consent” attached hereto as Annex I (a “Lender Consent”) (collectively, the “Exchanging Term Lenders”) will be deemed (i) to have agreed to the terms of this Second Amendment, (ii) to have agreed to exchange (as further described in the Lender Consent) an aggregate principal amount of its Existing Term Loans with Refinancing Term Loans in a principal amount equal to the amount of such Exchanging Term Lenders or such lesser amount notified to such Exchanging Term Lender by the Administrative Agent and (iii) upon the Second Amendment Effective Date to have exchanged (as further described in the Lender Consent) such amount of its Existing Term Loans with New Terms Loans in an equal principal amount;

WHEREAS, each Existing Term Lender that makes the appropriate election in its Lender Consent (collectively, the “Increasing Term Lenders”) will be also deemed to have agreed to make, on the Second Amendment Effective Date, Refinancing Term Loans in addition to the Refinancing Term Loans that are exchanged for its Existing Term Loans (such additional Refinancing Term Loans, collectively, the “Increased Term Loans”) in the amount notified to such Existing Term Lender by the Administrative Agent (but in no event greater than the amount such Person committed to make as Refinancing Term Loans);

WHEREAS, each Person that executes and delivers a joinder to this Second Amendment in the form of the “Joinder” attached hereto as Annex II (a “Joinder”) (each, an “Additional Term Lender” and, together with the Increasing Term Lender and Exchanging Term Lender, the “New

---

Term Lenders”) will be deemed (i) to have agreed to the terms of this Second Amendment and (ii) to have committed to make Refinancing Term Loans to the Borrower on the Second Amendment Effective Date (the “Additional Term Loans”), in the amount notified to such Additional Term Lender by the Administrative Agent (but in no event greater than the amount such Person committed to make as Additional Term Loans);

WHEREAS, the Net Proceeds of the Refinancing Term Loans will be used by the Borrower, together with cash on hand of the Borrower, to prepay in full the outstanding principal amount of the Existing Term Loans that are not exchanged for Refinancing Term Loans by the Existing Term Lenders; and

WHEREAS, the Lenders party hereto are willing, on the terms and subject to the conditions set forth below, to consent to the amendment and restatement of the Credit Agreement into the Second Amended and Restated Credit Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1 Certain Definitions. Capitalized terms used (including in the preamble and recitals hereto) but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. As used in this Second Amendment:

“Additional Term Lenders” is defined in the fifth recital hereto.

“Additional Term Loans” is defined in the fifth recital hereto.

“Credit Agreement” is defined in the first recital hereto.

“Exchanged Term Loans” is defined in Section 3.1 hereof.

“Exchanging Term Lenders” is defined in the third recital hereto.

“Existing Term Lenders” is defined in the third recital hereto.

“Existing Term Loans” is defined in the second recital hereto.

“Second Amendment” is defined in the preamble hereto.

“Second Amendment Effective Date” shall mean the date on which the conditions set forth in Article IV of this Second Amendment are satisfied or waived.

“Increased Term Loans” is defined in the fourth recital hereto.

“Increasing Term Lenders” is defined in the fourth recital hereto.



“Joinder” is defined in the fifth recital hereto.

“Lender Consent” is defined in the third recital hereto.

“New Term Lenders” is defined in the fifth recital hereto.

“Non-Exchanging Term Lenders” shall mean each Existing Term Lender that is not an Exchanging Term Lender.

“Refinancing Term Loans” is defined in the second recital hereto.

## ARTICLE II

### AMENDMENTS TO CREDIT AGREEMENT

SECTION 2.1 Amendment and Restatement of Existing Credit Agreement. The Borrower, the Lenders party hereto, the Administrative Agent and other parties party hereto agree that on the Second Amendment Effective Date, the Credit Agreement shall be amended and restated in the form of the Second Amended and Restated Credit Agreement attached hereto as Exhibit A (the “Second Amended and Restated Credit Agreement”) and any term or provision of the Credit Agreement which is different from that set forth in the Second Amended and Restated Credit Agreement shall be replaced and superseded in all respects by the terms and provisions of the Second Amended and Restated Credit Agreement.

SECTION 2.2 Acknowledgement. On and after the Second Amendment Effective Date, unless the context shall otherwise require, each reference in the Second Amended and Restated Credit Agreement or any other Loan Document to (a) “Loans” shall be deemed a reference to the Refinancing Term Loans contemplated hereby, and (b) “Lenders” shall be deemed a reference to the New Term Lenders. As of the Second Amendment Effective Date, after giving effect to the Second Amendment (after giving effect to any principal amortization payments made on or prior to the Second Amendment Effective Date), the aggregate outstanding principal of amount of “Loans” is \$467,650,000.

## ARTICLE III

### EXCHANGE OF EXISTING TERM LOANS

SECTION 3.1 Exchange of Existing Term Loans. On the terms and subject to the satisfaction (or waiver) of the conditions set forth in Article IV hereof, each Exchanging Term Lender agrees that an aggregate principal amount of its Existing Term Loans (the “Exchanged Term Loans”) equal to the amount of such Exchanging Term Lender’s Existing Term Loans (or such lesser amount notified to such Exchanging Term Lender by the Administrative Agent) will be exchanged with Refinancing Term Loans, as further described in such Exchanging Term Lender’s Lender Consent, as of the Second Amendment Effective Date.

SECTION 3.2 Agreement to Make Increased Term Loans and Additional Term Loans. On the terms and subject to the satisfaction (or waiver) of the conditions set forth in Article IV hereof, each Increasing Term Lender and each Additional Term Lender agrees to make Increased Term

Loans or Additional Term Loans, as the case may be, equal to the amount notified to such Increasing Term Lender or Additional Term Lender by the Administrative Agent (but in no event greater than the amount such Person committed to make as Increased Term Loans or Additional Term Loans, as the case may be), in each case on the Second Amendment Effective Date, and each Additional Term Lender shall be a “Lender” under the Credit Agreement as of such date. Amounts paid or prepaid in respect of Increased Term Loans or Additional Term Loans may not be reborrowed.

SECTION 3.3 Other Provisions Regarding Term Loans. On the Second Amendment Effective Date, the Borrower shall apply the Net Proceeds of the Refinancing Term Loans (if any), together with cash on hand, to prepay in full the principal amount of all Existing Term Loans, other than Exchanged Term Loans. The exchange of Exchanged Term Loans with Refinancing Term Loans and the repayment of Existing Term Loans (other than the Exchanged Term Loans) with the proceeds of the Increased Term Loans and Additional Term Loans contemplated hereby collectively constitute a voluntary prepayment of the Existing Term Loans by the Borrower pursuant to Section 2.11 of the Credit Agreement and shall be subject to the provisions of Section 2.11 of the Credit Agreement. The commitments of the Increased Term Lenders and the Additional Term Lenders and the refinancing undertakings of the Exchanging Term Lenders are several and no such New Term Lender will be responsible for any other New Term Lender’s failure to make or acquire by refinancing Refinancing Term Loans. Each of the parties hereto acknowledges and agrees that the terms of this Second Amendment do not constitute a novation but, rather, an amendment of the terms of a pre-existing Indebtedness and related agreement, as evidenced by the Second Amended and Restated Credit Agreement.

#### ARTICLE IV

##### CONDITIONS TO EFFECTIVENESS

The effectiveness of this Second Amendment (including the amendments contained in Article II, the acknowledgement contained in Section 2.1 and agreements contained in Article III but excluding this Article IV, which is effective as of the date hereof) are subject to the satisfaction (or waiver) of the following conditions:

SECTION 4.1 This Second Amendment shall have been duly executed by the Borrower, the Administrative Agent and the New Term Lenders (whether pursuant to the execution and delivery of a Lender Consent, a Joinder or counterparts to this Second Amendment, as applicable) and delivered to the Administrative Agent.

SECTION 4.2 At the time of and immediately after the Second Amendment Effective Date and the making of Refinancing Term Loans, no Default or Event of Default shall have occurred and be continuing.

SECTION 4.3 The representations and warranties set forth in ARTICLE III of the Credit Agreement and those set forth in Article V of this Second Amendment shall be true and correct in all material respects on and as of the date of the making of Refinancing Term Loans and the Second Amendment Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which

case such representations and warranties shall be true and correct in all material respects as of such earlier date; *provided, however*, that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects on such respective dates.

SECTION 4.4 The Administrative Agent shall have received a notice of Borrowing from the Borrower pursuant to Section 2.03 of the Second Amended and Restated Credit Agreement with respect to the Refinancing Term Loans.

SECTION 4.5 The Administrative Agent shall have received, on behalf of itself and the New Term Lenders, a satisfactory written opinion of Kirkland & Ellis LLP, counsel for the Borrower (i) dated the Second Amendment Effective Date and (ii) addressed to the Administrative Agent and the New Term Lenders, and in each case, each of their permitted assigns. The Borrower hereby requests such counsel to deliver such opinion.

SECTION 4.6 All fees required to be paid on the Second Amendment Effective Date pursuant to that certain Engagement Letter dated as of January 20, 2017 by and between the Borrower and Deutsche Bank Securities, Inc. (the “Engagement Letter”) and reasonable and documented out-of-pocket expenses required to be paid on the Second Amendment Effective Date pursuant to the Engagement Letter, to the extent invoiced at least three (3) Business Days prior to the Second Amendment Effective Date, shall, upon the Second Amendment Effective Date, have been paid.

SECTION 4.7 The Borrower shall have applied, concurrently with the exchange of the Exchanged Term Loans with Refinancing Term Loans and the making of the Increased Term Loans and Additional Term Loans (if any), the Net Proceeds of the Refinancing Term Loans (if any), together with cash on hand, to prepay in full the principal amount of all Existing Term Loans other than Exchanged Term Loans.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

SECTION 5.1 Representations and Warranties. TO INDUCE THE OTHER PARTIES HERETO TO ENTER INTO THIS AMENDMENT, THE BORROWER REPRESENTS AND WARRANTS TO EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT THAT, AS OF THE SECOND AMENDMENT EFFECTIVE DATE THIS AMENDMENT HAS BEEN DULY AUTHORIZED, EXECUTED AND DELIVERED BY THE BORROWER AND CONSTITUTES A LEGAL, VALID AND BINDING OBLIGATION OF THE BORROWER, ENFORCEABLE AGAINST IT 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.

ARTICLE VI

EFFECTS ON LOAN DOCUMENTS

SECTION 6.1 Except as specifically amended herein, all Loan Documents shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(a) The execution, delivery and effectiveness of this Second Amendment shall not operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of the Loan Documents or in any way limit, impair or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Loan Documents.

(b) The Borrower and the other parties hereto acknowledge and agree that, on and after the Second Amendment Effective Date, this Second Amendment, the Joinders and each of the other Loan Documents to be executed and delivered by a Loan Party shall constitute a Loan Document for all purposes of the Second Amended and Restated Credit Agreement.

(c) On and after the Second Amendment Effective Date, each reference in the Second Amended and Restated Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Second Amended and Restated Credit Agreement, and this Second Amendment and the Second Amended and Restated Credit Agreement shall be read together and construed as a single instrument.

(d) Nothing herein shall be deemed to entitle the Borrower to a further consent to, or a further waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Second Amended and Restated Credit Agreement or any other Loan Document in similar or different circumstances.

(e) Section headings used herein are for convenience of reference only, are not part of this Second Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Second Amendment.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1 APPLICABLE LAW. THIS SECOND AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7.2 Execution in Counterparts; Severability. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of

which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Second Amendment by facsimile transmission or other electronic transmission (e.g., a “.pdf” or “.tif” file) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 7.3 Reaffirmation. The Borrower, on behalf of itself and each of the Loan Parties party to the Guarantee Agreement, the Security Agreement and the other Collateral Documents, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) acknowledges and agrees that the Refinancing Term Loans are Loans and the New Term Lenders are Lenders, and that all of its obligations under the Term Guarantee Agreement and the Term Security Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis, (ii) reaffirms each Lien granted by each Loan Party to the Term Collateral Agent for the benefit of the Administrative Agent and the Secured Parties (including the New Term Lenders) and reaffirms the guaranties made pursuant to the Term Guarantee Agreement, (iii) acknowledges and agrees that the grants of security interests by and the guaranties of the Loan Parties contained in the Term Guarantee Agreement and the Term Security Documents are, and shall remain, in full force and effect after giving effect to the Second Amendment, and (iv) agrees that the Loan Document Obligations include, among other things and without limitation, the prompt and complete payment and performance by the Borrower when due and payable (whether at the stated maturity, by acceleration or otherwise) of principal and interest on, and premium (if any) on, the Refinancing Term Loans under the Second Amended and Restated Credit Agreement.

[Remainder of page intentionally left blank.]

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

BUILDERS FIRSTSOURCE, INC., as Borrower

By: /s/ Donald F. McAleenan  
Name: Donald F. McAleenan  
Title: Senior Vice President, General Counsel and Secretary

DEUTSCHE BANK AG NEW YORK BRANCH,  
as Administrative Agent

By: /s/ Marcus Tarkington  
Name: Marcus Tarkington  
Title: Director

By: /s/ Dusan Lazarov  
Name: Dusan Lazarov  
Title: Director

[Signature Page to Second Amendment]

---

## ANNEX I

### LENDER CONSENT TO SECOND AMENDMENT

LENDER CONSENT (this “Lender Consent”) to the Second Amendment to Credit Agreement, among the Borrower (as defined below), the New Term Lenders referred to therein (whether pursuant to the execution and delivery of a Lender Consent, a Joinder or counterparts to the Second Amendment, as applicable) and the Administrative Agent (as defined below), to the Amended and Restated Term Loan Credit Agreement dated as of August 22, 2016 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Credit Agreement”) by and among Builders FirstSource, Inc., a Delaware corporation (the “Borrower”), the lenders from time to time party thereto (the “Lenders”) and Deutsche Bank AG New York Branch, as administrative agent (in such capacity, the “Administrative Agent”). All capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Credit Agreement or the Second Amendment, as applicable.

#### **Term Lenders**

[Check one or more of the two boxes below]

- The undersigned Lender hereby irrevocably and unconditionally approves of and consents to the Second Amendment and consents to the exchange (on a cashless basis) of 100% of the outstanding principal amount of the Term Loans held by such Lender (or such lesser amount allocated to such Lender by the Administrative Agent) with a Refinancing Term Loan in a like principal amount.
  - The undersigned Lender hereby requests to purchase Increased Term Loans up to an aggregate principal amount no greater than \$\_\_\_\_\_, or such lesser amount as notified to such Lender by the Administrative Agent. Such Lender agrees that its signature hereto shall constitute its signature as Assignee to the Assignment and Assumption Agreement attached to the Credit Agreement reflecting such purchase and that it shall be bound by such Assignment and Assumption in all respects.
-

## ANNEX II

### JOINDER

JOINDER, dated as of February 23 2017 (this “Joinder”), by and among \_\_\_\_\_ (the “New Term Lender”), Builders FirstSource, Inc., a Delaware corporation (the “Borrower”), and Deutsche Bank AG New York Branch (the “Administrative Agent”).

#### RECITALS:

WHEREAS, reference is hereby made to the Second Amendment to Credit Agreement dated as of February 23, 2017 (the “Second Amendment”) among the Borrower, the New Term Lenders referred to therein (whether pursuant to the execution and delivery of a Lender Consent, a Joinder or counterparts to the Second Amendment, as applicable) and the Administrative Agent, to the Amended and Restated Term Loan Credit Agreement dated as of August 22, 2016 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, the Lenders (as defined in the Credit Agreement) and the Administrative Agent. All capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Credit Agreement or the Second Amendment, as applicable.

WHEREAS, pursuant to the terms of the Second Amendment, the Borrower has established Refinancing Term Loans with Exchanging Term Lenders, Increasing Term Lenders and/or Additional Term Lenders; and

WHEREAS, subject to the terms and conditions of the Credit Agreement and the Second Amendment, Additional Term Lenders may become Lenders pursuant to one or more Joinders.

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

The New Term Lender hereby agrees to make Refinancing Term Loans in the amount notified to such Additional Term Lender by the Administrative Agent, but not to exceed the amount set forth on its signature page hereto, pursuant to and in accordance with the Credit Agreement and the Second Amendment. The Refinancing Term Loans provided pursuant to this Joinder shall be subject to all of the terms in the Credit Agreement and the Second Amendment and to the conditions set forth in the Credit Agreement and the Second Amendment, and shall be entitled to all the benefits afforded by the Credit Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Term Security Documents. The New Term Lender, the Borrower and the Administrative Agent acknowledge and agree that the Refinancing Term Loans provided pursuant to this Joinder shall constitute Term Loans for all purposes of the Credit Agreement and the other applicable Loan Documents.

By executing and delivering this Joinder, the New Term Lender shall be deemed to confirm to and agree with the other parties hereto as follows: (i) such New Term Lender is legally authorized to enter into this Joinder and the Credit Agreement; (ii) such New Term Lender

---



confirms that it has received a copy of this Joinder, the Second Amendment and the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Joinder, the Second Amendment and the Credit Agreement; (iii) such New Term Lender will independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Joinder, the Second Amendment and the Credit Agreement; (iv) such New Term Lender appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Joinder, the Second Amendment and the Credit Agreement and the other Loan Documents as are delegated to the Administrative Agent, respectively, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto; and (v) such New Term Lender agrees that it will perform in accordance with their terms all the obligations which by the terms of this Joinder, the Second Amendment and the Credit Agreement are required to be performed by it as an Additional Term Lender.

Upon (i) the execution of a counterpart of this Joinder by the New Term Lender, the Administrative Agent and the Borrower and (ii) the delivery to the Administrative Agent of a fully executed counterpart (including by way of telecopy or other electronic transmission) hereof, the New Term Lender shall become a Lender under the Credit Agreement, effective as of the Second Amendment Effective Date.

Delivered herewith by the New Term Lender to the Administrative Agent are such forms, certificates or other evidence with respect to United States federal income tax withholding matters as the New Term Lender may be required to deliver to the Administrative Agent pursuant to the Credit Agreement.

This Joinder may not be amended, modified or waived except by an instrument or instruments in writing signed and delivered on behalf of each of the parties hereto.

This Joinder is a "Loan Document."

This Joinder, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.

**THIS JOINDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

---

In the event any one or more of the provisions contained in this Joinder should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

This Joinder may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Delivery of an executed signature page to this Joinder by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Joinder.

[Remainder of page intentionally left blank.]

---

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Joinder as of the date first written above.

---

[NAME OF NEW TERM LENDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

If a second signature is necessary:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Maximum Amount of Additional Term Loans:

\$ \_\_\_\_\_

---

BUILDERS FIRSTSOURCE, INC.,  
as Borrower

By \_\_\_\_\_  
Name:  
Title:

---

Accepted:

DEUTSCHE BANK AG NEW YORK BRANCH,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

---

**EXHIBIT A**

Second Amended and Restated Credit Agreement

---

---

SECOND AMENDED AND RESTATED TERM LOAN  
CREDIT AGREEMENT

amended and restated as of  
February 23, 2017,

among

BUILDERS FIRSTSOURCE, INC.,  
as Borrower,

The Lenders Party Hereto

and

DEUTSCHE BANK AG NEW YORK BRANCH,  
as Term Administrative Agent

---

DEUTSCHE BANK SECURITIES INC.,  
CITIGROUP GLOBAL MARKETS INC.,  
CREDIT SUISSE SECURITIES (USA) LLC,  
KEYBANK CAPITAL MARKETS INC.

and

SUNTRUST ROBINSON HUMPHREY, INC.,  
as Joint Lead Arrangers and Joint Bookrunners

---

---

# TABLE OF CONTENTS

Page

## ARTICLE I

### DEFINITIONS

SECTION 1.01	Defined Terms	1
SECTION 1.02	Classification of Loans and Borrowings	69
SECTION 1.03	Terms Generally	69
SECTION 1.04	Accounting Terms; GAAP	69
SECTION 1.05	Effectuation of Transactions	70
SECTION 1.06	Limited Condition Acquisitions	70
SECTION 1.07	Certain Determinations	71

## ARTICLE II

### THE CREDITS

SECTION 2.01	Commitments	72
SECTION 2.02	Loans and Borrowings	72
SECTION 2.03	Requests for Borrowings	73
SECTION 2.04	[Reserved]	73
SECTION 2.05	[Reserved]	73
SECTION 2.06	Funding of Borrowings	73
SECTION 2.07	Interest Elections	74
SECTION 2.08	Termination of Commitments	75
SECTION 2.09	Repayment of Loans; Evidence of Debt	76
SECTION 2.10	Amortization of Term Loans	76
SECTION 2.11	Prepayment of Loans	77
SECTION 2.12	Fees	88
SECTION 2.13	Interest	88
SECTION 2.14	Alternate Rate of Interest	89
SECTION 2.15	Increased Costs	90
SECTION 2.16	Break Funding Payments	91
SECTION 2.17	Taxes	91
SECTION 2.18	Payments Generally; Pro Rata Treatment; Sharing of Setoffs	95
SECTION 2.19	Mitigation Obligations; Replacement of Lenders	96
SECTION 2.20	Incremental Credit Extensions	97
SECTION 2.21	Refinancing Amendments	100
SECTION 2.22	Defaulting Lenders	101
SECTION 2.23	Illegality	102
SECTION 2.24	Loan Modification Offers	102



**TABLE OF CONTENTS**  
(continued)

**Page**

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01	Organization; Powers	104
SECTION 3.02	Authorization; Enforceability	104
SECTION 3.03	Governmental Approvals; No Conflicts	104
SECTION 3.04	Financial Condition; No Material Adverse Effect	105
SECTION 3.05	Properties	105
SECTION 3.06	Litigation and Environmental Matters	106
SECTION 3.07	Compliance with Laws	106
SECTION 3.08	Investment Company Status	106
SECTION 3.09	Taxes	106
SECTION 3.10	ERISA	106
SECTION 3.11	Disclosure	107
SECTION 3.12	Subsidiaries	107
SECTION 3.13	Intellectual Property; Licenses, Etc	107
SECTION 3.14	Solvency	108
SECTION 3.15	Senior Indebtedness	108
SECTION 3.16	Federal Reserve Regulations	108
SECTION 3.17	Use of Proceeds	108

ARTICLE IV

CONDITIONS

SECTION 4.01	Effective Date	109
--------------	----------------	-----

ARTICLE V

AFFIRMATIVE COVENANTS

SECTION 5.01	Financial Statements and Other Information	112
SECTION 5.02	Notices of Material Events	115
SECTION 5.03	Information Regarding Collateral	115
SECTION 5.04	Existence; Conduct of Business	116
SECTION 5.05	Payment of Taxes, etc.	116
SECTION 5.06	Maintenance of Properties	116
SECTION 5.07	Insurance	116
SECTION 5.08	Books and Records; Inspection and Audit Rights	117
SECTION 5.09	Compliance with Laws	118
SECTION 5.10	Use of Proceeds	118
SECTION 5.11	Additional Subsidiaries	118

## TABLE OF CONTENTS

(continued)

		<b>Page</b>
SECTION 5.12	Further Assurances	119
SECTION 5.13	Designation of Subsidiaries	119
SECTION 5.14	Certain Post-Closing Obligations	120
SECTION 5.15	Maintenance of Rating of the Borrower and the Facilities	120
SECTION 5.16	Lines of Business	120
SECTION 5.17	Transactions with Affiliates	120

### ARTICLE VI

#### NEGATIVE COVENANTS

SECTION 6.01	Indebtedness; Certain Equity Securities	122
SECTION 6.02	Liens	128
SECTION 6.03	Fundamental Changes	132
SECTION 6.04	Investments, Loans, Advances, Guarantees and Acquisitions	133
SECTION 6.05	Asset Sales	136
SECTION 6.06	[Reserved]	139
SECTION 6.07	Restricted Payments; Certain Payments of Indebtedness	139
SECTION 6.08	[Reserved]	144
SECTION 6.09	Restrictive Agreements	144
SECTION 6.10	Amendment of Junior Financing	145
SECTION 6.11	[Reserved]	146
SECTION 6.12	Changes in Fiscal Periods	146

### ARTICLE VII

#### EVENTS OF DEFAULT

SECTION 7.01	Events of Default	146
SECTION 7.02	Application of Proceeds	149

### ARTICLE VIII

#### ADMINISTRATIVE AGENT

SECTION 8.01	Appointment and Authority	149
SECTION 8.02	Rights as a Lender	150
SECTION 8.03	Exculpatory Provisions	150
SECTION 8.04	Reliance by Administrative Agent	151
SECTION 8.05	Delegation of Duties	152
SECTION 8.06	Resignation of Administrative Agent	152
SECTION 8.07	Non-Reliance on Term Administrative Agent and Other Lenders	153
SECTION 8.08	No Other Duties, Etc.	154
SECTION 8.09	Term Administrative Agent May File Proofs of Claim	154

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
SECTION 8.10	No Waiver; Cumulative Remedies; Enforcement	155
SECTION 8.11	Withholding Taxes	155
 ARTICLE IX  MISCELLANEOUS		
SECTION 9.01	Notices	156
SECTION 9.02	Waivers; Amendments	158
SECTION 9.03	Expenses; Indemnity; Damage Waiver	161
SECTION 9.04	Successors and Assigns	164
SECTION 9.05	Survival	171
SECTION 9.06	Counterparts; Integration; Effectiveness	171
SECTION 9.07	Severability	172
SECTION 9.08	Right of Setoff	172
SECTION 9.09	Governing Law; Jurisdiction; Consent to Service of Process	172
SECTION 9.10	WAIVER OF JURY TRIAL	173
SECTION 9.11	Headings	174
SECTION 9.12	Confidentiality	174
SECTION 9.13	USA PATRIOT Act	175
SECTION 9.14	Release of Liens and Guarantees	175
SECTION 9.15	No Advisory or Fiduciary Responsibility	177
SECTION 9.16	Interest Rate Limitation	177
SECTION 9.17	Intercreditor Agreements	177

SCHEDULES :

Schedule 2.01	—	Commitments and Loans
Schedule 3.03	—	Government Approvals; No Conflicts
Schedule 3.06	—	Litigation and Environmental Matters
Schedule 3.12	—	Subsidiaries
Schedule 5.14	—	Certain Post-Closing Obligations
Schedule 5.17	—	Existing Affiliate Transactions
Schedule 6.01	—	Existing Indebtedness
Schedule 6.02	—	Existing Liens
Schedule 6.04(e)	—	Existing Investments
Schedule 6.09	—	Existing Restrictions
Schedule 9.01	—	Notices

EXHIBITS :

Exhibit A	—	Form of Assignment and Assumption
Exhibit B	—	Form of Term Guarantee Agreement
Exhibit C	—	Form of Perfection Certificate
Exhibit D	—	Form of Term Collateral Agreement
Exhibit E	—	[Reserved]
Exhibit F	—	Form of Pari Passu Intercreditor Agreement
Exhibit G	—	Form of Second Lien Intercreditor Agreement
Exhibit H	—	Form of Closing Certificate
Exhibit I	—	Form of Intercompany Note
Exhibit J	—	Form of Specified Discount Prepayment Notice
Exhibit K	—	Form of Specified Discount Prepayment Response
Exhibit L	—	Form of Discount Range Prepayment Notice
Exhibit M	—	Form of Discount Range Prepayment Offer
Exhibit N	—	Form of Solicited Discounted Prepayment Notice
Exhibit O	—	Form of Solicited Discounted Prepayment Offer
Exhibit P	—	Form of Acceptance and Prepayment Notice
Exhibit Q-1	—	Form of United States Tax Compliance Certificate 1
Exhibit Q-2	—	Form of United States Tax Compliance Certificate 2
Exhibit Q-3	—	Form of United States Tax Compliance Certificate 3
Exhibit Q-4	—	Form of United States Tax Compliance Certificate 4
Exhibit R	—	Form of Term Note
Exhibit S	—	Form of Solvency Certificate
Exhibit T	—	Form of Notice of Borrowing

SECOND AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT dated as of February 23, 2017 (this “Agreement”), among BUILDERS FIRSTSOURCE, INC., a Delaware corporation (the “Borrower”), the LENDERS party hereto and DEUTSCHE BANK AG NEW YORK BRANCH (“DBNY”), as Term Administrative Agent.

WHEREAS, the Borrower is party to that certain Amended and Restated Credit Agreement dated as of August 22, 2016, by and among the Borrower, each lender from time to time party thereto and the Administrative Agent (as amended, restated, supplemented or otherwise modified prior to the Second Amendment Effective Date, the “Existing Credit Agreement”);

WHEREAS, the requisite parties to the Existing Credit Agreement have agreed to amend and restate the Existing Credit Agreement as provided in this Agreement, effective upon the satisfaction of the conditions precedent set forth in the Second Amendment.

NOW, THEREFORE, the parties hereto hereby agree to amend and restate the Existing Credit Agreement, and the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

## ARTICLE I

### DEFINITIONS

#### SECTION 1.01 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“ABL/Bond Intercreditor Agreement” means the ABL/Bond Intercreditor Agreement, dated as of May 29, 2013, by and among, *inter alios*, SunTrust Bank, Wilmington Trust, National Association and each additional representative party thereto from time to time, as amended, modified, supplemented, substituted, replaced or restated, in whole or in part, from time to time.

“ABL Credit Agreement” means the Credit Agreement dated as of the Effective Date among the Borrower, the Subsidiaries of the Borrower party thereto, SunTrust Bank, as administrative and collateral agent and the lenders party thereto from time to time, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time (whether with the original administrative agent and lenders or other agents and lenders or otherwise and whether provided under the original ABL Credit Agreement or another credit agreement, indenture, instrument, other document or otherwise, unless such credit agreement, indenture, instrument or document expressly provides that it is not an ABL Credit Agreement).

“ABL Facility” means the senior secured revolving loan facility under the ABL Credit Agreement or any amendment, supplement, modification, substitution, replacement, restatement or refinancing thereof, in whole or in part, from time to time, including in connection with a Permitted Refinancing of the ABL Credit Agreement.

“ABL Financing Transactions” means the ABL Financing Transactions as such term is defined in the ABL Credit Agreement.

“ABL Loan Documents” means, collectively, (i) the ABL Credit Agreement and (ii) the security documents, intercreditor agreements (including the ABL/Bond Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the ABL Credit Agreement or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with a Permitted Refinancing of the ABL Credit Agreement.

“ABL Obligations” means all Indebtedness and other obligations of the Borrower and any other Loan Parties outstanding under or pursuant to the ABL Loan Documents, together with guarantees thereof that are secured, or intended to be secured, under the ABL Loan Documents, including any direct or indirect, absolute or contingent, interest and fees that accrue after the commencement by or against the Borrower, any other Loan Party or any guarantor of ABL Obligations of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, and any obligations under a Designated Hedge Agreement or a Cash Management Agreement (or equivalent terms) that are secured pursuant to the ABL Loan Documents.

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

“Acceptable Discount” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(2).

“Acceptable Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(3).

“Acceptance and Prepayment Notice” means an irrevocable written notice from a Term Lender accepting a Solicited Discounted Prepayment Offer to make a Discounted Term Loan Prepayment at the Acceptable Discount specified therein pursuant to Section 2.11(a)(ii)(D) substantially in the form of Exhibit P.

“Acceptance Date” has the meaning specified in Section 2.11(a)(ii)(D)(2).

“Accepting Lenders” has the meaning specified in Section 2.24(a).

“Acquired Company” means ProBuild Holdings LLC, a Delaware limited liability company.

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a “Pro Forma Entity”) for any period as the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined as if references to the Borrower and its Restricted Subsidiaries in the definition of “Consolidated EBITDA” were references to such Pro Forma Entity and its subsidiaries that will become Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity.

“ Acquired Entity or Business ” has the meaning given such term in the definition of “Consolidated EBITDA.”

“ Acquisition ” means the acquisition of the Acquired Companies (as defined in the Acquisition Agreement) pursuant to the terms of the Acquisition Agreement.

“ Acquisition Agreement ” means that securities purchase agreement (together with all exhibits, schedules, annexes and disclosure schedules thereto) dated as of April 13, 2015 among the Borrower, as purchaser, the sellers identified therein and the Acquired Company.

“ Acquisition Documents ” means the Acquisition Agreement, all other agreements to be entered into between or among the Acquired Company or its Affiliates and the Borrower or its Affiliates in connection with the Acquisition and all schedules, exhibits and annexes to each of the foregoing and all side letters, instruments and agreements affecting the terms of the foregoing or entered into in connection therewith.

“ Acquisition Transaction ” means any acquisition by the Borrower or any Restricted Subsidiary that either (a) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or (b) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

“ Additional Revolving Lender ” means, at any time, any bank, financial institution or other institutional lender or investor that agrees to provide any portion of any Incremental Revolving Loans pursuant to an Incremental Facility Amendment in accordance with Section 2.20; provided that each Additional Revolving Lender shall be subject to the approval of the Term Administrative Agent if such consent would be required under Section 9.04(b) for an assignment of Revolving Loans, as applicable, to such bank, financial institution or other institutional lender or investor (such approval not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“ Additional Term Lender ” means, at any time, any bank, financial institution or other institutional lender or investor that agrees to provide any portion of any (a) Incremental Term Loans pursuant to an Incremental Facility Amendment in accordance with Section 2.20 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Term Lender shall be subject to the approval of the Term Administrative Agent if such consent would be required under Section 9.04(b) for an assignment of Term Loans or Term Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“ Adjusted LIBO Rate ” means, with respect to any Eurodollar Borrowing for any Interest Period, a rate per annum equal to the product of (i) the LIBO Rate as in effect at such time for such Interest Period and (ii) the Statutory Reserve Rate; provided that the Adjusted LIBO Rate for any Interest Period shall not be less than 1.00% per annum.

“ Administrative Questionnaire ” means an administrative questionnaire in a form supplied by the Term Administrative Agent.

“ Affected Class ” has the meaning specified in Section 2.24(a).

“ Affiliate ” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified.

“ Affiliated Debt Fund ” means any Affiliated Lender that is a bona fide diversified debt fund primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course.

“ Affiliated Lender ” means, at any time, any Lender that is an Investor or an Affiliate of an Investor (other than the Borrower or any of its Subsidiaries) at such time, to the extent that such Investor or its Affiliates constitute an Affiliate of the Borrower or its Subsidiaries.

“ Agent ” means the Term Administrative Agent, the Term Collateral Agent, each Joint Lead Arranger and any successors and assigns in such capacity, and “ Agents ” means two or more of them.

“ Agent Parties ” has the meaning given to such term in Section 9.01(c).

“ Agreement ” has the meaning given to such term in the preliminary statements hereto.

“ Alternate Base Rate ” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1.00% and (c) the Adjusted LIBO Rate for the applicable Loan on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in dollars with a maturity of one month plus 1.00%; provided that, solely for purposes of the foregoing, the Adjusted LIBO Rate for any day shall be calculated using the LIBO Rate based on the rate per annum determined by the Term Administrative Agent by reference to the ICE Benchmark Administration Interest Settlement Rates (as set forth by any service selected by the Term Administrative Agent that has been nominated by the ICE Benchmark Administration Limited (or any Person which takes over the administration of that rate) as an authorized information vendor for the purpose of displaying such rates) (the “ ICE LIBOR ”) as published by Reuters (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Term Administrative Agent from time to time) on such day at approximately 11:00 a.m. (London time) for deposits in dollars for a period equal to one month. If the Term Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the Term Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.



“ Applicable Account ” means, with respect to any payment to be made to the Term Administrative Agent hereunder, the account specified by the Term Administrative Agent from time to time for the purpose of receiving payments of such type.

“ Applicable Discount ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(2).

“ Applicable Rate ” means, for any day, (a) 2.00% per annum, in the case of an ABR Loan, or (ii) 3.00% per annum, in the case of a Eurodollar Loan.

“ Approved Bank ” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“ Approved Foreign Bank ” has the meaning assigned to such term in the definition of “Permitted Investments.”

“ Approved Fund ” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its activities and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04(b)), substantially in the form of Exhibit A or any other form reasonably approved by the Term Administrative Agent.

“ Auction Agent ” means (a) the Term Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Term Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.11(a)(ii)(A); provided that the Borrower shall not designate the Term Administrative Agent as the Auction Agent without the written consent of the Term Administrative Agent (it being understood that the Term Administrative Agent shall be under no obligation to agree to act as the Auction Agent).

“ Audited Financial Statements ” means (a) the audited combined balance sheets of the Acquired Company for the fiscal years ended December 31, 2013 and December 31, 2014, and the related consolidated statements of income and cash flows of the Acquired Company for the fiscal years ended December 31, 2012, December 31, 2013 and December 31, 2014 and (b) the audited consolidated balance sheets of the Borrower for the fiscal years ended December 31, 2013 and December 31, 2014, and the related consolidated statements of income and cash flows of the Borrower for the fiscal years ended December 31, 2012, December 31, 2013 and December 31, 2014.

“ Available Amount ” means, as of any date of determination, a cumulative amount equal to (without duplication):

(a) \$75,000,000 (the “ Starter Basket ”), plus

(b) the sum of an amount (which amount shall not be less than zero) equal to the greater of (A) 50% of Consolidated Net Income of the Borrower and its Restricted Subsidiaries for the period (treated as one accounting period) from the first day of the first full fiscal quarter of the Borrower commencing after the Effective Date to the end of the most recently ended Test Period as of such date and (B) the sum of Excess Cash Flow (but not less than zero in any period) for the fiscal year ending December 31, 2016 and Excess Cash Flow for each succeeding completed fiscal year as of such date, in each case, that was not required to prepay Term Borrowings pursuant to Section 2.11(d), plus

(c) returns, profits, distributions and similar amounts received in cash or Permitted Investments by the Borrower and its Restricted Subsidiaries on Investments made using the Available Amount (not to exceed the amount of such Investments), plus

(d) Investments of the Borrower or any of its Restricted Subsidiaries in any Unrestricted Subsidiary made using the Available Amount that has been re-designated as a Restricted Subsidiary or that has been merged or consolidated with or into the Borrower or any of its Restricted Subsidiaries (up to the lesser of (i) the fair market value determined in good faith by the Borrower of the Investments of the Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation and (ii) the fair market value determined in good faith by the Borrower of the original Investment by the Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary), plus

(e) the Net Proceeds of a sale or other Disposition of any Unrestricted Subsidiary (including the issuance of stock of an Unrestricted Subsidiary) received by the Borrower or any Restricted Subsidiary, plus

(f) to the extent not included in Consolidated Net Income, dividends or other distributions or returns on capital received by the Borrower or any Restricted Subsidiary from an Unrestricted Subsidiary, plus

(g) the aggregate amount of any Retained Declined Proceeds since the Effective Date.

“ Available Equity Amount ” means a cumulative amount equal to (without duplication):

(a) the Net Proceeds of new public or private issuances of Qualified Equity Interests of any parent of the Borrower which are contributed to the Borrower, plus

(b) capital contributions received by the Borrower after the Effective Date in cash or Permitted Investments (other than (i) in respect of any Disqualified Equity Interest, (ii) to the extent constituting a Specified Equity Contribution (as defined in the ABL Credit Agreement) or (iii) amounts applied pursuant to Section 6.01(a)(xiv)), plus

(c) the net cash proceeds received by the Borrower or any Restricted Subsidiary from Indebtedness and Disqualified Equity Interest issuances issued after the Effective Date and which have been exchanged or converted into Qualified Equity Interests, plus

(d) returns, profits, distributions and similar amounts received in cash or Permitted Investments by the Borrower or any Restricted Subsidiary on Investments made using the Available Equity Amount (not to exceed the amount of such Investments).

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers, board of directors, manager or managing member of such Person or the functional equivalent of the foregoing or any committee thereof duly authorized to act on behalf of such board, manager or managing member, (c) in the case of any partnership, the board of directors or board of managers of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

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

“Borrower” has the meaning assigned to such term in the preliminary statements hereto.

“Borrower Materials” has the meaning assigned to such term in the last paragraph of Section 5.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by the Borrower to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.11(a)(ii)(B).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by the Borrower of offers for, and the corresponding acceptance by a Term Lender of, a voluntary prepayment of Term Loans at a specified range at a discount to par pursuant to Section 2.11(a)(ii)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by the Borrower of offers for, and the subsequent acceptance, if any, by a Term Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.11(a)(ii)(D).

“Borrowing” means Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means (a) in the case of a Eurodollar Borrowing, \$1,000,000 and (b) in the case of an ABR Borrowing, \$500,000.

“Borrowing Multiple” means (a) in the case of a Eurodollar Borrowing, \$1,000,000 and (b) in the case of an ABR Borrowing, \$500,000.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“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 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; provided, that all obligations of any Person that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect on the Effective Date (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease or Capital Lease Obligation) for purposes of this Agreement regardless of any change in GAAP following the Effective Date that would otherwise require such obligation to be recharacterized as a Capital Lease Obligation, to the extent that financial reporting shall not be affected hereby. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

“Cash Management Obligations” means (a) obligations of the Borrower or any Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Cash Management Services” has the meaning assigned to such term in the definition of “Secured Cash Management Obligations.”

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“CFC Holdco” means a Domestic Subsidiary that is a disregarded entity for U.S. federal income tax purposes with no material assets other than capital stock (and debt securities, if any) of one or more Foreign Subsidiaries that are CFCs, or of other CFC Holdcos.

“Change of Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Borrower and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the Borrower held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one or more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of the Borrower or (b) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the Secured Notes Indenture or the Unsecured Notes Indenture.

For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of the Borrower directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (a) of this definition is triggered).

“Change in Law” means: (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the

date of this Agreement or (c) the making or issuance of 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, including, for the avoidance of doubt, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank of 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,” to the extent enacted, adopted, promulgated or issued after the date of this Agreement, but only to the extent such rules, regulations, or published interpretations or directives are applied to the Borrower and its Subsidiaries by the Term Administrative Agent or any Lender in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities, including, without limitation, for purposes of Section 2.15.

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Incremental Revolving Loans, Term Loans, Incremental Term Loans or Other Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Commitment or Other Term Commitment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Commitments, Other Term Loans and Incremental Term Loans that have different terms and conditions shall be construed to be in different Classes.

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

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Term Security Documents as security for the Secured Obligations.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Term Administrative Agent shall have received from (i) the Borrower and each of the Restricted Subsidiaries (other than any Excluded Subsidiary) either (x) a counterpart of the Term Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Term Guarantee Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Person and (ii) the Borrower and each Subsidiary Loan Party either (x) a counterpart of the Term Collateral Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Subsidiary Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Term Collateral Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Person, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, to the extent reasonably requested by the Term Administrative Agent, opinions and documents of the type referred to in Sections 4.01(b) and 4.01(d);

(b) all outstanding Equity Interests of each Restricted Subsidiary that is a Material Subsidiary (other than any Equity Interests constituting Excluded Assets) owned by or on behalf of any Loan Party, shall have been pledged pursuant to the Term Collateral Agreement, and, subject to the ABL/Bond Intercreditor Agreement and the Pari Passu Intercreditor Agreement, the Term Administrative Agent shall have received certificates, if any, or other instruments, if any, representing all such Equity Interests to the extent constituting “certificated securities” (other than such Equity Interests constituting Excluded Assets), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank;

(c) if any Indebtedness for borrowed money of the Borrower or any Subsidiary in a principal amount of \$1,000,000 or more is owing by such obligor to any Loan Party and such Indebtedness is evidenced by a promissory note, such promissory note shall be pledged pursuant to the Term Collateral Agreement, and, subject to the ABL/Bond Intercreditor Agreement and the Pari Passu Intercreditor Agreement, the Term Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank; provided, however, the foregoing delivery requirement with respect to any intercompany indebtedness may be satisfied by delivery of an omnibus or global intercompany note executed by all Loan Parties as payees and all such obligors as payors;

(d) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and Intellectual Property security agreements required by this Agreement, the Term Security Documents, Requirements of Law and reasonably requested by the Term Administrative Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Term Security Documents and perfect such Liens to the extent required by, and with the priority required by, this Agreement, the Term Security Documents and the other provisions of the term “Collateral and Guarantee Requirement,” shall have been filed, registered or recorded or delivered to the Term Administrative Agent for filing, registration or recording; and

(e) the Term Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property (if the Mortgaged Property is in a jurisdiction that imposes a mortgage recording or similar tax is imposed on the amount secured by such Mortgage, then the amount secured by such Mortgage shall be limited to the book value of such Mortgaged Property, as reasonably determined by the Borrower), (ii) a policy or policies of title insurance (or marked unconditional commitment to issue such policy or policies) issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such customary lender’s endorsements (other than a creditor’s rights endorsement) as the Term Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates (it being agreed that the Term Administrative Agent shall accept zoning reports from a nationally recognized zoning company in lieu of zoning endorsements to such title insurance policies), in an amount equal to the fair market value of such Mortgaged Property or as otherwise reasonably agreed by the parties;

provided that in no event will the Borrower be required to obtain independent appraisals of such Mortgaged Properties, unless required by FIRREA, (iii) a completed “Life-of-Loan” Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and if any Mortgaged Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in special flood hazard area, a duly executed notice about special flood hazard area status and flood disaster assistance and evidence of such flood insurance as provided in Section 5.07(b), (iv) opinions, addressed to the Term Administrative Agent and the Secured Parties, from counsel qualified to opine in each jurisdiction where a Mortgaged Property is located regarding the enforceability of the Mortgage and such other matters as may be in form and substance reasonably satisfactory to the Term Administrative Agent, (v) a survey or existing survey together with a no change affidavit of such Mortgaged Property, in compliance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and otherwise reasonably satisfactory to the Term Administrative Agent, and (vi) evidence of payment of title insurance premiums and expenses and all recording, mortgage, transfer and stamp taxes and fees payable in connection with recording the Mortgage, any amendments thereto and any fixture filings in appropriate county land office(s).

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if the Term Administrative Agent and the Borrower reasonably agree in writing that the cost, burden, difficulty or consequence of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences to the Borrower and its Affiliates (including the imposition of withholding or other material taxes)), outweighs the benefits to be obtained by the Lenders therefrom; (b) Liens required to be granted from time to time pursuant to the term “Collateral and Guarantee Requirement” shall be subject to exceptions and limitations set forth in the Term Security Documents; (c) in no event shall control agreements or other control or similar arrangements be required with respect to cash, Permitted Investments, other deposit accounts, securities and commodities accounts (including securities entitlements and related assets) (other than any such control agreements or other control or similar agreements as required by an ABL Facility and only for so long as such ABL Facility is in effect), letter of credit rights or other assets requiring perfection by control (but not, for avoidance of doubt, possession); (d) in no event shall any Loan Party be required to complete any filings or other action with respect to the perfection of security interests in any jurisdiction outside of the United States, and no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the United States (including any Equity Interests of Foreign Subsidiaries and any Intellectual Property governed by or arising or existing under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia) or to perfect or make enforceable any security interests in any such assets (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); (e) in no event shall any Loan Party be required to complete any filings or other action with respect to perfection of security interests in



assets subject to certificates of title beyond the filing of UCC financing statements; (f) other than the filing of UCC financing statements, no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$1,000,000; (g) in no event shall any Loan Party be required to complete any filings or other action with respect to security interests in Intellectual Property beyond the filing of Intellectual Property security agreements with the United States Patent and Trademark Office or the United States Copyright Office; (h) no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements); and (i) in no event shall the Collateral include any Excluded Assets. The Term Administrative Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date) and any other obligations under this definition where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Term Security Documents.

“Commitment” means with respect to any Lender, its Term Commitment, Incremental Revolving Commitment, Other Term Commitment of any Class or any combination thereof (as the context requires).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means the certificate required to be delivered pursuant to Section 5.01(d).

“Consolidated Cash Interest Expense” means, as of any date for the applicable period ending on such date with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis, the amount payable with respect to such period in respect of (a) total interest expense payable in cash with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries (including the interest component under Capitalized Leases, but excluding, to the extent included in interest expense, (i) fees and expenses (including any penalties and interest relating to Taxes) associated with the consummation of the Transactions, (ii) annual agency fees paid to the administrative agents and collateral agents under any credit facilities or other debt instruments or documents, (iii) costs associated with obtaining Swap Agreements and any interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Agreements or other derivative instruments, and any one-time cash costs associated with breakage in respect of Swap Agreements for interest rates, (iv) fees and expenses (including any penalties and interest relating to Taxes) associated with any Investment not prohibited by Section 6.04, the issuance of Equity Interests or Indebtedness, (v) any interest component relating to accretion or accrual of discounted liabilities, (vi) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations, (vii) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses or expensing of any financing fees or prepayment or redemption premiums or penalty and any other amounts of non-cash interest (including as a result of the effects of acquisition method accounting or pushdown accounting), and (viii) any interest expense attributable to the exercise of

appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto and with respect to any Permitted Acquisition or other Investment, all as calculated on a consolidated basis in accordance with GAAP minus (b) cash interest income of the Borrower and its Restricted Subsidiaries earned during such period, in each case as determined in accordance with GAAP.

“ Consolidated EBITDA ” means, for any period, Consolidated Net Income for such period, plus :

(a) without duplication and to the extent already deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense and, to the extent not reflected in such total interest expense, the sum of (A) premium payments, debt discount, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets plus (B) the portion of rent expense with respect to such period under Capitalized Leases that is treated as interest expense in accordance with GAAP plus (C) the implied interest component of synthetic leases with respect to such period plus (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or such derivative instruments plus (E) bank and letter of credit fees and costs of surety bonds in connection with financing activities, plus (F) any commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility plus (G) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program;

(ii) provision for taxes based on income, profits or capital and sales taxes, including federal, provincial, territorial, foreign, state, local, franchise, excise, and similar taxes and foreign withholding taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto);

(iii) Non-Cash Charges;

(iv) operating expenses incurred on or prior to the Effective Date attributable to (A) salary obligations paid to employees terminated prior to the Effective Date and (B) wages paid to executives in excess of the amounts the Borrower and/or any of its Restricted Subsidiaries are required to pay pursuant to their respective employment agreements;

(v) extraordinary losses or charges in accordance with GAAP;

(vi) unusual, non-recurring or exceptional expenses, losses or charges (including any unusual, non-recurring or exceptional operating expenses, losses or charges directly attributable to the implementation of cost savings initiatives), severance, relocation costs, integration and facilities' opening costs and other business optimization expenses and operating improvements (including related to new product introductions), systems development and establishment costs, recruiting fees, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of facilities, internal costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), contract terminations and professional and consulting fees incurred in connection with any of the foregoing;

(vii) restructuring charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements;

(viii) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any Non-Wholly Owned Subsidiary deducted (and not added back in such period) in calculating Consolidated Net Income;

(ix) (A) the amount of board of directors, management, monitoring, consulting and advisory fees, indemnities and related expenses paid or accrued in such period (including any termination fees payable in connection with the early termination of management and monitoring agreements) and (B) the amount of expenses relating to payments made to option holders of the Borrower or any of its direct or indirect parent companies in connection with, or as a result of, any distribution being made to shareholders of such Person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted in the Loan Documents;

(x) losses, expenses or charges (including all fees and expenses or charges relating thereto) (A) from abandoned, closed, disposed or discontinued operations and any losses on disposal of abandoned, closed or discontinued operations and (B) attributable to business dispositions or asset dispositions (other than in the ordinary course of business) as determined in good faith by a Financial Officer;

(xi) any non-cash loss attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such loss has not been realized);

(xii) any loss relating to amounts paid in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income for such period;

(xiii) any gain relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (c)(vi) and (c)(vii) below;

(xiv) any costs or expenses incurred by the Borrower or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of the Borrower or Net Proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests);

(xv) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature;

(xvi) the amount of losses on Dispositions of accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xvii) other add-backs and adjustments reflected in the Information Memorandum and the Model;

(xviii) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions or Investments;

(xix) charges, losses, lost profits, expenses (including litigation expenses, fee and charges) or write-offs to the extent indemnified or insured by a third party, including expenses or losses covered by indemnification provisions or by any insurance provider in connection with the Transactions, a Permitted Acquisition or any other acquisition or Investment, disposition or any Casualty Event, in each case, to the extent that coverage has not been denied and so long as such amounts are actually reimbursed in cash within one year after the related amount is first added to Consolidated EBITDA pursuant to this clause (xix) (and if not so reimbursed within one year, such amount shall be deducted from Consolidated EBITDA during the next measurement period);

(xx) cash receipts (or any netting arrangements resulting in reduced cash expenses) not included in Consolidated EBITDA in any period to the extent non-cash gains relating to such receipts were deducted in the calculation of Consolidated EBITDA pursuant to clause (c) below for any previous period and not added back; and

(xxi) Public Company Costs; plus

(b) without duplication, the amount of “run rate” cost savings, operating expense reductions, other operating improvements, and synergies related to any Specified Transaction, the Transactions, any restructuring, cost saving initiative or other initiative projected by the Borrower in good faith to be realized as a result of actions taken, committed to be taken or planned to be taken, in each case on or prior to the date that is 24 months after the end of the relevant Test Period (including actions initiated prior to the Effective Date) (which cost savings, operating expense reductions, other operating improvements and synergies shall be added to Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; provided that (A) such cost savings, operating expense reductions, other operating improvements and synergies are reasonably identifiable and quantifiable and (B) no cost savings, operating expense reductions, other operating improvements or synergies shall be added pursuant to this clause (b) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions, other operating improvements or synergies that are included in clauses (a)(vi) and (a)(vii) above or in the definition of “Pro Forma Adjustment” (it being understood and agreed that “run rate” shall mean the full recurring benefit that is associated with any action taken); less

(c) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) extraordinary or non-recurring gains;

(ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period); and

(iii) (A) gains (including all fees and expenses or income relating thereto) attributable to business dispositions or asset dispositions, other than in the ordinary course of business, as determined in good faith by a Financial Officer and (B) gains or income (including all reasonable fees and expenses or charges relating thereto) from abandoned, closed, disposed or discontinued operations and any gains on disposal of abandoned, closed or discontinued operations;

(iv) any non-cash gain attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such gain has not been realized);

(v) any gain relating to amounts received in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income in such period;

(vi) any loss relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (a)(xii) and (a)(xiii) above; and

(vii) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any Non Wholly Owned Subsidiary added (and not deducted in such period) to Consolidated Net Income; plus

(d) any income from investments recorded using the equity method of accounting or the cost method of accounting, without duplication and to the extent not included in arriving at Consolidated Net Income, except to the extent such income was attributable to income that would be deducted pursuant to clause (c) if it were income of the Borrower or its Restricted Subsidiaries; minus

(e) any losses from investments recorded using the equity method of accounting or the cost method of accounting, without duplication and to the extent not deducted in arriving at Consolidated Net Income, except to the extent such loss was attributable to losses that would be added back pursuant to clause (a) and (b) above if it were a loss of the Borrower or a Restricted Subsidiary; plus

(f) an amount, with respect to investments recorded using the equity method of accounting or the cost method of accounting and without duplication of any amounts added pursuant to clause (d) above, equal to the amount attributable to each such investment that would be added to Consolidated EBITDA pursuant to clauses (a) and (b) above if instead attributable to the Borrower or a Restricted Subsidiary, pro-rated according to the Borrower's or the applicable Subsidiary's percentage ownership in such investment; minus

(g) an amount, with respect to investments recorded using the equity method of accounting or the cost method of accounting and without duplication of any amounts deducted pursuant to clause (e) above, equal to the amount attributable to each such investment that would be deducted from Consolidated EBITDA pursuant to clause (c) above if instead attributable to the Borrower or a Restricted Subsidiary, pro-rated according to the Borrower's or the applicable Subsidiary's percentage ownership in such investment;

in each case, as determined on a consolidated basis for the Borrower and its Restricted Subsidiaries in accordance with GAAP; provided that:

(I) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA currency translation gains and losses related to currency remeasurements of assets or liabilities (including the net loss or gain resulting from hedging agreements for currency exchange risk and revaluations of intercompany balances);

(II) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) to the extent not included in Consolidated Net Income, the Acquired EBITDA of any Person, property, business or asset or attributable to any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary during such period (other than any Unrestricted Subsidiary) to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) (each such Person, property, business or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), in each case based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis and (B) an adjustment in respect of each Pro Forma Entity equal to the amount of the Pro Forma Adjustment with respect to such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) as specified in the Pro Forma Adjustment certificate delivered to the Term Administrative Agent (for further delivery to the Lenders); provided that, with respect to any determination to be made on a Pro Forma Basis, at the election of the Borrower, such Acquired EBITDA or such adjustment shall not be required to be included for any Pro Forma Entity to the extent the aggregate consideration paid in connection with the acquisition of such Acquired Entity or Business or the fair market value of such Converted Restricted Subsidiary, in the aggregate, is less than \$50,000,000;

(III) there shall be (A) to the extent included in Consolidated Net Income, excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset (other than any Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations in accordance with GAAP (other than (x) if so classified on the basis that it is being held for sale unless such sale has actually occurred during such period and (y) for periods prior to the applicable sale, transfer or other disposition, if the Disposed EBITDA of such Person, property, business or asset is positive (i.e., if such Disposed EBITDA is negative, it shall be added back in determining Consolidated EBITDA for any period)) by the Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified, a “Sold Entity or Business”), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), in each case

based on the Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis and (B) to the extent not included in Consolidated Net Income, included in determining Consolidated EBITDA for any period in which a Sold Entity or Business is disposed, an adjustment equal to the Pro Forma Disposal Adjustment with respect to such Sold Entity or Business (including the portion thereof occurring prior to such disposal) as specified in the Pro Forma Disposal Adjustment certificate delivered to the Term Administrative Agent (for further delivery to the Lenders); and

(IV) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA any expense (or income) as a result of adjustments recorded to contingent consideration liabilities relating to the Transaction or any Permitted Acquisition (or other Investment permitted hereunder).

Notwithstanding the foregoing, Consolidated EBITDA shall be deemed to equal (a) \$49,709,000 for the fiscal quarter ended March 31, 2015, (b) \$96,173,000 for the fiscal quarter ended December 31, 2014, (c) \$125,683,000 for the fiscal quarter ended September 30, 2014 and (d) \$120,146,000 for the fiscal quarter ended June 30, 2014 (it being understood that such amounts are subject to adjustments, as and to the extent otherwise contemplated in this Agreement, in connection with any Pro Forma Adjustment or any calculation on a Pro Forma Basis); provided that such amounts of Consolidated EBITDA for any such fiscal quarter shall be adjusted to include, without duplication, any cost savings that would otherwise be included pursuant to clause (b) of this definition.

“Consolidated Net Income” means, for any period, the net income (loss) of the Borrower and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication,

(a) extraordinary items for such period,

(b) the cumulative effect of a change in accounting principles during such period,

(c) any Transaction Costs incurred during such period ,

(d) any fees and expenses (including any transaction or retention bonus or similar payment) incurred during such period, or any amortization thereof for such period, in connection with any acquisition, non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investment, recapitalization, asset disposition, non-competition agreement, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of or waiver or consent relating to any debt instrument (in each case, including the Transaction Costs and any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in



accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460),

(e) any income (loss) (and all fees and expenses or charges relating thereto) for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments,

(f) accruals and reserves that are established or adjusted as a result of the Transactions or any Permitted Acquisition or other Investment not prohibited under this Agreement in accordance with GAAP (including any adjustment of estimated payouts on earn-outs) or changes as a result of the adoption or modification of accounting policies during such period,

(g) stock-based award compensation expenses,

(h) any income (loss) attributable to deferred compensation plans or trusts,

(i) any income (loss) from Investments recorded using the equity method,

(j) the amount of any expense required to be recorded as compensation expense related to contingent transaction consideration,

(k) any unrealized or realized gain or loss due solely to fluctuations in currency values and the related tax effects, determined in accordance with GAAP, and

(l) (i) the net income of any Person that is not a Subsidiary of such Person or is an Unrestricted Subsidiary or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent person or a subsidiary thereof in respect of such period and (ii) the net income shall include any ordinary course dividend distribution or other payment in cash received from any Person in excess of the amounts included in clause (i) above.

There shall be included in Consolidated Net Income, without duplication, the amount of any cash tax benefits related to the tax amortization of intangible assets in such period. There shall be excluded from Consolidated Net Income for any period the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto and deferred rent) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and its Restricted Subsidiaries), as a result of the Transactions, any acquisition or Investment consummated prior to the Effective Date and any Permitted Acquisitions (or other Investment not prohibited hereunder) or the amortization or write-off of any amounts thereof.

In addition, to the extent not already included in Consolidated Net Income, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance or reimbursement of expenses and charges that are covered by

indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted hereunder.

“Consolidated Senior Secured First Lien Indebtedness” means, as of any date of determination, Consolidated Total Indebtedness as of such date that is not subordinated in right of payment to the Loan Document Obligations and that is secured by a Lien on the Collateral on an equal priority basis with Liens on the Collateral securing the Loan Document Obligations (including, for the avoidance of doubt, the Loan Document Obligations).

“Consolidated Senior Secured Indebtedness” means, as of any date of determination, Consolidated Total Indebtedness as of such date that is not subordinated in right of payment to the Secured Obligations and is secured by a Lien on the Collateral securing the Loan Document Obligations.

“Consolidated Senior Secured First Lien Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured First Lien Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Consolidated Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Consolidated Total Indebtedness” means, as of any date of determination, the aggregate amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of the acquisition method accounting in connection with the Transactions or any Permitted Acquisition (or other Investment not prohibited hereunder)) consisting only of Indebtedness for borrowed money, drawn but unreimbursed obligations under letters of credit, obligations in respect of Capitalized Leases and debt obligations evidenced by promissory notes or similar instruments, but excluding any obligations under or in respect of Qualified Securitization Facilities and excluding Indebtedness outstanding under the ABL Facility that was used to finance seasonal working capital needs of the Borrower and its Subsidiaries (as reasonably determined by the Borrower in its reasonable discretion), minus the aggregate amount of cash and Permitted Investments (in each case, free and clear of all liens, other than Liens permitted pursuant to Section 6.02), excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries as of such date.

“Consolidated Working Capital” means, at any date, the excess of (a) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries at such date, excluding the current portion of deferred income taxes and deferred rent balances over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any

Funded Debt, (ii) all Indebtedness consisting of Loans and obligations under letters of credit to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in working capital (A) arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries shall be measured from the date on which such acquisition or disposition occurred until the first anniversary of such acquisition or disposition with respect to the Person subject to such acquisition or disposition and (B) shall exclude (I) the impact of non-cash adjustments contemplated in the Excess Cash Flow calculation, (II) the impact of adjusting items in the definition of Consolidated Net Income and (III) any changes in current assets or current liabilities as a result of (x) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under hedging agreements or other derivative obligations, (y) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (z) the effects of acquisition method accounting.

“Contract Consideration” has the meaning assigned to such term in the definition of “Excess Cash Flow.”

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Converted Restricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA.”

“Converted Unrestricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA.”

“Covered Jurisdiction” means the United States (or any state or commonwealth thereof or the District of Columbia).

“Credit Agreement Refinancing Indebtedness” means Indebtedness issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Term Loans (“Refinanced Debt”); provided that such exchanging, extending, renewing, replacing or refinancing Indebtedness (a) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (plus any premium, accrued interest and fees and expenses incurred in connection with such exchange, extension, renewal, replacement or refinancing), (b) does not mature earlier than or have a Weighted Average Life to Maturity shorter than the Refinanced Debt, (c) shall not be guaranteed by any entity that is not a Loan Party, (d) in the case of any secured Indebtedness (i) is not secured by any assets not securing the Secured Obligations and (ii) if not comprising Other Term Loans hereunder, is subject to a Customary Intercreditor Agreement(s) and (e) otherwise has terms and conditions that shall be reasonably satisfactory to the Borrower and the lenders providing such Credit Agreement Refinancing Indebtedness. For the avoidance of doubt, such Credit Agreement Refinancing Indebtedness shall not be subject to any “most favored nation” pricing provisions.

“ Customary Intercreditor Agreement ” means (a) to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the Secured Obligations (but without regard to the control of remedies) at the option of the Borrower, either (i) an intercreditor agreement substantially in the form of the Pari Passu Intercreditor Agreement (with such modifications as may be necessary or appropriate in light of prevailing market conditions and reasonably acceptable to the Term Administrative Agent) or (ii) a customary intercreditor agreement in form and substance reasonably acceptable to the Term Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority to the Liens on the Collateral securing the Secured Obligations (but without regard to the control of remedies) and (b) to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank junior to the Liens on the Collateral securing the Secured Obligations, at the option of the Borrower, either (i) an intercreditor agreement substantially in the form of the Second Lien Intercreditor Agreement (with such modifications as may be necessary or appropriate in light of prevailing market conditions and reasonably acceptable to the Term Administrative Agent) or (ii) a customary intercreditor agreement in form and substance reasonably acceptable to the Term Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Liens on the Collateral securing the Secured Obligations. With regard to any changes in light of prevailing market conditions as set forth above in clauses (a)(i) or (b)(i) or with regard to clauses (a)(ii) or (b)(ii) , such changes or agreement, as applicable, shall be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within three (3) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Term Administrative Agent’s entry into such intercreditor agreement (including with such changes) is reasonable and to have consented to such intercreditor agreement (including with such changes) and to the Term Administrative Agent’s execution thereof.

“ DBNY ” has the meaning given to such term in the preliminary statements hereto.

“ Debtor Relief Laws ” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

“ Defaulting Lender ” means, subject to Section 2.22(b), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within two (2) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower, the Term Administrative Agent or any Lender that it does not intend to comply with its funding obligations or has made a public statement or provided any written notification to any Person to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Term Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Term Administrative Agent shall comply with any such

reasonable request)) to confirm in a manner satisfactory to the Term Administrative Agent and the Borrower that it will comply with its funding obligations (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Term Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has (i) become or is insolvent, (ii) become the subject of a proceeding under any Debtor Relief Law, (iii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iv) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority where such ownership interest or proceeding does not result in or provide such Lender or Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender or Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Lender or Person.

“ Designated Non-Cash Consideration ” means the fair market value of non-cash consideration received by the Borrower or a Subsidiary in connection with a Disposition pursuant to Section 6.05(k) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

“ Discount Prepayment Accepting Lender ” has the meaning assigned to such term in Section 2.11(a)(ii)(B)(2).

“ Discount Range ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(1).

“ Discount Range Prepayment Amount ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(1).

“ Discount Range Prepayment Notice ” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.11(a)(ii)(C) substantially in the form of Exhibit L.

“ Discount Range Prepayment Offer ” means the irrevocable written offer by a Term Lender, substantially in the form of Exhibit M, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“ Discount Range Prepayment Response Date ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(1).

“ Discount Range Proration ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(3).

(3). “ Discounted Prepayment Determination Date ” has the meaning assigned to such term in Section 2.11(a)(ii)(D)

“ Discounted Prepayment Effective Date ” means in the case of a Borrower Offer of Specified Discount Prepayment or Borrower Solicitation of Discount Range Prepayment Offer, five (5) Business Days following the receipt by each relevant Term Lender of notice from the Auction Agent in accordance with Section 2.11(a)(ii)(B), Section 2.11(a)(ii)(C) or Section 2.11(a)(ii)(D), as applicable unless a shorter period is agreed to between the Borrower and the Auction Agent.

“ Discounted Term Loan Prepayment ” has the meaning assigned to such term in Section 2.11(a)(ii)(A).

“ Dispose ” and “ Disposition ” each has the meaning assigned to such term in Section 6.05.

“ Disposed EBITDA ” means, with respect to any Sold Entity or Business or Converted Unrestricted Subsidiary for any period through (but not after) the date of such disposition, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to the Borrower and its Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries or to such Converted Unrestricted Subsidiary and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary.

“ Disqualified Equity Interest ” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date ninety-one (91) days after the Latest Maturity Date; provided, however, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity

Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change of control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after the Termination Date and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of the Borrower (or any direct or indirect parent thereof) or any of its subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by the Borrower (or any direct or indirect parent company thereof) or any of its subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person.

“Disqualified Lenders” means (i) those Persons identified by the Borrower to the Term Administrative Agent in writing prior to April 13, 2015 as being “Disqualified Lenders,” (ii) those Persons who are competitors of the Borrower and its Subsidiaries (other than any bona fide diversified debt investment fund) identified by the Borrower to the Term Administrative Agent from time to time in writing (including by email) which designation shall become effective two (2) days after delivery of each such written supplement to the Term Administrative Agent, but which shall not apply retroactively to disqualify any persons that have previously acquired an assignment or participation interest in any Loan, (iii) in the case of each Person identified pursuant to clauses (i) and (ii) above, any of their Affiliates that are either (x) identified in writing by the Borrower from time to time or (y) known or reasonably identifiable as Affiliates and (iv) any Affiliate of a Lead Arranger that is engaged as a principal primarily in private equity, mezzanine financing or venture capital (other than such Affiliate engaged by the Borrower or its Affiliate as part of the Acquisition). Upon inquiry by any Term Lender to the Term Administrative Agent as to whether a specified potential assignee or prospective participant is on the list of Disqualified Lenders, the Term Administrative Agent shall be permitted to disclose to such Term Lender whether such specific potential assignee or prospective participant is on the list of Disqualified Lenders.

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

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

“ECF Percentage” means, with respect to the prepayment required by Section 2.11(d) with respect to any fiscal year of the Borrower, if the Consolidated Senior Secured First Lien Net Leverage Ratio (prior to giving effect to the applicable prepayment pursuant to Section 2.11(d), but after giving effect to any voluntary prepayments made pursuant to Section 2.11(a) prior to the date of such prepayment) as of the end of such fiscal year is (a) greater than 3.50 to 1.00, 50% of Excess Cash Flow for such fiscal year, (b) greater than 3.00 to 1.00 but less than or equal to 3.50 to 1.00, 25% of Excess Cash Flow for such fiscal year and (c) less than or equal to 3.00 to 1.00, 0% of Excess Cash Flow for such fiscal year.

“Effective Date” means July 31, 2015.

“Effective Yield” means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Term Administrative Agent and the Borrower and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors (the effect of which floors shall be determined in a

manner set forth in the proviso below) or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (a) the remaining Weighted Average Life to Maturity of such Indebtedness and (b) the four years following the date of incurrence thereof) payable generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, syndication, commitment, prepayment, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with the relevant Lenders (and, if applicable, consent fees for an amendment paid generally to consenting Lenders and, solely for purposes of determining the effective yield for purposes of Section 2.11(a)(i) any original issue discount or upfront fees payable in connection with the Loans issued on the Closing Date; provided that with respect to any Indebtedness that includes a “LIBOR floor” or “Base Rate floor,” (i) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the interest rate margin for such Indebtedness for the purpose of calculating the Effective Yield and (ii) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the Effective Yield.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than the Borrower or any of its Affiliates), other than, in each case, (i) a natural person, (ii) a Defaulting Lender or (iii) a Disqualified Lender. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Term Administrative Agent shall have no liability with respect to any assignment made to a Disqualified Lender unless (i) (A) the Term Administrative Agent has acted with gross negligence, bad faith or willful misconduct (in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment) or (B) such assignment resulted from a material breach of the Loan Documents by the Term Administrative Agent (as determined by a court of competent jurisdiction in a final and non-appealable judgment) and (ii) the Borrower has not consented to such assignment or is not deemed to have consented to such assignment to the extent required by Section 9.04(b).

“Environmental Laws” means all applicable Requirements of Law relating to the protection of the environment, to preservation or reclamation of natural resources, to Release or threatened Release of any Hazardous Material or, to the extent relating to exposure to Hazardous Materials, to health or safety matters.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities) resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement to the extent 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.

“Equity Issuance” means the issuance of equity by the Borrower in the form of common equity or “qualified preferred” equity reasonably acceptable to the Joint Lead Arrangers having a gross aggregate amount not less than \$100,000,000.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case 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) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA) with respect to the termination of any Plan or by application of Section 4069 of ERISA with respect to any terminated plan; (f) the receipt by a 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 Plans or to appoint a trustee to administer any Plan, or to an intention to terminate or to appoint a trustee to administer any plan or plans in respect of which such Loan Party or ERISA Affiliate would be deemed to be an employer under Section 4069 of ERISA; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (h) the receipt by a Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability, or the failure of a Loan Party or any ERISA Affiliate to pay when due, after the expiration of any applicable grace period, any installment payment with respect to any Withdrawal Liability; or (i) the withdrawal of a Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA.

“Eurodollar” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“ Excess Cash Flow ” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all Non-Cash Charges to the extent deducted in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital and long-term accounts receivable for such period ,  
and

(iv) an amount equal to the aggregate net non-cash loss on dispositions by the Borrower and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income, less :

(b) the sum, without duplication, of:

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (including any amounts included in Consolidated Net Income of proceeds received or due from business interruption insurance or reimbursement of expenses and charges that are covered by indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Agreement to the extent such amounts are due but not received during such period) and cash charges included in clauses (a) through (j) of the definition of “Consolidated Net Income” (other than cash charges in respect of Transaction Costs paid on or about the Effective Date to the extent financed with the proceeds of Indebtedness incurred on the Effective Date or an equity investment on the Effective Date),

(ii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of capital expenditures made in cash or accrued during such period, except to the extent that such capital expenditures were financed with the proceeds of Indebtedness of the Borrower or its Restricted Subsidiaries,

(iii) the aggregate amount of all principal payments of Indebtedness (including (1) the principal component of payments in respect of Capitalized Leases and (2) the amount of any mandatory prepayment of Loans to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding all other prepayments of Term Loans and all prepayments of revolving loans and swingline loans) made during such period, other than (A) in respect of any revolving credit facility except to the extent there is an equivalent permanent reduction in commitments thereunder and (B) to the extent financed with the proceeds of other Indebtedness of the Borrower or its Restricted Subsidiaries,

(iv) an amount equal to the aggregate net non-cash gain on dispositions by the Borrower and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital and long-term accounts receivable for such period,

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries other than Indebtedness,

(vii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of Investments (other than Investments in Permitted Investments) and acquisitions not prohibited by this Agreement to the extent that such Investments and acquisitions were financed with internally generated cash flow of the Borrower and its Restricted Subsidiaries,

(viii) the amount of dividends and other Restricted Payments (including the amount of Tax Distributions made by the Borrower during such period, to the extent not deducted in arriving at Consolidated Net Income) paid in cash during such period, to the extent such dividends and Restricted Payments were financed with internally generated cash flow of the Borrower and its Restricted Subsidiaries,

(ix) the aggregate amount of payments and expenditures actually made by the Borrower and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such payments and expenditures are not expensed during such period,

(x) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of Non-Cash Charges included in the calculation of Consolidated Net Income in any prior period,

(xi) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xii) at the option of the Borrower, and without duplication of amounts deducted from Excess Cash Flow in prior periods, (1) the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts, commitments, letters of intent or purchase orders (the “Contract Consideration”), in each case, entered into prior to or during such period and (2) to the extent set forth in a certificate of a Financial Officer delivered to the Term Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Test Period is required to be delivered pursuant to Section 5.01(d), the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash expenditures by the

Borrower or any of the Restricted Subsidiaries (the “ Planned Expenditures ”), in the case of each of clauses (1) and (2), relating to Permitted Acquisitions, other Investments (other than Investments in Permitted Investments) or capital expenditures (including Capitalized Software Expenditures or other purchases of Intellectual Property) to be consummated or made during a subsequent Test Period (and in the case of Planned Expenditures, the subsequent Test Period); provided, that to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions, Investments or capital expenditures during such Test Period is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such Test Period, and

(xiii) the amount of taxes (including penalties and interest) paid in cash and/or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period.

“ Exchange Act ” means the United States Securities Exchange Act of 1934, as amended from time to time.

“ Excluded Affiliates ” means (a) Affiliates of the Joint Lead Arrangers that are engaged as principals primarily in private equity, mezzanine financing or venture capital and (b) employees of the Joint Lead Arrangers engaged directly or indirectly in the sale of the Acquired Company as representatives of the Acquired Company (other than, in each case, such Persons engaged by the Borrower or its Affiliates as part of the Transactions and such senior employees who are required, in accordance with industry regulations or such Joint Lead Arranger’s (or its Affiliate’s) internal policies and procedures, to act in a supervisory capacity and such Joint Lead Arranger’s internal legal, compliance, risk management, credit or investment committee members).

“ Excluded Assets ” has the meaning assigned to such term in the Term Collateral Agreement.

“ Excluded Information ” has the meaning assigned to such term in Section 2.11(a)(ii)(A).

“ Excluded Real Property ” means (a) any feeowned real property with a purchase price (in the case of real property acquired after the Effective Date) or Fair Market Value (in the case of real property owned as of the Effective Date, with Fair Market Value determined as of the Effective Date) of less than \$3,500,000 individually, (b) any real property that is subject to a Lien permitted by Sections 6.02(iv), (xix), (xxii), (xxiii), (xxviii) or (xxxi), (c) any real property with respect to which, in the reasonable judgment of the Term Administrative Agent (confirmed by notice to the Borrower) the cost (including as a result of adverse tax consequences) of providing a Mortgage shall be excessive in view of the benefits to be obtained by the Lenders, (d) any real property to the extent providing a mortgage on such real property would (i) be prohibited or limited by any applicable law, rule or regulation (but only so long as such prohibition or limitation is in effect), (ii) violate a contractual obligation to the owners of such real property (other than any

such owners that are the Borrower or Affiliates of the Borrower) that is binding on or relating to such real property (other than customary non-assignment provisions which are ineffective under the Uniform Commercial Code) but only to the extent such contractual obligation was not incurred in anticipation of this provision or (iii) give any other party (other than the Borrower or a wholly-owned Restricted Subsidiary of the Borrower) to any contract, agreement, instrument or indenture governing such real property the right to terminate its obligations thereunder (other than customary non-assignment provisions which are ineffective under the Uniform Commercial Code or other applicable law) and (e) any Leasehold.

“ Excluded Subsidiary ” has the meaning assigned to such term in the Term Guarantee Agreement.

“ Excluded Swap Obligation ” means, with respect to any Loan Guarantor at any time, any Secured Swap Obligation under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act, if, and to the extent that, all or a portion of the guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Secured Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act (determined after giving effect to any “Keepwell”, support or other agreement for the benefit of such Loan Guarantor, at the time such guarantee or grant of a security interest becomes effective with respect to such related Secured Swap Obligation). If a Secured Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Secured Swap Obligation that is attributable to swaps that are or would be rendered illegal due to such guarantee or security interest.

“ Excluded Taxes ” means, with respect to the Term Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) such recipient’s net income (however denominated) and franchise Taxes imposed on it (in lieu of net income Taxes) by a jurisdiction (i) as a result of such recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, or (ii) as a result of any other present or former connection between such recipient and the jurisdiction imposing such Tax (other than a connection arising solely from such recipient (x) having executed, delivered, become a party to, performed its obligations or received payments under, received or perfected a security interest under or enforced any Loan Documents or engaged in any other transaction pursuant to this Agreement or (y) with respect to any Taxes imposed as a result of any Loan Party’s connection with the taxing jurisdiction, having sold or assigned an interest in any Loan Documents), (b) any branch profits tax imposed under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (a) above, (c) any U.S. federal withholding Tax imposed pursuant to FATCA, (d) any withholding Tax that is attributable to a Lender’s failure to comply with Section 2.17(e) and (e) except in the case of an assignee pursuant to a request by the Borrower under Section 2.19 hereto, any U.S. federal withholding Taxes imposed on amounts payable to a Lender pursuant to a Requirement of Law in effect at the time such Lender becomes a party hereto (or designates a new lending office), except to the extent that

such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Tax under Section 2.17(a).

“Fair Market Value” or “fair market value” means, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time taking into account the nature and characteristics of such asset, as reasonably determined by the Borrower in good faith (which determination shall be conclusive).

“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 thereto), any current or future Treasury regulations thereunder or other official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version described above) and any intergovernmental agreements implementing the foregoing.

“Federal Funds Effective Rate” means, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Term Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Fee Letter” means the fee letter among the Borrower, the Joint Lead Arrangers and the Lenders party thereto, dated as of April 13, 2015.

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

“Financing Transactions” means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party and (b) the borrowing of Initial Loans hereunder and the use of the proceeds thereof.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“First Amendment” shall mean that certain First Amendment to Credit Agreement dated as of August 22, 2016 by and among the Borrower, the lenders party thereto and the Administrative Agent.

“First Amendment Effective Date” shall mean the date on which the conditions set forth in Article IV of the First Amendment have been satisfied or waived.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster

Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Prepayment Event” has the meaning assigned to such term in Section 2.11(g).

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

“Form Intercreditor Agreements” means (a) an intercreditor agreement substantially in the form of the Pari Passu Intercreditor Agreement and/or (b) an intercreditor agreement substantially in the form of the Second Lien Intercreditor Agreement, as applicable.

“Funded Debt” means all Indebtedness of the Borrower and its Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; provided, however, that if the Borrower notifies the Term Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Term 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, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of any subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of Capital Lease Obligations.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether federal, state, provincial, territorial,

local or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness 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 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 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 (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). 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” as a verb has a corresponding meaning.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other dangerous or deleterious substances, wastes, chemicals, pollutants or contaminants of any nature and in any form regulated pursuant to any Environmental Law.

“ICE LIBOR” has the meaning assigned to such term in the definition of “Alternate Base Rate.”

“Identified Participating Lenders” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(3).

“Identified Qualifying Lenders” has the meaning specified in Section 2.11(a)(ii)(D)(3).

“Immaterial Subsidiary” means any Subsidiary other than a Material Subsidiary.

“Impacted Loans” has the meaning assigned to such term in Section 2.14(b).

“Incremental Cap” means, as of any date of determination, (I)(a) \$300,000,000 plus (b) (i) the aggregate principal amount of all Term Loans voluntarily prepaid pursuant to Section 2.11(a)(i) and (ii) the aggregate amount of all Term Loans repurchased and prepaid



pursuant to Section 2.11(a)(ii) or otherwise in a manner not prohibited by Section 9.04(g), in each case prior to such date (other than, in each case, prepayments, repurchases and commitment reductions with the proceeds of the incurrence of long-term Indebtedness), minus (c) the amount of all Incremental Facilities and all Incremental Equivalent Debt outstanding at such time that was incurred in reliance on the foregoing clauses (a) and/or (b) plus (II) the maximum aggregate principal amount that can be incurred without causing (a) in the case of any Incremental Facilities secured by the Collateral on a pari passu basis with the Secured Obligations, after giving effect to such incurrence of any such Incremental Facility or Incremental Equivalent Debt (deducting in calculating the numerator of such Consolidated Senior Secured First Lien Net Leverage Ratio any cash proceeds thereof to the extent such proceeds are not promptly applied to the transaction financed in connection therewith) and the use of proceeds thereof, on a Pro Forma Basis and, in the case of an Incremental Revolving Facility, assuming a full draw on such Incremental Revolving Facility (but without giving effect to any simultaneous incurrence of any Incremental Facility or Incremental Equivalent Debt made pursuant to the foregoing clause (I)), the Consolidated Senior Secured First Lien Net Leverage Ratio to exceed either (x) 3.75 to 1.00 for the most recently ended four fiscal quarter period for which financial statements are available or (y) in the case of any Incremental Facility incurred to consummate a Permitted Acquisition or other Investment not prohibited by the Loan Documents, either (i) 3.75 to 1.00 on a Pro Forma Basis for the most recently ended four fiscal quarter period for which financial statements are available or (ii) the Consolidated Senior Secured First Lien Net Leverage Ratio immediately prior to the incurrence of such Incremental Facility, (b) in the case of any Incremental Facilities secured by the Collateral on a junior basis with the Secured Obligations, after giving effect to such incurrence of any such Incremental Facility (deducting in calculating the numerator of such Consolidated Senior Secured Net Leverage Ratio any cash proceeds thereof to the extent such proceeds are not promptly applied to the transaction financed in connection therewith) and the use of proceeds thereof, on a Pro Forma Basis (but without giving effect to any simultaneous incurrence of any Incremental Facility made pursuant to the foregoing clause (I)), the Consolidated Senior Secured Net Leverage Ratio to exceed either (x) 4.50 to 1.00 for the most recently ended four fiscal quarter period for which financial statements are available or (y) in the case of any Incremental Facility incurred to consummate a Permitted Acquisition or other Investment not prohibited by the Loan Documents, either (i) 4.50 to 1.00 on a Pro Forma Basis for the most recently ended four fiscal quarter period for which financial statements are available or (ii) the Consolidated Senior Secured Net Leverage Ratio immediately prior to the incurrence of such Incremental Facility and (c) in the case of any unsecured Incremental Facilities or Incremental Equivalent Debt, after giving effect to such incurrence of any such Incremental Facility (deducting in calculating the numerator of such Total Net Leverage Ratio any cash proceeds thereof to the extent such proceeds are not promptly applied to the transaction financed in connection therewith) and the use of proceeds thereof, on a Pro Forma Basis (but without giving effect to any simultaneous incurrence of any Incremental Facility made pursuant to the foregoing clause (I)), either (x) the Total Net Leverage Ratio to exceed either (i) 6.00 to 1.00 for the most recently ended four fiscal quarter period for which financial statements are available or (ii) in the case of any Incremental Facility incurred to consummate a Permitted Acquisition or other Investment not prohibited by the Loan Documents, either (A) 6.00 to 1.00 on a Pro Forma Basis for the most recently ended four fiscal quarter period for which financial statements are available or (B) the Total Net Leverage Ratio immediately prior to the incurrence of such Incremental Facility or (y) the Interest Coverage Ratio to be less than either (i) 2.00:1.00 for the most recently ended four fiscal quarter period for which financial statements are available or

(ii) in the case of any Incremental Facility incurred to consummate a Permitted Acquisition or other Investment not prohibited by the Loan Documents, either (A) 2.00 to 1.00 on a Pro Forma Basis for the most recently ended four fiscal quarter period for which financial statements are available or (B) the Interest Coverage Ratio immediately prior to the incurrence of such Incremental Facility. Any ratio calculated for purposes of determining the “Incremental Cap” shall be calculated on a Pro Forma Basis for the most recent for the most recently ended four fiscal quarter period for which financial statements are available, at the Borrower’s option, either at the time (A) of the effectiveness of such Incremental Facility or Incremental Equivalent Debt or (B) a definitive agreement is entered into with respect to the transaction to be financed by such Incremental Facility or Incremental Equivalent Debt; provided that in connection with any subsequent calculation of the Incremental Cap prior to the earlier of the date on which such transaction to be financed by such Incremental Facility or Incremental Equivalent Debt is consummated or the date that the definitive agreement for such transaction to be financed by such Incremental Facility or Incremental Equivalent Debt is terminated or expires without consummation of such transaction, the Incremental Cap shall be calculated on a Pro Forma Basis assuming such transaction and the other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. Loans may be incurred under both clauses (I) and (II), and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (II) above and then calculating the incurrence under clause (I) above); provided that the Borrower may redesignate any such Indebtedness originally designated as incurred pursuant to clause (I) above if, at the time of such redesignation, the Borrower would be permitted to incur under clause (II) of the Incremental Cap the aggregate principal amount of Indebtedness being so redesignated (for purposes of clarity, with any such redesignation having the effect of increasing the Borrower’s ability to incur indebtedness under clause (I) above as of the date of such redesignation by the amount of such Indebtedness so redesignated).

“ Incremental Equivalent Debt ” has the meaning assigned to such term in Section 6.01(a)(xx).

“ Incremental Facilities ” has the meaning assigned to such term in Section 2.20(a).

“ Incremental Facility Amendment ” has the meaning assigned to such term in Section 2.20(e).

“ Incremental Revolving Facilities ” has the meaning assigned to such term in Section 2.20(a).

“ Incremental Revolving Increase ” has the meaning assigned to such term is Section 2.20(a).

“ Incremental Revolving Lender ” has the meaning assigned to such term is Section 2.20(a).

“ Incremental Revolving Loan ” means a Loan provided under any Incremental Revolving Facility.

“ Incremental Term Facility ” has the meaning assigned to such term in Section 2.20(a).

“ Incremental Term Increase ” has the meaning assigned to such term in Section 2.20(a).

“ Incremental Term Loan ” means a Loan provided under any Incremental Term Facility.

“ 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 under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) trade accounts payable in the ordinary course of business, (y) any earn-out obligation until after 30 days of becoming due and payable, has not been paid and such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (z) taxes and other accrued expenses), (e) 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, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; provided that the term “Indebtedness” shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty, indemnity or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Person that is a direct or indirect parent of the Borrower appearing on the balance sheet of the Borrower, or solely by reason of push down accounting under GAAP, (v) for the avoidance of doubt, any Qualified Equity Interests issued by the Borrower, (vi) obligations in respect of any residual value guarantees on equipment leases, (vii) any earn-out, take-or-pay or similar obligation to the extent such obligation is not shown as a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable and (viii) asset retirement obligations and obligations in respect of reclamation and workers’ compensation (including pensions and retiree medical care) . 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 Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of the Borrower and its Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms).

“Indemnified Taxes” means all Taxes, other than Excluded Taxes and Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 9.12(a).

“Information Memorandum” means the Confidential Information Memorandum dated July 14, 2015, relating to the Borrower and the Transactions.

“Initial Incremental Revolving Facility” has the meaning assigned to such term in Section 2.20(a).

“Initial Revolving Loans” means the Loans made pursuant to the Initial Incremental Revolving Facility.

“Initial Term Loans” means the Loans made pursuant to Section 2.01 on the Effective Date.

“Insignificant Subsidiary” means, at any time, any Subsidiary of the Borrower that is not a “significant subsidiary” within the meaning of Rule 405 of the Securities Act of 1933, as amended, in each case determined as of the most recently ended Test Period as of such time.

“Intellectual Property” has the meaning assigned to such term in the Term Collateral Agreement.

“Intercreditor Agreements” means the Pari Passu Intercreditor Agreement, the Second Lien Intercreditor Agreement, the ABL/Bond Intercreditor Agreement and any Customary Intercreditor Agreement, collectively, in each case to the extent in effect.

“Interest Coverage Ratio” means, with respect to any Test Period, the ratio of (x) Consolidated EBITDA for such Test Period to (y) Consolidated Cash Interest Expense for such Test Period.

“Interest Election Request” means a request by the Borrower to convert or continue a Term Borrowing in accordance with Section 2.07.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date such Borrowing is disbursed or converted to or continued as a Eurodollar Borrowing and ending on the date that is one, two, three or six months thereafter as selected by the Borrower in its Borrowing Request (or, if consented to by each Lender participating therein, twelve months or such other period less than one month thereafter as the Borrower may elect);

provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month at the end of such Interest Period and (c) no Interest Period shall extend beyond the Term Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, in relation to the “LIBO Rate” for any Loan, the rate which results from interpolating on a linear basis between: (i) the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period and (ii) the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period, each as of approximately 11:00 A.M., London, England time, two Business Days prior to the commencement of such Interest Period.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Restricted Subsidiaries (i) intercompany advances arising from their cash management, tax, and accounting operations and (ii) intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. The amount, as of any date of determination, of (a) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (b) any Investment in the form of a Guarantee shall be 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, (c) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by a Financial Officer) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or

other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (d) any Investment (other than any Investment referred to in clause (a), (b) or (c) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (i) the cost of all additions thereto and minus (ii) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (ii) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“ Investor ” means Warburg Pincus LLC and JLL Partners, Inc. and any funds, partnerships or other investment vehicles managed or directly or indirectly controlled by either of them, but not including, however, any portfolio companies of the foregoing.

“ Joint Lead Arrangers ” means each of Deutsche Bank Securities Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, KeyBank Capital Markets Inc. and SunTrust Robinson Humphrey, Inc. and any permitted successors and assigns thereof, in their respective capacities as joint lead arrangers and joint bookrunners hereunder.

“ Junior Financing ” means (a) any Indebtedness (other than (i) any permitted intercompany Indebtedness owing to the Borrower or any Restricted Subsidiary or any Permitted Unsecured Refinancing Debt or (ii) any Indebtedness in an aggregate principal amount not exceeding \$125,000,000) that is subordinated in right of payment to the Loan Document Obligations, and (b) any Permitted Refinancing in respect of the foregoing.

“ Latest Maturity Date ” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Other Term Loan or any Other Term Commitment, in each case as extended in accordance with this Agreement from time to time.

“ LCA Election ” has the meaning assigned to such term in Section 1.06.

“ LCA Test Date ” has the meaning assigned to such term in Section 1.06.

“Leaseholds” of any Person means all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, an Incremental Facility Amendment, a Loan Modification Agreement or a Refinancing Amendment, in each case, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate” means for any Interest Period with respect to a Eurodollar Borrowing, the rate per annum equal to (i) the ICE Benchmark Administration LIBOR Rate or the successor thereto if the ICE Benchmark Administration is no longer making a LIBOR rate available, as published by Reuters (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Term Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the Interpolated Rate.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, security assignment, security transfer of title or security interest in, on or of such asset and (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.

“Limited Condition Acquisition” means any acquisition, including by way of merger, by the Borrower or one or more of its Restricted Subsidiaries permitted pursuant to this Agreement whose consummation is not conditioned upon the availability of, or on obtaining, third party financing.

“Loan Document Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of the Loans and all accrued and unpaid interest thereon at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expenses, reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment and performance of all other obligations of the Borrower under or pursuant to each of the Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents (including interest and monetary obligations

incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“Loan Documents” means this Agreement, the Fee Letter, any Refinancing Amendment, any Modification Agreement, any Incremental Facility Amendment, the Term Guarantee Agreement, the Term Collateral Agreement, the other Term Security Documents, the Pari Passu Intercreditor Agreement, the Second Lien Intercreditor Agreement (if applicable), the ABL/Bond Intercreditor Agreement, any Customary Intercreditor Agreement and, except for purposes of Section 9.02, any Term Note delivered pursuant to Section 2.09(e).

“Loan Guarantors” means the Borrower and the Subsidiary Loan Parties.

“Loan Modification Agreement” means a Loan Modification Agreement, in form reasonably satisfactory to the Term Administrative Agent, among the Borrower, the Term Administrative Agent and one or more Accepting Lenders, effecting one or more Permitted Amendments and such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.24.

“Loan Modification Offer” has the meaning specified in Section 2.24(a).

“Loan Parties” means the Borrower and the Subsidiary Loan Parties.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

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

“Majority in Interest”, when used in reference to Lenders of any Class, means, at any time, Lenders holding outstanding Term Loans of such Class representing more than 50% of all Term Loans of such Class outstanding at such time; provided that whenever there are one or more Defaulting Lenders, the total outstanding Term Loans of each Defaulting Lender shall be excluded for purposes of making a determination of the Majority in Interest.

“Management Investors” means the members of the Board of Directors, officers and employees of the Borrower and/or its Subsidiaries who are (directly or indirectly through one or more investment vehicles) investors in the Borrower (or any direct or indirect parent thereof).

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement.”

“Material Adverse Effect” means a circumstance or condition affecting the business, financial condition, or results of operations of the Borrower and its Subsidiaries, taken as a whole, that would reasonably be expected to have a materially adverse effect on (a) the ability of the Borrower and the other Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents or (b) the material rights and remedies of the Term Administrative Agent and the Lenders under the Loan Documents.



“Material Indebtedness” means Indebtedness for borrowed money (other than the Loan Document Obligations), Capital Lease Obligations, unreimbursed obligations for letter of credit drawings and financial guarantees (other than ordinary course of business contingent reimbursement obligations) or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Restricted Subsidiaries in an aggregate principal amount exceeding \$50,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Non-Public Information” means (a) if the Borrower is a public reporting company, material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing for purposes of United States Federal and state securities laws and (b) if the Borrower is not a public reporting company, information that is (i) of the type that would be required to be made publicly available if the Borrower or any of its Subsidiaries were a public reporting company and (ii) material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States Federal or state securities laws.

“Material Real Property” means real property (including fixtures) located in the United States and owned by any Loan Party with a Fair Market Value, as reasonably determined by the Borrower in good faith, greater than or equal to \$3,500,000.

“Material Subsidiary” means (i) each Wholly Owned Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended, had net revenues or total assets for such quarter in excess of 5.0% of the consolidated net revenues or total assets, as applicable, of the Borrower and its Restricted Subsidiaries for such quarter; provided that in the event that the Immaterial Subsidiaries, taken together, had as of the last day of the fiscal quarter of the Borrower most recently ended net revenues or total assets in excess of 10.0 % of the consolidated revenues or total assets, as applicable, of the Borrower and its Restricted Subsidiaries for such quarter, the Borrower shall designate one or more Immaterial Subsidiaries to be a Material Subsidiary as may be necessary such that the foregoing 10.0% limit shall not be exceeded, and any such Subsidiary shall thereafter be deemed to be an Material Subsidiary hereunder; provided further that the Borrower may re-designate Material Subsidiaries as Immaterial Subsidiaries so long as Borrower is in compliance with the foregoing.

“Maximum Rate” has the meaning assigned to such term in Section 9.16.

“Model” means that certain financial model delivered by the Borrower to the Term Administrative Agent on March 30, 2015 (together with any updates or modifications thereto reasonably agreed between the Borrower and the Term Administrative Agent and/or necessary to reflect any exercise of “market flex” pursuant to the Fee Letter).

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“ Mortgage ” means a mortgage, deed of trust, hypothecation, assignment of leases and rents, leasehold mortgage, debenture, legal charge or other security document granting a Lien on any Mortgaged Property in favor of the Term Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time. Each Mortgage shall be in form and substance reasonably satisfactory to the Term Administrative Agent and the Borrower. For the avoidance of doubt, no Mortgage shall be required with respect to any Excluded Real Property.

“ Mortgaged Property ” means each parcel of real property with respect to which a Mortgage is granted pursuant to the Collateral and Guarantee Requirement, Section 5.11, Section 5.12 or Section 5.14 (if any).

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

“ Net Proceeds ” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by the Borrower and its Restricted Subsidiaries in connection with such event (including attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by the Borrower and its Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of the Borrower or its Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by the Borrower or any Restricted Subsidiary and (iii) the amount of all taxes paid (or reasonably estimated to be payable), the amount of Tax Distributions, dividends and other restricted payments that the Borrower and/or the Restricted Subsidiaries may make pursuant to Section 6.07(a)(vii)(A) or (B) as a result of such event, and the amount of any reserves established by the Borrower and its Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

“ New Project ” shall mean (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility,

branch or office owned by the Borrower or its Subsidiaries which in fact commences operations and (b) each creation (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“Non-Accepting Lender” has the meaning assigned to such term in Section 2.24(c).

“Non-Cash Charges” means (a) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities or as a result of a change in law or regulation, in each case pursuant to GAAP, and the amortization of intangibles pursuant to GAAP (which, without limiting the foregoing, shall include any impairment charges resulting from the application of FASB Statements No. 142 and 144 and the amortization of intangibles arising pursuant to No. 141), (b) all losses from Investments recorded using the equity method, (c) all Non-Cash Compensation Expenses, (d) the non-cash impact of acquisition method accounting, (e) depreciation and amortization (including, without limitation, as they relate to acquisition accounting, amortization of deferred financing fees or costs, Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pension and other post-employment benefits) and (f) other non-cash charges (including non-cash charges related to deferred rent) ( provided, in each case, that if any non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period).

“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Non-Wholly Owned Subsidiary” of any Person means any Subsidiary of such Person other than a Wholly Owned Subsidiary.

“Not Otherwise Applied” means, with reference to the Available Amount or the Available Equity Amount, as applicable, that such amount was not previously applied pursuant to Sections 6.04(m), 6.07(a)(viii) and 6.07(b)(iv).

“Offered Amount” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(1).

“Offered Discount” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(1).

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person.

“ Other Taxes ” means any and all present or future recording, stamp, documentary, excise, transfer, sales, property or similar Taxes, charges or levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“ Other Term Commitments ” means one or more Classes of term loan commitments that result from a Refinancing Amendment or a Loan Modification Agreement.

“ Other Term Loans ” means one or more Classes of Term Loans hereunder that result from a Refinancing Amendment or a Loan Modification Agreement.

“ Pari Passu Intercreditor Agreement ” means the Pari Passu Intercreditor Agreement in the form of Exhibit F among the Term Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a pari passu basis (but without regard to the control of remedies).

“ Participant ” has the meaning assigned to such term in Section 9.04(c)(i).

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

“ Participating Lender ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(2).

“ 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 substantially in the form of Exhibit C.

“ Permitted ABL Debt ” means the ABL Obligations (including any additional Indebtedness permitted to be incurred under any incremental facilities potentially available under the ABL Credit Agreement as in effect on the Effective Date) permitted to be incurred and secured pursuant to the terms of the ABL Credit Agreement as in effect on the Effective Date (as may be amended in accordance with the express terms of the ABL/Bond Intercreditor Agreement) and any Permitted Refinancing thereof. For the avoidance of doubt, the aggregate principal amount of ABL Facilities on the Effective Date shall not exceed \$800,000,000.

“ Permitted Acquisition ” means the purchase or other acquisition, by merger, consolidation or otherwise, by the Borrower or any Subsidiary of any Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person; provided that (a) in the case of any purchase or other acquisition of Equity Interests in a Person, (i) such Person, upon the consummation of such purchase or acquisition, will be a Subsidiary (including as a result of a merger, amalgamation or consolidation between any Subsidiary and such Person), or (ii) such Person is merged or amalgamated into or consolidated with a Subsidiary and such Subsidiary is the surviving entity of such merger, amalgamation or consolidation, (b) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 5.16, (c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to

satisfy the requirements set forth in clauses (a), (b), (c) and (d) of the definition of the term “Collateral and Guarantee Requirement” to the extent applicable shall have been taken (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made that are reasonably satisfactory to the Term Administrative Agent) (unless such newly created or acquired Subsidiary is designated as an Unrestricted Subsidiary pursuant to Section 5.13 or is otherwise an Excluded Subsidiary) and (d) after giving Pro Forma Effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing (except this clause (d) shall not apply with respect to any Limited Condition Acquisition).

“ Permitted Amendment ” means an amendment to this Agreement and, if applicable the other Loan Documents, effected in connection with a Loan Modification Offer pursuant to Section 2.24, providing for an extension of a maturity date applicable to the Loans and/or Commitments of the Accepting Lenders and, in connection therewith, (a) a change in the Applicable Rate with respect to the Loans and/or Commitments of the Accepting Lenders and/or (b) a change in the fees payable to, or the inclusion of new fees to be payable to, the Accepting Lenders and/or (c) additional covenants, events of default, and guarantees or other provisions applicable only to periods after the Latest Maturity Date at the time of such Loan Modification Offer (it being understood that to the extent that any financial maintenance covenant is added for the benefit of any such Loans and/or Commitments, no consent shall be required by the Term Administrative Agent or any of the Lenders if such financial maintenance covenant is also added for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Loans and/or Commitments or only applicable after the Latest Maturity Date at the time of such Loan Modification Offer).

“ Permitted Encumbrances ” means:

(a) Liens for Taxes, assessments or governmental charges that are (i) not overdue for a period of the greater of (x) 30 days and (y) any applicable grace period related thereto, or otherwise not at such time required to be paid pursuant to Section 5.05 or (ii) being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP (or other applicable accounting principles);

(b) Liens with respect to outstanding motor vehicle fines and Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or construction contractors’ Liens and other similar Liens arising in the ordinary course of business, in each case so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers’ compensation, unemployment insurance and other social security legislation or (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instrument for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i), whether pursuant to statutory requirements, common law or consensual arrangements;

(d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, return-of-money bonds, bankers acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with past practice, whether pursuant to statutory requirements, common law or consensual arrangements;

(e) (i) survey exceptions, encumbrances, charges, easements, rights-of-way, restrictions, encroachments, protrusions, by-law, regulation or zoning restrictions, reservations of or rights of other Persons and other similar encumbrances and title defects or irregularities affecting real property, that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (ii) any exception on the title policies issued in connection with any Mortgaged Property;

(f) Liens securing, or otherwise arising from, judgments, decrees or attachments not constituting an Event of Default under Section 7.01(j);

(g) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any of its Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments; provided that such Lien secures only the obligations of the Borrower or such Subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01 and (ii) specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(h) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings made in respect of operating leases entered into by the Borrower or any of its Subsidiaries;

(i) rights of recapture of unused real property (other than any Mortgaged Property) in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any Governmental Authority;

(j) Liens in favor of deposit banks or securities intermediaries securing customary fees, expenses or charges in connection with the establishment, operation or maintenance of deposit accounts or securities accounts;

(k) Liens in favor of obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

- (l) Liens arising from grants of non-exclusive licenses or sublicenses of Intellectual Property made in the ordinary course of business;
- (m) rights of setoff, banker's lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;
- (n) Liens arising from the right of distress enjoyed by landlords or Liens otherwise granted to landlords, in either case, to secure the payment of arrears of rent or performance of other obligations in respect of leased properties, so long as such Liens are not exercised or except where the exercise of such Liens would not reasonably be expected to have a Material Adverse Effect;
- (o) Liens or security given to public utilities or to any municipality or Governmental Authority when required by the utility, municipality or Governmental Authority in connection with the supply of services or utilities to the Borrower and any other Restricted Subsidiaries;
- (p) servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreements and other agreements pertaining to the use or development of any of the assets of the Person, provided the same do not result in (i) a substantial and prolonged interruption or disruption of the business activities of the Borrower and its Restricted Subsidiaries, taken as a whole, or (ii) a Material Adverse Effect;
- (q) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under this Agreement;
- (r) the rights reserved to or vested in any Person or Governmental Authority by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;
- (s) restrictive covenants affecting the use to which real property may be put;
- (t) operating leases of vehicles or equipment which are entered into in the ordinary course of business;
- (u) Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that such Liens or covenants do not interfere with the ordinary conduct of business of the Borrower or any Restricted Subsidiary;

(v) statutory Liens incurred or pledges or deposits made, in each case in the ordinary course of business, in favor of a Governmental Authority to secure the performance of obligations of the Borrower or any Restricted Subsidiary under Environmental Laws to which any such Person is subject;

(w) Liens on cash collateral that are required to be granted by the Borrower or any Restricted Subsidiary in connection with swap arrangements for gas or electricity used in the business of such Person;

(x) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof; and

(y) Liens securing Priority Obligations;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness for borrowed money other than Liens referred to in clauses (d) and (k) above securing obligations under letters of credit or bank guarantees or similar instruments related thereto and in clause (g) above, in each case to the extent any such Lien would constitute a Lien securing Indebtedness for borrowed money.

“ Permitted First Priority Refinancing Debt ” means any secured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of senior secured notes or senior secured loans; provided that (i) such Indebtedness is secured by the Collateral on a pari passu basis (but without regard to the control of remedies) with the Loan Document Obligations, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers or events of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt and (iv) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to a Customary Intercreditor Agreement providing that the Liens on the Collateral securing such obligations shall rank equal in priority to the Liens on the Collateral securing the Loan Document Obligations (but without regard to the control of remedies). Permitted First Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“ Permitted Holders ” means (a) the Investors, (b) the Management Investors and (c) any other holder of a direct or indirect equity interest in the Borrower (or any direct or indirect parent thereof) that becomes a holder of such interest prior to the ninetieth (90th) day after the Effective Date that was identified in writing to the Joint Lead Arrangers prior to the Effective Date.

“ Permitted Investments ” means any of the following, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) dollars, euro, Canadian dollars, or such other currencies held by it from time to time in the ordinary course of business;



(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States, (ii) the United Kingdom, (iii) Canada, (iv) Switzerland or (v) any member nation of the European Union, having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of such country or such member nation of the European Union is pledged in support thereof;

(c) time deposits and Eurodollar time deposits with, or certificates of deposit or bankers' acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least \$250,000,000 in the case of U.S. banks and \$100,000,000 (or the U.S. dollar equivalent as of the date of determination) in the case of foreign banks (any such bank in the foregoing clauses (i) or (ii) being an "Approved Bank"), in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any commercial paper and variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer covering securities described in clauses (b) and (c) above;

(f) marketable short-term money market and similar highly liquid funds substantially all of the assets of which are comprised of securities of the types described in clauses (b) through (e) above;

(g) securities with average maturities of 12 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, Switzerland, a member of the European Union or by any political subdivision or taxing authority of any such state, member, commonwealth or territory having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) investments with average maturities of 12 months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction;

(j) investments, classified in accordance with GAAP as current assets of the Borrower or any Subsidiary, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000 or its equivalent, and, in either case, the

portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;

(k) with respect to any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia: (i) obligations of the national government of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 24 months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;

(l) investments in money market funds access to which is provided as part of "sweep" accounts maintained with an Approved Bank;

(m) investments in industrial development revenue bonds that (i) "re-set" interest rates not less frequently than quarterly, (ii) are entitled to the benefit of a remarketing arrangement with an established broker dealer and (iii) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank;

(n) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (m);

(o) Sterling bills of exchange eligible for rediscount at the Bank of England (or their dematerialized equivalent); and

(p) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.01(a)(ii), the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.01(a)(v), Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity

date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Document Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) if the Indebtedness being modified, refinanced, refunded, renewed or extended is permitted pursuant to Section 6.01(a)(xviii) or (a)(xix), such Indebtedness complies with the Required Additional Debt Terms, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is permitted pursuant to Section 6.01(a)(ii), (i) the other terms and conditions of any such Permitted Refinancing shall be as agreed between the Borrower and the lenders providing any such Permitted Refinancing, (ii) the primary obligor in respect of, and/or the Persons (if any) that Guarantee, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is the primary obligor in respect of, and/or Persons (if any) that Guaranteed the Indebtedness being modified, refinanced, refunded, renewed or extended and (iii) the principal amount (or accreted value, if applicable) of the Indebtedness being modified, refinanced, refunded, renewed or extended does not exceed the original principal amount (or accreted value, if applicable) of such Indebtedness, except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder and (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is permitted pursuant to Section 6.01(a)(vii) or (a)(viii), the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is (x) unsecured if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured or (y) not secured on a more favorable basis than the Indebtedness being modified, refinanced, refunded, renewed or extended if such Indebtedness being modified, refinanced, refunded, renewed or extended is secured. For the avoidance of doubt, it is understood that a Permitted Refinancing may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing; provided that such excess amount is otherwise permitted to be incurred under Section 6.01. For the avoidance of doubt, it is understood and agreed that a Permitted Refinancing includes successive Permitted Refinancings of the same Indebtedness.

“ Permitted Second Priority Refinancing Debt ” means any secured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of junior lien secured notes or junior lien secured loans; provided that (i) such Indebtedness is secured by the Collateral on a junior lien, subordinated basis to the Secured Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers or events of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, and (iv) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to a Customary Intercreditor Agreement. Permitted Second Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“ Permitted Unsecured Refinancing Debt ” means any unsecured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of senior unsecured notes or senior unsecured loans; provided that (i) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (ii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers or events of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, and (iii) such Indebtedness is not secured by any Lien on any property or assets of the Borrower or any Restricted Subsidiary. Permitted Unsecured Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“ 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 as such term is defined in Section 3(2) of ERISA (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 a Loan Party or any ERISA Affiliate is an “employer” as defined in Section 3(5) of ERISA.

“ Planned Expenditures ” has the meaning assigned to such term in clause (b) of the definition of “Excess Cash Flow.”

“ Platform ” has the meaning assigned to such term in the last paragraph of Section 5.01.

“ Post-Transaction Period ” means, with respect to any Specified Transaction, the period beginning on the date such Specified Transaction is consummated and ending on the last day of the eighth full consecutive fiscal quarter immediately following the date on which such Specified Transaction is consummated.

“ Prepayment Event ” means:

(a) any non-ordinary course sale, transfer or other disposition of any property or asset of the Borrower or any of its Restricted Subsidiaries permitted by Section 6.05(j) and (k) other than dispositions resulting in aggregate Net Proceeds not exceeding (A) \$37,500,000 in the case of any single transaction or series of related transactions and (B) \$75,000,000 for all such transactions during any fiscal year of the Borrower; or

(b) the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 (other than Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt, Permitted Second Priority Refinancing Debt and Other Term Loans which shall constitute a Prepayment Event to the extent required by the definition of “Credit Agreement Refinancing Indebtedness”) or permitted by the Required Lenders pursuant to Section 9.02.

“Prime Rate” means the rate of interest per annum announced from time to time by DBNY (or any successor to DBNY in its capacity as Term Administrative Agent) as its prime commercial lending rate in effect at its principal office in New York City and notified to the Borrower. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer.

“Priority Obligation” means any obligation that is secured by a Lien on any Collateral in favor of a Governmental Authority, which Lien ranks or is capable of ranking prior to or pari passu with the Liens created thereon by the applicable Term Security Documents, including any such Lien securing amounts owing for wages, vacation pay, severance pay, employee deductions, sales tax, excise tax, other Taxes, workers compensation, governmental royalties and stumpage or pension fund obligations.

“Pro Forma Adjustment” means, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Transaction Period with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of the Borrower, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith as a result of (a) actions taken, prior to or during such Post-Transaction Period, for the purposes of realizing reasonably identifiable and quantifiable cost savings, or (b) any additional costs incurred prior to or during such Post-Transaction Period in connection with the combination of the operations of such Pro Forma Entity with the operations of the Borrower and its Restricted Subsidiaries; provided that (A) so long as such actions are taken prior to or during such Post-Transaction Period or such costs are incurred prior to or during such Post-Transaction Period it may be assumed, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, that such cost savings will be realizable during the entirety of such Test Period, or such additional costs will be incurred during the entirety of such Test Period, (B) any Pro Forma Adjustment to Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower and (C) any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period.

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” mean, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis or after giving Pro Forma Effect thereto, that (a) to the extent applicable, the Pro Forma Adjustment shall have been made and (b) all Specified Transactions and the following transactions in connection therewith that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made shall be deemed to have occurred as of the first day of the applicable period of measurement in such test, financial ratio or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (A) in the case of a Disposition of all or substantially all Equity Interests in any subsidiary of the Borrower or any division, product line, or facility used for operations of the Borrower or any of its Subsidiaries, shall be excluded and (B) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction,” shall be included, (ii) any retirement of Indebtedness, and (iii) any Indebtedness incurred or assumed by

the Borrower or any of its Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination and interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to operating expense reductions that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Borrower or any of its Subsidiaries and (z) factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

“Pro Forma Disposal Adjustment” means, for any Test Period that includes all or a portion of a fiscal quarter included in any Post-Transaction Period with respect to any Sold Entity or Business, the pro forma increase or decrease in Consolidated EBITDA projected by the Borrower in good faith as a result of contractual arrangements between the Borrower or any Restricted Subsidiary entered into with such Sold Entity or Business at the time of its disposal or within the Post-Transaction Period and which represent an increase or decrease in Consolidated EBITDA which is incremental to the Disposed EBITDA of such Sold Entity or Business for the most recent Test Period prior to its disposal.

“Pro Forma Entity” has the meaning given to such term in the definition of “Acquired EBITDA.”

“Pro Forma Financial Statements” has the meaning assigned to such term in Section 3.04(c).

“Proposed Change” has the meaning assigned to such term in Section 9.02(c).

“Public Company Costs” means, as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as companies with listed equity, directors’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising solely by virtue of the listing of such Person’s equity securities on a national securities exchange.

“Public Lender” has the meaning assigned to such term in the last paragraph of Section 5.01.

“Qualified Equity Interests” means Equity Interests of the Borrower other than Disqualified Equity Interests.

“Qualified Securitization Facility” means any Securitization Facility that meets the following conditions: (a) the Borrower shall have determined in good faith that such

Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Securitization Subsidiary and (b) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower).

“Qualifying Lender” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(3).

“Refinanced Debt” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness.”

“Refinancing” means the refinancing, repayment, redemption, satisfaction and discharge, or defeasance of all the existing third party Indebtedness for borrowed money of the Acquired Company and its Restricted Subsidiaries under (x) that certain amended and restated credit agreement dated as of March 12, 2012, among, *inter alios*, the Acquired Company, as borrower, the lenders and issuing bank from time to time party thereto and Wells Fargo Capital Finance, LLC as administrative agent and (y) those certain unsecured subordinated notes, due January 27, 2017.

“Refinancing Amendment” means an amendment to this Agreement in form and substance reasonably satisfactory to the Term Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Term Administrative Agent and (c) each Additional Term Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.21.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates and permitted successors and assigns of each of the foregoing.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including the environment within any building or any occupied structure, facility or fixture.

“Removal Effective Date” has the meaning assigned to such term in Section 8.05.

“Repricing Transaction” means (a) the incurrence by the Borrower or any Guarantor of any Indebtedness in the form of long-term bank debt financing (i) for the primary purpose (as reasonably determined by the Borrower) of reducing the Effective Yield for the respective Type of such Indebtedness to less than the Effective Yield for the Term Loans of the

respective equivalent Type, but excluding Indebtedness incurred in connection with (A) a Change of Control or (B) any amendment, waiver, refinancing or other reduction that involves an upsizing in connection with an Acquisition Transaction and (ii) the proceeds of which are used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, outstanding principal of Term Loans or (b) any effective reduction in the Effective Yield for the Term Loans (e.g., by way of amendment, waiver or otherwise), except for a reduction in connection with (A) a Change of Control or (B) any amendment, waiver, refinancing or other reduction that involves an upsizing in connection with an Acquisition Transaction. Any determination by the Term Administrative Agent with respect to whether a Repricing Transaction shall have occurred shall be conclusive and binding on all Lenders holding the Term Loans.

“ Required Additional Debt Terms ” means with respect to any Indebtedness, (a) such Indebtedness does not mature earlier than the Latest Maturity Date (except in the case of customary bridge loans which subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing which does not mature earlier than the Latest Maturity Date ), (b) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers or events of default or, if term loans, excess cash flow prepayments applicable to periods before the Latest Maturity Date) that could result in redemptions of such Indebtedness prior to the Latest Maturity Date, (c) such Indebtedness is not guaranteed by any entity that is not a Loan Party, (d) if secured, such Indebtedness (i) is not secured by any assets not securing the Secured Obligations and (ii) is subject to a Customary Intercreditor Agreement(s) and (e) the other terms and conditions of such Indebtedness shall be as agreed between the Borrower and the lenders providing any such Indebtedness.

“ Required Lenders ” means, at any time, Lenders having Term Loans representing more than 50% of the outstanding Term Loans at such time; provided that to the extent set forth in Section 9.02 or Section 9.04 whenever there are one or more Defaulting Lenders, the total outstanding Term Loans of each Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“ Requirements of Law ” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“ Resignation Effective Date ” has the meaning assigned to such term in Section 8.06.

“ Responsible Officer ” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, or other similar officer, manager or a member of the Board of Directors of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a)(i) of the definition of the term “Collateral and Guarantee Requirement,” any secretary or assistant secretary of a Loan Party. Any document delivered



hereunder that is signed by a Responsible Officer of a 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.

“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 Restricted 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 Equity Interests in the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Restricted Subsidiary.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.11(e).

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor to its rating agency business.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Second Amendment” shall mean that certain Second Amendment to Credit Agreement dated as of February 23, 2017 by and among the Borrower, the lenders party thereto and the Administrative Agent.

“Second Amendment Effective Date” shall mean the date on which the conditions set forth in Article IV of the Second Amendment have been satisfied or waived.

“Second Lien Intercreditor Agreement” means the Second Lien Intercreditor Agreement in the form of Exhibit G among the Term Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral.

“Secured Cash Management Obligations” means the due and punctual payment and performance of all obligations of the Borrower and its Restricted Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds (collectively, “Cash Management Services”) provided to the Borrower or any Restricted Subsidiary (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Term Administrative Agent, a Lender or any of their respective Affiliates, (b) owed on the Effective Date to a Person that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) owed to a Person that is an Agent, a Lender or an Affiliate of an Agent or Lender at the time such obligations are incurred.

“Secured Notes” means those 7.625% Senior Secured Notes due 2021 issued by the Borrower pursuant to the Senior Notes Indenture.

“Secured Notes Indenture” means the Indenture, dated as of May 29, 2013, among the Borrower, the subsidiary guarantors party thereto from time to time and Wilmington Trust, National Association, as trustee, governing the Secured Notes, as the same may be amended, supplemented, waived or otherwise modified from time to time.

“Secured Obligations” means the Loan Document Obligations, the Secured Cash Management Obligations and the Secured Swap Obligations (excluding with respect to any Loan Guarantor, Excluded Swap Obligations of such Loan Guarantor).

“Secured Parties” has the meaning assigned to such term in the Term Collateral Agreement.

“Secured Swap Obligations” means the due and punctual payment and performance of all obligations of the Borrower and its Restricted Subsidiaries under each Swap Agreement that (a) is with a counterparty that is the Term Administrative Agent, a Lender or any of their respective Affiliates, (b) is in effect on the Effective Date with a counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent as of the Effective Date or (c) is entered into after the Effective Date with any counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Swap Agreement is entered into.

“Securitization Assets” means the accounts receivable, royalty and other similar rights to payment and any other assets related thereto subject to a Qualified Securitization Facility that are customarily sold or pledged in connection with securitization transactions and the proceeds thereof.

“Securitization Facility” means any of one or more receivables securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties and indemnities made in connection with such facilities) to the Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary) pursuant to which the Borrower or any Restricted Subsidiary sells or grants a security interest in its accounts receivable or assets related thereto that are customarily sold or pledged in connection with securitization transactions to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“Securitization Subsidiary” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

“Senior Representative” means, with respect to any series of Indebtedness permitted by this Agreement to be secured on the Collateral on a pari passu or junior or subordinated basis, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Settlement” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“Settlement Asset” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

“Settlement Indebtedness” means any payment or reimbursement obligation in respect of a Settlement Payment.

“Settlement Lien” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“Settlement Payment” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“Settlement Receivable” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“Sold Entity or Business” has the meaning assigned to such term in the definition of the term “Consolidated EBITDA.”

“Solicited Discount Proration” has the meaning assigned to such term in Section 2.11(a)(ii)(D)(3).

(1) “Solicited Discounted Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(ii)(D)

“Solicited Discounted Prepayment Notice” means an irrevocable written notice of a Borrower Solicitation of Discounted Prepayment Offers made pursuant to Section 2.11(a)(ii)(D) substantially in the form of Exhibit N.

“Solicited Discounted Prepayment Offer” means the irrevocable written offer by each Term Lender, substantially in the form of Exhibit O, submitted following the Term Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

(D)(1). “Solicited Discounted Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(ii)

“Specified Acquisition Agreement Representations” means such of the representations and warranties in the Acquisition Agreement made by the Acquired Company with respect to the Acquired Company and its subsidiaries as are material to the interests of the Lenders, but only to the extent that the Borrower (and/or its applicable Affiliate) has the right to terminate its and/or such Affiliate’s obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement.

“Specified Discount” has the meaning assigned to such term in Section 2.11(a)(ii)(B)(1).

“Specified Discount Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(ii)(B)(1).

“Specified Discount Prepayment Notice” means an irrevocable written notice of the Borrower of Specified Discount Prepayment made pursuant to Section 2.11(a)(ii)(B) substantially in the form of Exhibit J.

“Specified Discount Prepayment Response” means the irrevocable written response by each Term Lender, substantially in the form of Exhibit K, to a Specified Discount Prepayment Notice.

(B)(1). “Specified Discount Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(ii)

“Specified Discount Proration” has the meaning assigned to such term in Section 2.11(a)(ii)(B)(3).

“Specified Event of Default” means an Event of Default under Section 7.01(a), (b), (h) or (i).

“Specified Representations” means the representations and warranties of the Borrower, and to the extent applicable, the other Subsidiary Loan Parties (other than any Subsidiary Loan Party that is an Insignificant Subsidiary), set forth in (i) Section 3.01, Section 3.02, Section 3.03(b)(i) (with respect to the entering into and performance of the Term Loan Documents), Section 3.08, Section 3.14 and Section 3.16 (only with respect to the second sentence thereof) and (ii) Sections 2.03(f) and 3.02(c) of the Term Collateral Agreement.

“Specified Transaction” means, with respect to any period, any Investment, sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, New Project or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis or after giving Pro Forma Effect thereto.

“Starter Basket” has the meaning assigned to such term in the definition of “Available Amount.”

“ Statutory Reserve Rate ” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve, liquid asset or similar percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by any Governmental Authority of the United States. Such reserve, liquid asset or similar percentages shall include those imposed pursuant to Regulation D of the Board of Governors. Eurodollar Loans shall be deemed to be subject to such reserve, liquid asset or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D of the Board of Governors or any other applicable law, rule or regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“ Submitted Amount ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(1).

“ Submitted Discount ” has the meaning assigned to such term in Section 2.11(a)(ii)(C)(1).

“ 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 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 (unless parent does not Control such entity), or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“ Subsidiary ” means any subsidiary of the Borrower (unless otherwise specified).

“ Subsidiary Loan Party ” means each Subsidiary of the Borrower that is a party to the Term Guarantee Agreement.

“ Successor Borrower ” has the meaning assigned to such term in Section 6.03(a)(iv).

“ Swap Agreement ” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or

governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Tax Distributions” has the meaning assigned to such term in Section 6.07(a)(vii)(A).

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Administrative Agent” means DBNY, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Term Collateral Agent” has the meaning given to such term in Section 8.01(b) and its successors in such capacity as provided in Article VIII.

“Term Collateral Agreement” means the Term Collateral Agreement among the Borrower, each other Loan Party and the Term Collateral Agent, substantially in the form of Exhibit D.

“Term Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) a Refinancing Amendment, (iii) an Incremental Facility Amendment in respect of any Term Loans or (iv) a Loan Modification Agreement. The amount of each Lender’s Term Commitment as of the Effective Date is set forth on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Term Commitment, Loan Modification Agreement or Refinancing Amendment, as the case may be. As of the Effective Date, the total Term Commitment is \$600,000,000.

“Term Guarantee Agreement” means the Term Guarantee Agreement among the Loan Parties and the Term Administrative Agent, substantially in the form of Exhibit B.

“Term Lender” means a Lender with a Term Commitment or an outstanding Term Loan.

“Term Loans” means Initial Term Loans, Other Term Loans and Incremental Term Loans, as the context requires.

“Term Maturity Date” means February 29, 2024 (or, with respect to any Term Lender that has the maturity date of its Term Loans pursuant to a Permitted Amendment, the extended maturity date set forth in any such Loan Modification Agreement with respect thereto).

“Term Note” means a promissory note of the Borrower, substantially in the form of Exhibit R, payable to a Lender in a principal amount equal to the principal amount of the Term Loans of such Lender.

“Term Security Documents” means the Term Collateral Agreement, the Mortgages and each other security agreement or pledge agreement executed and delivered pursuant to the Collateral and Guarantee Requirement, Sections 5.11, 5.12 or 5.14 to secure any of the Secured Obligations.

“Termination Date” means the date on which all Commitments have expired or been terminated, all Secured Obligations have been paid in full in cash (other than (x) Secured Swap Obligations not yet due and payable, (y) Secured Cash Management Obligations not yet due and payable and (z) contingent indemnification obligations not yet accrued and payable).

“Test Period” means, at any date of determination, the period of four consecutive fiscal quarters of the Borrower then last ended as of such time for which financial statements have been delivered pursuant to Section 5.01(a) or (b); provided that for any date of determination before the delivery of the first financial statements pursuant to Section 5.01(a) or (b), the Test Period shall be the period of four consecutive fiscal quarters of the Borrower then last ended as of such time.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Total Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Transaction Costs” means all fees, costs and expenses incurred or payable by the Borrower or any Subsidiary in connection with the Transactions.

“Transactions” means (a) the Financing Transactions, (b) the ABL Financing Transactions, (c) the issuance of the Unsecured Notes, (d) the Acquisition and the other transactions contemplated by the Acquisition Documents, (e) the Equity Issuance, (f) the Refinancing and (g) the payment of the Transaction Costs.

“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Term Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” and “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“Unaudited Financial Statements” means (a) the unaudited consolidated balance sheet of the Acquired Company dated March 31, 2015, and the related consolidated statements of

income and cash flows of the Acquired Company for the fiscal quarter ended on that date and (b) the unaudited consolidated balance sheet of the Borrower dated March 31, 2015, and the related consolidated statements of income and cash flows of the Borrower for the fiscal quarter ended on that date.

“United States Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(e)(ii)(C).

“Unrestricted Subsidiary” means (i) as of the Effective Date, Dixieline Builders Fund Control, Inc. and (ii) thereafter, any Subsidiary designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.13.

“Unsecured Notes” means the Borrower’s \$700,000,000 10.75% Senior Notes due 2023 issued pursuant to the Unsecured Notes Indenture on July 31, 2015.

“Unsecured Notes Indenture” means the indenture, dated as of July 31, 2015, by and among the Borrower and Wilmington Trust, National Association, as trustee.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Restricted Subsidiary” means any Restricted Subsidiary that is a Wholly Owned Subsidiary.

“Wholly Owned Subsidiary” means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law) are, as of such date, owned, controlled or held by such Person or one or more Wholly Owned Subsidiaries of such Person or by such Person and one or more Wholly Owned Subsidiaries of such Person.

“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.



## SECTION 1.02 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class ( e.g., a “ Term Loan ”) or by Type ( e.g., a “ Eurodollar Loan ” or “ ABR Loan ”) or by Class and Type ( e.g., a “ Eurodollar Term Loan ”). Borrowings also may be classified and referred to by Class ( e.g., a “ Term Borrowing ”) or by Type ( e.g., a “ Eurodollar Borrowing ”) or by Class and Type ( e.g., a “ Eurodollar Term 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 (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or other modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## SECTION 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Agreement, the Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio, the Consolidated Senior Secured First Lien Net Leverage Ratio, the Interest Coverage Ratio and any other financial ratio or test shall be calculated on a Pro Forma Basis, including to give effect to all Specified Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made, and in making any determination on a Pro Forma Basis, such calculations shall be made in good faith by a Financial Officer and shall be conclusive absent manifest error.

#### SECTION 1.05 Effectuation of Transactions.

All references herein to the Borrower and the other Subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Acquisition and the other Transactions to occur on the Effective Date, unless the context otherwise requires.

#### SECTION 1.06 Limited Condition Acquisitions.

Notwithstanding anything in this Agreement or any Loan Document to the contrary, when calculating any applicable ratio, the amount or availability of the Available Amount or any other basket based on Consolidated EBITDA or total assets, or determining other compliance with this Agreement (including the determination of compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Specified Transaction undertaken in connection with the consummation of a Limited Condition Acquisition, the date of determination of such ratio, the amount or availability of the Available Amount or any other basket based on Consolidated EBITDA or total assets, and determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "LCA Test Date") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable Test Period ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower and its Subsidiaries) at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions. 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 Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Transaction 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 and the use of proceeds thereof) have been consummated.

SECTION 1.07 Certain Determinations.

(a) For purposes of determining compliance with any of the covenants set forth in Article V or Article VI (including in connection with any Incremental Facility) at any time (whether at the time of incurrence or thereafter), any Lien, Investment, Indebtedness, Disposition, Restricted Payment or Affiliate transaction meets the criteria of one, or more than one, of the categories permitted pursuant to Article V or Article VI (including in connection with any Incremental Facility), the Borrower (i) shall in its sole discretion determine under which category such Lien (other than Liens with respect to the Initial Term Loans), Investment, Indebtedness (other than Indebtedness consisting of the Initial Term Loans), Disposition, Restricted Payment or Affiliate transaction (or, in each case, any portion there) is permitted and (ii) shall be permitted, in its sole discretion, to make any redetermination and/or to divide, classify or reclassify under which category or categories such Lien, Investment, Indebtedness, Disposition, Restricted Payment or Affiliate transaction is permitted from time to time as it may determine and without notice to the Term Administrative Agent or any Lender. For the avoidance of doubt, if the applicable date for meeting any requirement hereunder or under any other Loan Document falls on a day that is not a Business Day, compliance with such requirement shall not be required until noon on the first Business Day following such applicable date.

(b) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, any Total Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Senior Secured First Lien Net Leverage Ratio and/or Interest Coverage Ratio) (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 any such financial ratio or test (any such amounts, the “Incurrence Based Amounts”), it is understood and agreed that the Fixed Amounts (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence, except that incurrences of Indebtedness and Liens constituting Fixed Amounts shall be taken into account for purposes of Incurrence Based Amounts other than Incurrence Based Amounts contained in Section 6.01 or Section 6.02.

(c) Notwithstanding anything to the contrary herein, the Form Intercreditor Agreements shall be deemed to be reasonable and acceptable to the Term Administrative Agent and the Lenders, and the Term Administrative Agent and the Lenders shall be deemed to have consented to the use of each such Form Intercreditor Agreement (and to the Term Administrative Agent’s execution thereof) in connection with any Indebtedness permitted to be incurred, issued and/or assumed by the Borrower or any of its Subsidiaries pursuant to Section 6.01.

ARTICLE II  
THE CREDITS

SECTION 2.01 Commitments.

Subject to the terms and conditions set forth herein, each Term Lender agrees to make Initial Term Loans to the Borrower on the Effective Date denominated in dollars in a principal amount not exceeding such Term Lender's Term Commitment. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02 Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar 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 Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurodollar Borrowing that results from a continuation of an outstanding Eurodollar Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of six Eurodollar Borrowings outstanding.

### SECTION 2.03 Requests for Borrowings.

To request a Borrowing, the Borrower shall notify the Term Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 2:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing (or, in the case of any Eurodollar Borrowing to be made on the Effective Date, one (1) Business Day) or (b) in the case of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Term Administrative Agent of a written Borrowing Request signed by the Borrower substantially in the form of Exhibit T. Each such telephonic and written Borrowing Request shall specify the following information:

- (i) specifying the Class of the requested Borrowing;
- (ii) the aggregate amount of such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Borrowing is specified as to any Borrowing, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar 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 2.03, the Term Administrative Agent shall advise each Lender of the applicable Class 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 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the Applicable Account of the Term Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Term Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Term 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 Term Administrative Agent such Lender's share of such Borrowing, the Term Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.06 and may, in reliance on such assumption and in its sole discretion, 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 Term Administrative Agent, then the applicable Lender agrees to pay to the Term Administrative Agent an amount equal to such share on demand of the Term Administrative Agent. If such Lender does not pay such corresponding amount forthwith upon demand of the Term Administrative Agent therefor, the Term Administrative Agent shall promptly notify the Borrower, and the Borrower agrees to pay such corresponding amount to the Term Administrative Agent forthwith on demand. If such Lender pays such amount to the Term Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. The Term Administrative Agent shall also be entitled to recover from such Lender or from the Borrower interest on such corresponding amount, 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 Term Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Term Administrative Agent in accordance with banking industry rules on interbank compensation, or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing in accordance with Section 2.13.

(c) The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.03(c).

#### SECTION 2.07 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. 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 2.07, the Borrower shall notify the Term Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, facsimile or other electronic transmission to the Term Administrative Agent of a written Interest Election Request signed by a Responsible Officer of the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.03:

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

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

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section 2.07, the Term Administrative Agent shall advise each Lender of the applicable Class 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 Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Term 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 Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### SECTION 2.08 Termination of Commitments.

(a) Unless previously terminated, the Term Commitments shall terminate at 5:00 p.m., New York City time, on the Effective Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class, provided that each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000 unless such amount represents all of the remaining Commitments of such Class.

(c) The Borrower shall notify the Term Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.08 at least one (1) Business Day prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Term Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 shall be irrevocable. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

#### SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Term Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10.

(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 Term Administrative Agent shall, in connection with maintenance of the Register in accordance with Section 9.04(b)(iv) 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, premium, interest or fees 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 Term 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 2.09 shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of any Lender or the Term Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement. In the event of any inconsistency between the entries made pursuant to paragraphs (b) and (c) of this Section 2.09, the accounts maintained by the Term Administrative Agent pursuant to paragraph (c) of this Section 2.09 shall control.

(e) Any Lender may request through the Term Administrative Agent that Loans of any Class made by it be evidenced by a Term Note. In such event, the Borrower shall execute and deliver to such Lender a Term Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns).

#### SECTION 2.10 Amortization of Term Loans.

(a) Subject to adjustment pursuant to paragraph (c) of this Section 2.10, the Borrower shall repay Borrowings of Term Loans on the last day of each March, June, September and December (commencing September 30, 2016) in the principal amount of Term Loans equal to



0.25% of the original aggregate principal amount of the Term Loans outstanding on the First Amendment Effective Date; provided that if any such date is not a Business Day, such payment shall be due on the immediately preceding Business Day.

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Term Maturity Date.

(c) Any prepayment of a Borrowing of any Class (i) pursuant to Section 2.11(a)(i) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10 as directed by the Borrower (and absent such direction, in direct order of maturity) and (ii) pursuant to Section 2.11(c) or 2.11(d) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10, or, except as otherwise provided in any Refinancing Amendment or Loan Modification Agreement, pursuant to the corresponding section of such Refinancing Amendment or Loan Modification Agreement, as applicable, as directed by the Borrower (and absent such direction, in direct order of maturity).

(d) Prior to any repayment of any Borrowings of any Class hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Term Administrative Agent by telephone (confirmed by hand delivery or facsimile) of such election not later than 2:00 p.m., New York City time, one (1) Business Day before the scheduled date of such repayment. In the absence of a designation by the Borrower as described in the preceding sentence, the Term Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

#### SECTION 2.11 Prepayment of Loans.

(a) (i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty; provided that in the event that, on or prior to the date that is six months after the Second Amendment Effective Date, the Borrower (x) makes any prepayment of Term Loans in connection with any Repricing Transaction for the primary purpose of reducing the Effective Yield on such Term Loans or (y) effects any amendment of this Agreement resulting in a Repricing Transaction for the primary purpose of reducing the Effective Yield on the Term Loans, the Borrower shall pay to the Term Administrative Agent, for the ratable account of each of the applicable Term Lenders, (I) a prepayment premium of 1.00% of the principal amount of the Term Loans being prepaid in connection with such Repricing Transaction and (II) in the case of clause (y), an amount equal to 1.00% of the aggregate amount of the applicable Term Loans outstanding immediately prior to such amendment that are subject to an effective pricing reduction pursuant to such Repricing Transaction.

(ii) Notwithstanding anything in any Loan Document to the contrary, so long as no Default or Event of Default has occurred and is continuing, the Borrower or any of its Subsidiaries may offer to prepay all or a portion of the outstanding Term Loans on the following basis:

(A) the Borrower or any of its Subsidiaries shall have the right to make a voluntary prepayment of Term Loans at a discount to par (such prepayment, the “Discounted Term Loan Prepayment”) pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers, in each case made in accordance with this Section 2.11(a)(ii); provided that the Borrower or any of its Subsidiaries shall not initiate any action under this Section 2.11(a)(ii) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by the Borrower or any of its Subsidiaries on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date the Borrower or any of its Subsidiaries were notified that no Term Lender was willing to accept any prepayment of any Term Loan and/or Other Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of the Borrower’s or any of its Subsidiaries’ election not to accept any Solicited Discounted Prepayment Offers and (z) each Lender participating in any Discounted Term Loan Prepayment acknowledges and agrees that in connection with such Discounted Term Loan Prepayment, (1) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to participate in such Discounted Term Loan Prepayment (“Excluded Information”), (2) such Lender has independently and, without reliance on the Borrower, any of its Subsidiaries, the Term Administrative Agent or any of their respective Affiliates, made its own analysis and determination to participate in such Discounted Term Loan Prepayment notwithstanding such Lender’s lack of knowledge of the Excluded Information and (3) none of the Borrower, its Subsidiaries, the Term Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against the Borrower, its Subsidiaries, the Term Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; provided further that any Term Loan that is prepaid will be automatically and irrevocably cancelled.

(B) (1) Subject to the proviso to subsection (A) above, the Borrower or any of its Subsidiaries may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with three (3) Business Days’ notice in the form of a Specified Discount Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of the Borrower or any of its Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “Specified Discount Prepayment Amount”) with respect to each applicable tranche, the tranche or tranches of Term Loans subject to such offer and the specific

percentage discount to par (the “ Specified Discount ”) of such Term Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each relevant Term Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “ Specified Discount Prepayment Response Date ”).

(2) Each relevant Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its relevant then outstanding Term Loans at the Specified Discount and, if so (such accepting Term Lender, a “ Discount Prepayment Accepting Lender ”), the amount and the tranches of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the Borrower or any of its Subsidiaries will make prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2); provided that, if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro-rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with the Borrower or any of its Subsidiaries and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “ Specified Discount Proration ”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the Borrower or any of its Subsidiaries of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, tranche and Type of Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent

of the amounts stated in the foregoing notices to the Borrower or any of its Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Borrower or any of its Subsidiaries shall be due and payable by the Borrower or any of its Subsidiaries on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, the Borrower or any of its Subsidiaries may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with three (3) Business Days' notice in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of the Borrower or any of its Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "Discount Range Prepayment Amount"), the tranche or tranches of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "Discount Range") of the principal amount of such Term Loans with respect to each relevant tranche of Term Loans willing to be prepaid by the Borrower or any of its Subsidiaries (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by the Borrower or any of its Subsidiaries shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each relevant Term Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding relevant Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the "Discount Range Prepayment Response Date"). Each relevant Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "Submitted Discount") at which such Term Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender's Term Loans (the "Submitted Amount") such Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with the Borrower or any of its Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C) the Borrower or any of its Subsidiaries agree to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers

received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “Applicable Discount”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, the Borrower or any of its Subsidiaries will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; provided that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “Identified Participating Lenders”) shall be made pro-rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with the Borrower or any of its Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Discount Range Proration”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the Borrower or any of its Subsidiaries of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Lender to be prepaid at the Applicable Discount on such date, and (z) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Borrower or any of its Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Borrower or any of its Subsidiaries shall be due and payable by such Borrower on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, the Borrower or any of its Subsidiaries may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with three (3) Business Days’ notice in the form of a Solicited

Discounted Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of the Borrower or any of its Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate dollar amount of the Term Loans (the “Solicited Discounted Prepayment Amount”) and the tranche or tranches of Term Loans, the Borrower or any of its Subsidiaries is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by the Borrower or any of its Subsidiaries shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each relevant Term Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “Solicited Discounted Prepayment Response Date”). Each Term Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the “Offered Discount”) such Term Lender is willing to allow to be applied to the prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the “Offered Amount”) such Term Lender is willing to have prepaid subject to such Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the Borrower or any of its Subsidiaries with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. the Borrower or any of its Subsidiaries shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Borrower or any of its Subsidiaries (the “Acceptable Discount”), if any. If the Borrower or any of its Subsidiaries elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by the Borrower or any of its Subsidiaries from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “Acceptance Date”), the Borrower or any of its Subsidiaries shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Borrower or any of its Subsidiaries by the Acceptance Date, the Borrower or any of its Subsidiaries shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “Discounted Prepayment Determination Date”), the Auction Agent will determine (in consultation with the Borrower or any of its Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the tranches of Term Loans (the “Acceptable Prepayment Amount”) to be prepaid by the Borrower or any of its Subsidiaries at the Acceptable Discount in accordance with this Section 2.11(a)(ii)(D). If the Borrower or any of its Subsidiaries elects to accept any Acceptable Discount, then the Borrower or any of its Subsidiaries agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Lender that has submitted a Solicited Discounted Prepayment Offer with a Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “Qualifying Lender”). The Borrower or any of its Subsidiaries will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; provided that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “Identified Qualifying Lenders”) shall be made pro-rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with the Borrower or any of its Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Solicited Discount Proration”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the Borrower or any of its Subsidiaries of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender who made a Solicited Discounted Prepayment Offer of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches of such Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower shall be due and payable by such Borrower on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Borrower or any of its Subsidiaries and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of reasonable and customary fees and expenses from the Borrower or any of its Subsidiaries in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, the Borrower or any of its Subsidiaries shall prepay such Term Loans on the Discounted Prepayment Effective Date. The Borrower or any of its Subsidiaries shall make such prepayment to the Auction Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Term Administrative Agent's Office in immediately available funds not later than 11:00 a.m. (New York City time) on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining principal installments of the relevant tranche of Term Loans on a pro rata basis across such installments. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.11(a)(ii) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable. The aggregate principal amount of the tranches and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.11(a)(ii), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the Borrower or any of its Subsidiaries.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.11(a)(ii), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; provided that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Borrower or any of its Subsidiaries and the Lenders acknowledges and agrees that the Auction Agent may perform any and all of its duties under this Section 2.11(a)(ii) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.11(a)(ii) as well as activities of the Auction Agent.



(J) The Borrower or any of its Subsidiaries shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date, as applicable (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower to make any prepayment to a Term Lender, as applicable, pursuant to this Section 2.11(a)(ii) shall not constitute a Default or Event of Default under Section 7.01 or otherwise).

(b) [Reserved].

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of the Borrower or any of its Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five (5) Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term “Prepayment Event,” on the date of such Prepayment Event), prepay Term Loans in an aggregate amount equal to 100% of the amount of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term “Prepayment Event”, if the Borrower or any of the Restricted Subsidiaries invest (or commit to invest) the Net Proceeds from such event (or a portion thereof) within 12 months after receipt of such Net Proceeds in the business of the Borrower and the Subsidiaries (including any acquisitions permitted under Section 6.04), then no prepayment shall be required pursuant to this paragraph in respect of such Net Proceeds in respect of such event (or the applicable portion of such Net Proceeds, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so invested (or committed to be invested) by the end of such 12-month period (or if committed to be so invested within such 12-month period, have not been so invested within 18 months after receipt thereof), at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so invested (or committed to be invested); provided further that the Borrower may use a portion of such Net Proceeds to prepay or repurchase any other Indebtedness that is secured by the Collateral on a pari passu basis with the Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof with the proceeds of such Prepayment Event, in each case in an amount not to exceed the product of (x) the amount of such Net Proceeds and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Term Loans and such other Indebtedness.

(d) Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2016, the Borrower shall prepay Term Loans in an aggregate amount equal to the ECF Percentage of Excess Cash Flow for such fiscal year; provided that such amount shall, at the option of the Borrower, be reduced on a dollar-for-dollar basis for such fiscal year by the aggregate amount of prepayments and repurchases of (i) Term Loans made pursuant to Section 2.11(a) or otherwise in a manner not prohibited by Section 9.04(g) and (ii) other Consolidated Senior Secured First Lien Indebtedness, in each case during such fiscal year, subject to the immediately succeeding clause (w), or after such fiscal year and prior to the 90th day after the end of such fiscal year; provided further that (w) any such voluntary prepayments that have not

been applied to reduce the payments which may be due from time to time pursuant to this Section 2.11(d) shall be carried over to subsequent periods, and may reduce the payments due from time to time pursuant to this Section 2.11(d) during such subsequent periods, until such time as such voluntary prepayments reduce such payments which may be due from time to time, (x) such reduction as a result of prepayments pursuant to Section 2.11(a)(ii) or Section 9.04(g) shall be limited to the actual amount of such cash prepayment, (y) in the case of the prepayment of any revolving commitments, there is a corresponding reduction in commitments and (z) such reduction shall exclude all such prepayments funded with the proceeds of other long-term Indebtedness). Each prepayment pursuant to this paragraph shall be made on or before the date that is ten (10) days after the date on which financial statements are required to be delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated.

(e) Prior to any optional prepayment of Borrowings pursuant to Section 2.11(a)(i), the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section 2.11. In the event of any mandatory prepayment of Borrowings made at a time when Borrowings of more than one Class remain outstanding, the Borrower shall select Borrowings to be prepaid so that the aggregate amount of such prepayment is allocated between Borrowings (and, to the extent provided in the Refinancing Amendment for any Class of Other Term Loans, the Borrowings of such Class) pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class; provided that any Term Lender (and, to the extent provided in the Refinancing Amendment or Loan Modification Agreement for any Class of Other Term Loans, any Lender that holds Other Term Loans of such Class) may elect, by notice to the Term Administrative Agent by telephone (confirmed by facsimile) at least two (2) Business Days prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans or Other Term Loans of any such Class pursuant to this Section 2.11 (other than an optional prepayment pursuant to paragraph (a)(i) of this Section 2.11 or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans or Other Term Loans of any such Class but was so declined (and not used pursuant to the immediately following sentence) shall be retained by the Borrower (such amounts, “Retained Declined Proceeds”). An amount equal to any portion of a mandatory prepayment of Borrowings that is declined by the Lenders under this Section 2.11(e) may, to the extent not prohibited hereunder or under the documentation governing the Permitted First Priority Refinancing Debt or ABL/Bond Intercreditor Agreement, be applied by the Borrower to prepay (at the Borrower’s election) Permitted Second Priority Refinancing Debt. Optional prepayments of Borrowings shall be allocated among the Classes of Borrowings as directed by the Borrower. In the absence of a designation by the Borrower as described in the preceding provisions of this paragraph of the Type of Borrowing of any Class, the Term Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16 and shall be applied in direct order of maturity; provided that, in connection with any mandatory prepayments by the Borrower of the Term Loans pursuant to Section 2.11(c) or (d), such prepayments shall be applied on a pro rata basis to the then outstanding Term Loans being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurodollar Loans.

(f) The Borrower shall notify the Term Administrative Agent of any prepayment hereunder by telephone (confirmed by facsimile) (i) in the case of prepayment of a Eurodollar

Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Term Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Term Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a 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 subject to Section 2.11(a)(i), shall be without premium or penalty. At the Borrower's election in connection with any prepayment pursuant to this Section 2.11, such prepayment shall not be applied to any Term Loan of a Defaulting Lender (under any of subclauses (a), (b) or (c) of the definition of "Defaulting Lender") and shall be allocated ratably among the relevant non-Defaulting Lenders.

(g) Notwithstanding any other provisions of Section 2.11(c) or (d), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event by or Excess Cash Flow of a Foreign Subsidiary of the Borrower giving rise to a prepayment pursuant to Section 2.11(c) or (d) (a "Foreign Prepayment Event") are prohibited or delayed by applicable local law from being repatriated to the Borrower, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or (d), as the case may be, and such amounts may be retained by such Subsidiary, and once the Borrower has determined in good faith that such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, then the amount of such Net Proceeds or Excess Cash Flow will be taken into account as soon as practicable in determining the amount to be applied (net of additional taxes payable or reserved if such amounts were repatriated) to the repayment of the Term Loans pursuant to Section 2.11(c) or (d), as applicable, (B) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event or Excess Cash Flow would have a material adverse tax or cost consequence with respect to such Net Proceeds or Excess Cash Flow, the amount of Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account as soon as practicable in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary; provided that when the Borrower determines in good faith that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event or Excess Cash Flow would no longer have a material adverse tax consequence with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow shall be taken into account in determining the amount to be applied (net of additional taxes payable or reserved against if such amounts were repatriated) to the repayment of the Term Loans pursuant to Section 2.11(c) or Section 2.11(d), as applicable, and (C)

to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event or Excess Cash Flow would give rise to a risk of liability for the directors of such Subsidiary, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary.

#### SECTION 2.12 Fees.

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

(b) The Borrower agrees to pay on the Effective Date to each Term Lender party to this Agreement as a Term Lender on the Effective Date, as fee compensation for the funding of such Term Lender's Term Loan, a closing fee in an amount equal to 1.00% of the stated principal amount of such Term Lender's Term Loan. Such fees shall be payable to each Lender out of the proceeds of such Term Lender's Term Loan as and when funded on the Effective Date and shall be treated (and reported) by the Borrower and Term Lenders as a reduction in issue price of the Term Loans for U.S. federal, state and local income tax purposes. Such closing fee will be in all respects fully earned, due and payable on the Effective Date and non-refundable and non-creditable thereafter.

(c) Notwithstanding the foregoing, and subject to Section 2.22, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 2.12.

#### 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 Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if upon the occurrence and during the continuance of any Specified Event of Default 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, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other amount, 2.00% per annum plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall be payable pursuant to this Section 2.13(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender; provided, further that no amounts shall accrue pursuant to this Section 2.13(c) on any overdue amount or other amount payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section 2.13 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Term Administrative Agent, and such determination shall be conclusive absent manifest error.

#### SECTION 2.14 Alternate Rate of Interest.

If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Term Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Term Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, “Impacted Loans”);

(c) the Term Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Term Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, then such Borrowing shall be made as an ABR Borrowing; provided, however, that, in each case, the Borrower may revoke any Borrowing Request that is pending when such notice is received.

(d) Notwithstanding the foregoing, if the Term Administrative Agent has made the determination described in clause (a) of this Section 2.14 and/or is advised by the Required Lenders of their determination in accordance with clause (b) of this Section 2.14 and the Borrower shall so request, the Term Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend the definition of “LIBO Rate” and other applicable provisions to preserve the original intent thereof in light of such change; provided that, until so amended, such Impacted Loans will be handled as otherwise provided pursuant to the terms of this Section 2.14.

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such increased costs actually incurred or reduction actually suffered.

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

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.15 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender'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 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

## SECTION 2.16 Break Funding Payments.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(f) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(c), then, in any such event, the Borrower shall, after receipt of a written request by any Lender affected by any such event (which request shall set forth in reasonable detail the basis for requesting such amount), compensate each Lender for the loss, cost and expense (excluding loss of profit) actually incurred by it as a result of such event. For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 2.16, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Adjusted LIBO Rate for such Loan by a matching deposit or other borrowing in the applicable interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 and the reasons therefor delivered to the Borrower shall be prima facie evidence of such amounts. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt of such demand. Notwithstanding the foregoing, this Section 2.16 will not apply to losses, costs or expenses resulting from Taxes, as to which Section 2.17 shall govern. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.16 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in similar circumstances under comparable provisions of other credit agreements.

## SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If the applicable withholding agent shall be required by applicable Requirements of Law (as determined in the good faith discretion of the applicable withholding agent) to deduct any Taxes from such payments, then the applicable withholding agent shall make such deductions and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law, and if such Taxes are Indemnified Taxes or Other Taxes, then the amount payable by the applicable Loan Party shall be increased as necessary so that after all such required deductions have been made (including such deductions applicable to additional amounts payable under this Section 2.17), each Lender (or, in the case of a payment made to the Term Administrative Agent for its own account, the Term Administrative Agent) receives an amount equal to the sum it would have received had no such deductions been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law.

(c) The Borrower shall indemnify the Term Administrative Agent and each Lender within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Term Administrative Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party under any Loan Document and any Other Taxes paid by the Term Administrative Agent or such Lender, as the case may be (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Term Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of any Taxes by a Loan Party to a Governmental Authority, the Borrower shall deliver to the Term 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 Term Administrative Agent.

(e) Each Lender shall, at such times as are reasonably requested by Borrower or the Term Administrative Agent, provide Borrower and the Term Administrative Agent with any properly completed and executed documentation prescribed by any Requirement of Law, or reasonably requested by Borrower or the Term Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation expired, obsolete or inaccurate in any respect (including any specific documentation required below in this Section 2.17(e)), deliver promptly to the Borrower and the Term Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Term Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to Tax at a rate reduced by an applicable tax treaty, the Borrower, the Term Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate.

Without limiting the generality of the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Term Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.



(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Term Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Term Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) two properly completed and duly signed certificates, substantially in the form of Exhibit Q (any such certificate a “United States Tax Compliance Certificate”), and (y) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two properly completed and duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner that would be required under this Section 2.17 if such beneficial owner were a Lender, as applicable ( provided that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) two properly completed and duly signed copies of any other form prescribed by applicable Requirements of 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 Requirements of Law to permit the Borrower and the Term Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to any 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 Term Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Term 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 Term Administrative Agent as may be necessary for the Borrower and the Term Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(f) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded hereunder, the Term Administrative Agent or the relevant Lender, as applicable, shall use commercially reasonable efforts to cooperate with the Borrower in a reasonable challenge of such Taxes if so requested by the Borrower, provided that (a) the Term Administrative Agent or such Lender determines in its reasonable discretion that it would not be subject to any unreimbursed third party cost or expense or otherwise be prejudiced by cooperating in such challenge, (b) the Borrower pays all related expenses of the Term Administrative Agent or such Lender, as applicable and (c) the Borrower indemnifies the Term Administrative Agent or such Lender, as applicable, for any liabilities or other costs incurred by such party in connection with such challenge. If the Term Administrative Agent or a Lender receives a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Term Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Term Administrative Agent or such Lender, agrees promptly to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Term Administrative Agent or such Lender in the event the Term Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. The Term Administrative Agent or such Lender, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority ( provided that the Term Administrative Agent or such Lender may delete any information therein that the Term Administrative Agent or such Lender deems confidential). Notwithstanding anything to the contrary, this Section 2.17(f) shall not be construed to require the Term Administrative Agent or any Lender to make available its Tax returns (or any other information relating to Taxes which it deems confidential) to any Loan Party or any other person.

(g) The agreements in this Section 2.17 shall survive the resignation or replacement of the Term Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(h) For purposes of this Section 2.17, the term “applicable Requirements of Law” includes FATCA.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without condition or deduction for any counterclaim, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Term 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 such account as may be specified by the Term Administrative Agent, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Term 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. Except as otherwise provided herein, if any payment under any Loan Document 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. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension. All payments or prepayments of any Loan shall be made in dollars, all payments of accrued interest payable on a Loan shall be made in dollars, and all other payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Term Administrative Agent to pay fully all amounts of principal, 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 then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal 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 Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Term Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such

participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans of that Class or any increase in the Applicable Rate in respect of Loans of Lenders that have consented to any such extension. 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's 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 Term Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Term Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Term Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Term Administrative Agent forthwith on demand the amount so distributed to such Lender 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 Term Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Term Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06(a) or Section 2.06(b), Section 2.18(d) or Section 9.03(c), then the Term Administrative Agent may, in its discretion and in the order determined by the Term Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Term Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

#### 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 additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or any event gives rise to the operation of Section 2.23, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 or mitigate the applicability of Section 2.23, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense reasonably

deemed by such Lender to be material and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender.

(b) If (i) any Lender requests compensation under Section 2.15 or gives notice under Section 2.23, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 2.17 or (iii) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Term Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation); provided that (A) the Borrower shall have received the prior written consent of the Term Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consents, in each case, shall not unreasonably be withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued but unpaid interest thereon, accrued but unpaid 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), (C) the Borrower or such assignee shall have paid (unless waived) to the Term Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) 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 or a notice given under Section 2.23, such assignment will result in a material 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 (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Term Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

#### SECTION 2.20 Incremental Credit Extensions.

(a) The Borrower may at any time or from time to time on one or more occasions after the Effective Date, by written notice delivered to the Term Administrative Agent request (i) one or more additional Classes of term loans (each, an “Incremental Term Facility”), (ii) one or more additional term loans of the same Class of any existing Class of term loans (each, an “Incremental Term Increase”), (iii) one or more tranches of cash-flow revolving credit facilities (the first of such tranches, the “Initial Incremental Revolving Facility” and, together with each such tranche thereafter, the “Incremental Revolving Facilities”) or (iv) one or more increases in the amount of any existing Class of Incremental Revolving Loans (each, an “Incremental Revolving Increase”, and together with any Incremental Term Facility, Incremental Term Increase and Incremental Revolving Facilities, the “Incremental Facilities”); provided that, after giving effect to any Incremental Facility Amendment referred to below and at the time that any such Incremental Term Loan or Incremental Revolving Loan is made or effected, no Event of Default (except, in the case of the incurrence or provision of any Incremental Facility in connection with a Permitted

Acquisition or other Investment not prohibited by the terms of this Agreement) shall have occurred and be continuing. Notwithstanding anything to contrary herein, the aggregate principal amount of the Incremental Facilities that can be incurred at any time shall not exceed the Incremental Cap at such time. Each Incremental Facility shall be in a minimum principal amount of \$10,000,000 and integral multiples of \$1,000,000 in excess thereof if such Incremental Facilities are denominated in dollars (unless the Borrower and the Term Administrative Agent otherwise agree); provided that such amount may be less than \$10,000,000 if such amount represents all the remaining availability under the aggregate principal amount of Incremental Facilities set forth above.

(b) The Incremental Term Loans (a) shall (i) rank equal or junior in right of payment with the Term Loans, (ii) if secured, be secured only by the Collateral securing the Obligations and (iii) only be guaranteed by the Loan Parties, (b) shall not mature earlier than the Term Maturity Date, (c) shall not have a shorter Weighted Average Life to Maturity than the remaining Term Loans, (d) shall have a maturity date (subject to clause (b)), an amortization schedule (subject to clause (c)), interest rates (including through fixed interest rates), "most favored nation" provisions, interest margins, rate floors, upfront fees, funding discounts, original issue discounts, financial covenants, prepayment terms and premiums and other terms and conditions as determined by the Borrower and the Additional Term Lenders thereunder; provided that, for any Incremental Term Loans that rank equal in right of payment with the Term Loans and are secured on a pari passu basis with the Collateral securing the Loan Document Obligations, in the event that the Effective Yield for any such Incremental Term Loans is greater than the Effective Yield for the Term Loans by more than 0.50% per annum, then the Effective Yield for the Term Loans shall be increased to the extent necessary so that the Effective Yield for the Term Loans is equal to the Effective Yield for such Incremental Term Loans minus 0.50% per annum (provided that the "LIBOR floor" applicable to the outstanding Term Loans shall be increased to an amount not to exceed the "LIBOR floor" applicable to such Incremental Term Loans prior to any increase in the Applicable Rate applicable to such Term Loans then outstanding); and (e) may otherwise have terms and conditions different from those of the Term Loans (including currency denomination); provided that (x) to the extent the terms and documentation with respect to any Incremental Facility are not consistent with the existing Term Loans (except with respect to matters contemplated by clauses (b), (c) and (d) above) the terms, conditions and documentation of any such Incremental Facility shall be as agreed between the Borrower and the Additional Term Lenders providing such Incremental Facility and (y) in no event shall it be a condition to the effectiveness of, or borrowing under, any such Incremental Term Loans that any representation or warranty of any Loan Party set forth herein be true and correct, except and solely to the extent required by the Additional Term Lenders providing such Incremental Term Loans. Any Incremental Term Facility or Incremental Term Increase shall be pursuant to documentation as determined by the Borrower and the Additional Term Lenders providing such Incremental Term Facility or Incremental Term Increase, subject to the restrictions and exceptions set forth above.

(c) The Incremental Revolving Facilities shall be on terms and documentation as determined by the Borrower and the lenders providing such Incremental Revolving Facility; provided that any Incremental Revolving Facility (a) shall (i) rank equal or junior in right of payment with the Term Loans, (ii) if secured, be secured only by the Collateral securing the Obligations and (iii) only be guaranteed by the Loan Parties, (b) shall not provide for scheduled amortization or mandatory commitment reductions prior to the final scheduled maturity date of the

Term Loans, (c) may provide for the ability to participate with respect to borrowings and, subject to exceptions set forth in the Loan Documents, repayments on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) with any other existing cash-flow revolving facility tranche, (d) may not have a final scheduled maturity date earlier than the Term Loans, (e) may provide for the ability to permanently repay and terminate the Incremental Revolving Loans on a pro rata basis, less than a pro rata basis, or greater than a pro rata basis with any existing cash-flow revolving facility tranche and (f) may otherwise have terms and conditions different from those of the Term Loans (including currency denomination); provided that (x) to the extent the terms and documentation with respect to any Incremental Revolving Facility are not consistent with the Term Loans, the terms, conditions and documentation of any such Incremental Revolving Facility shall be as agreed between the Borrower and the Additional Revolving Lenders providing such Incremental Revolving Facility and (y) in no event shall it be a condition to the effectiveness of, or borrowing under, any such Incremental Revolving Facility that any representation or warranty of any Loan Party set forth herein be true and correct, except and solely to the extent required by the Additional Revolving Lenders providing such Incremental Revolving Loans. Any Incremental Revolving Facility or Incremental Revolving Increase shall be pursuant to documentation as determined by the Borrower and the Additional Revolving Lenders providing such Incremental Revolving Facility or Incremental Revolving Increase, subject to the restrictions and exceptions set forth above.

(d) The Incremental Revolving Increase shall be treated the same as the Class of Incremental Revolving Loans being increased (including with respect to maturity date thereof) and shall be considered to be part of the Class of Incremental Revolving Loans being increased (it being understood that, if required to consummate an Incremental Revolving Increase, the pricing, interest rate margins, “most favored nation” provisions, rate floors and undrawn commitment fees on the Class of Incremental Revolving Loans being increased may be increased and additional upfront or similar fees may be payable to the lenders providing the Incremental Revolving Increase (without any requirement to pay such fees to any existing Incremental Revolving Lenders)). Any Incremental Revolving Increase shall be on the same terms and pursuant to the same documentation applicable to the Incremental Revolving Loans (excluding upfront fees and customary arranger fees).

(e) Each notice from the Borrower pursuant to this Section 2.20 shall set forth the requested amount of the relevant Incremental Term Loans or Incremental Revolving Loans.

(f) Commitments in respect of any Incremental Term Increase or Incremental Revolving Increase shall become Commitments under this Agreement pursuant to an amendment (an “Incremental Facility Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each Additional Term Lender, if any, and the Term Administrative Agent. An Incremental Facility may be provided, subject to the prior written consent of the Borrower (not to be unreasonably withheld), by any existing Lender (it being understood that no existing Lender shall have the right to participate in any Incremental Facility or, unless it agrees, be obligated to provide any Incremental Term Loans or Incremental Revolving Loans) or by any Additional Term Lender or Additional Revolving Lender. Incremental Term Loans and Incremental Revolving Loans shall be a “Loan” for all purposes of this Agreement and the other Loan Documents. The Incremental Facility Amendment may, subject to Section 2.20(b), without the consent of any other Lenders,

effect such amendments to this Agreement and the other Loan Documents as may be necessary, in the reasonable opinion of the Term Administrative Agent and the Borrower, to effect the provisions of this Section 2.20. The effectiveness of any Incremental Facility Amendment and the occurrence of any credit event (including the making (but not the conversion or continuation) of a Loan) pursuant to such Incremental Facility Amendment shall be subject to the satisfaction of such conditions as the parties thereto shall agree and as required by this Section 2.20. The Borrower will use the proceeds of the Incremental Term Loans or Incremental Revolving Loans for any purpose not prohibited by this Agreement.

(g) Notwithstanding anything to the contrary, this Section 2.20 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

#### SECTION 2.21 Refinancing Amendments.

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Term Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement (which for purposes of this clause (a) will be deemed to include any then outstanding Other Term Loans) in the form of Other Term Loans or Other Term Commitments pursuant to a Refinancing Amendment; provided that such Credit Agreement Refinancing Indebtedness (i) will be unsecured or will rank pari passu or junior in right of payment and of security with the other Loans and Commitments hereunder, (ii) will have such pricing and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof, and (iii) the Net Proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans being so refinanced. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of the conditions as agreed between the lenders providing such Credit Agreement Refinancing Indebtedness and the Borrower and, to the extent reasonably requested by the Term Administrative Agent, receipt by the Term Administrative Agent of legal opinions, board resolutions, officers' certificates and/or reaffirmation agreements consistent with those delivered on the Effective Date under Section 4.01 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Term Administrative Agent). Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.21 shall be in an aggregate principal amount that is (x) not less than \$10,000,000 in the case of Other Term Loans and (y) an integral multiple of \$1,000,000 in excess thereof (in each case unless the Borrower and the Term Administrative Agent otherwise agree). The Term Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans and/or Other Term Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Term Administrative Agent and the Borrower, to effect the provisions of this Section.



(b) This Section 2.21 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

SECTION 2.22 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii) Reallocation of Payments. Subject to the last sentence of Section 2.11(f), any payment of principal, interest, fees or other amounts received by the Term Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise, and including any amounts made available to the Term Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Term Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Term Administrative Agent hereunder; second, 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 that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Term Administrative Agent; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and fifth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans and such Lender is a Defaulting Lender under clause (a) of the definition thereof, such payment shall be applied solely to pay the relevant Loans of the relevant non-Defaulting Lenders on a pro rata basis prior to being applied pursuant to this Section 2.22(a)(ii).

(b) Defaulting Lender Cure. If the Borrower and the Term Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Term Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such actions as the Term Administrative Agent may determine to be necessary, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower

while that Lender was a Defaulting Lender; and provided further that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### SECTION 2.23 Illegality.

If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to the Adjusted LIBO Rate, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Term Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Loans denominated in dollars or to convert ABR Loans denominated in dollars to Eurodollar Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Adjusted LIBO Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Term Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate Base Rate, in each case until such Lender notifies the Term Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon three Business Days' notice from such Lender (with a copy to the Term Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans denominated in dollars of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Term Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted LIBO Rate, the Term Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Adjusted LIBO Rate component thereof until the Term Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted LIBO Rate. Each Lender agrees to notify the Term Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

#### SECTION 2.24 Loan Modification Offers.

(a) At any time after the Effective Date, the Borrower may on one or more occasions, by written notice to the Term Administrative Agent, make one or more offers (each, a "Loan Modification Offer") to all the Lenders of one or more Classes (each Class subject to such a Loan Modification Offer, an "Affected Class") to effect one or more Permitted Amendments relating to such Affected Class pursuant to procedures reasonably specified by the Term Administrative Agent and reasonably acceptable to the Borrower (including mechanics to permit cashless rollovers and exchanges by Lenders). Such notice shall set forth (i) the terms and

conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Loans and Commitments of the Lenders of the Affected Class that accept the applicable Loan Modification Offer (such Lenders, the “Accepting Lenders”) and, in the case of any Accepting Lender, only with respect to such Lender’s Loans and Commitments of such Affected Class as to which such Lender’s acceptance has been made.

(b) A Permitted Amendment shall be effected pursuant to a Loan Modification Agreement executed and delivered by the Borrower, each applicable Accepting Lender and the Term Administrative Agent; provided that no Permitted Amendment shall become effective unless the Borrower shall have delivered to the Term Administrative Agent such legal opinions, board resolutions, secretary’s certificates, officer’s certificates and other documents as shall be reasonably requested by the Term Administrative Agent in connection therewith. The Term Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each Loan Modification Agreement may, without the consent of any Lender other than the applicable Accepting Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Term Administrative Agent, to give effect to the provisions of this Section 2.24, including any amendments necessary to treat the applicable Loans and/or Commitments of the Accepting Lenders as a new “Class” of loans and/or commitments hereunder.

(c) If, in connection with any proposed Loan Modification Offer, any Lender declines to consent to such Loan Modification Offer on the terms and by the deadline set forth in such Loan Modification Offer (each such Lender, a “Non-Accepting Lender”) then the Borrower may, on notice to the Term Administrative Agent and the Non-Accepting Lender, (i) replace such Non-Accepting Lender in whole or in part by causing such Lender to (and such Lender shall be obligated to) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the Affected Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that neither the Term Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) the applicable assignee shall have agreed to provide Loans and/or Commitments on the terms set forth in the applicable Permitted Amendment, (b) such Non-Accepting Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the Affected Class assigned by it pursuant to this Section 2.24(c), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11(a)(i)) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (c) unless waived, the Borrower or such Eligible Assignee shall have paid to the Term Administrative Agent the processing and recordation fee specified in Section 9.04(b).

(d) Notwithstanding anything to the contrary, this Section 2.24 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that as of the Effective Date; provided that on the Effective Date, such Person's representations and warranties shall be limited to the Specified Representations:

#### SECTION 3.01 Organization; Powers.

Each of the Borrower and its Restricted Subsidiaries is (a) duly organized or incorporated, validly existing and in good standing (to the extent such concept exists in the relevant jurisdictions) under the laws of the jurisdiction of its organization, (b) has the corporate or other organizational power and authority to carry on its business as now conducted and to execute, deliver and perform its obligations under each Loan Document to which it is a party and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### SECTION 3.02 Authorization; Enforceability.

This Agreement has been duly authorized, executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such Loan Party, as the case may be, enforceable against it 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.

Except as set forth on Schedule 3.03, the Financing Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate (i) the Organizational Documents of, or (ii) any Requirements of Law applicable to, the Borrower or any Restricted Subsidiary, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon the Borrower or any Restricted Subsidiary or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by the Borrower or any Restricted Subsidiary, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any Restricted Subsidiary, except Liens created under the Loan Documents or permitted by Section 6.02, except to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right, or imposition of Lien, as the case may be, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04 Financial Condition; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Acquired Company and its Subsidiaries as of the respective dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The Unaudited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Acquired Company and its Subsidiaries as of the dates thereof and their results of operations for the periods covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) The Borrower has heretofore furnished to the Joint Lead Arrangers the consolidated pro forma balance sheet of the Borrower and its Subsidiaries as of March 31, 2015, and the related consolidated pro forma statement of operations of the Borrower as of and for the twelve-month period then ended (such pro forma balance sheet and statement of operations, the “Pro Forma Financial Statements”), which have been prepared giving effect to the Transactions (excluding the impact of purchase accounting effects required by GAAP) as if such Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of operations). The Pro Forma Financial Statements have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis and in accordance with GAAP the estimated financial position of the Borrower and its Subsidiaries as of March 31, 2015, and their estimated results of operations for the periods covered thereby, assuming that the Transactions had actually occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of operations).

(d) Since the Effective Date, there has been no Material Adverse Effect.

SECTION 3.05 Properties.

Each of the Borrower and its Restricted Subsidiaries has good title to, or valid interests in, all its real and personal property material to its business, if any (including all of the Mortgaged Properties), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in each case, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

### SECTION 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, 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 in writing against or affecting the Borrower or any Restricted Subsidiary that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 3.06, and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of the Borrower or any Restricted Subsidiary (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, to the knowledge of the Borrower, become subject to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability .

### SECTION 3.07 Compliance with Laws.

Each of the Borrower and its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

### SECTION 3.08 Investment Company Status.

None of the Loan Parties is required to register as an “investment company” under the Investment Company Act of 1940, as amended from time to time.

### SECTION 3.09 Taxes.

Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns and reports required to have been filed and (b) have paid or caused to be paid all Taxes levied or imposed on their properties, income or assets (whether or not shown on a Tax return) including in their capacity as tax withholding agents, except any Taxes that are being contested in good faith by appropriate proceedings, provided that the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP and applicable local standards. There is no proposed Tax assessment, deficiency or other claim against the Borrower or any Restricted Subsidiary that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

### SECTION 3.10 ERISA.

(a) Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the six year period

prior to the date on which this representation is made or deemed made or is reasonably expected to occur, and (ii) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

(c) Except as would not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect: (i) each employee benefit plan (as defined in Section 3(2) of ERISA) that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service, (ii) to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status, and (iii) there are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any such plan.

#### SECTION 3.11 Disclosure.

As of the Effective Date (to the Borrower's knowledge), all written factual information and written factual data (other than projections and information of a general economic or industry specific nature) furnished by or on behalf of any Loan Party to the Term Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished), when taken as a whole when furnished, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information, when taken as a whole, was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered, it being understood that (i) any such projected financial information is merely a prediction as to future events and its not to be viewed as fact, (ii) such projected financial information is subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower or any of its Subsidiaries and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

#### SECTION 3.12 Subsidiaries.

As of the Effective Date, Schedule 3.12 sets forth the name of, and the ownership interest of the Borrower and each of its subsidiaries in, each subsidiary of the Borrower.

#### SECTION 3.13 Intellectual Property; Licenses, Etc.

Except as would not reasonably be expected to have a Material Adverse Effect, each of the Borrower and its Restricted Subsidiaries owns, licenses or possesses the right to use all Intellectual Property that is reasonably necessary for the operation of its business substantially as currently conducted. To the knowledge of the Borrower, no Intellectual Property used by the

Borrower or any Restricted Subsidiary in the operation of its business as currently conducted infringes upon the Intellectual Property of any Person except for such infringements that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No claim or litigation regarding any of the Intellectual Property is pending or, to the knowledge of the Borrower, threatened against the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

#### SECTION 3.14 Solvency.

Immediately after the consummation of each of the Transactions to occur on the Effective Date, after taking into account all applicable rights of indemnity and contribution, (a) the sum of the debt (including contingent liabilities) of the Borrower and its Subsidiaries, on a consolidated basis, does not exceed the present fair saleable value of the present assets of the Borrower and its Subsidiaries, on a consolidated basis, (b) the capital of the Borrower and its Subsidiaries, on a consolidated basis, is not unreasonably small in relation to their business as contemplated on the Effective Date, (c) the Borrower and its Subsidiaries, on a consolidated basis, have not incurred and do not intend to incur, or believe that they will incur, debts including current obligations, beyond their ability to pay such debts as they become due (whether at maturity or otherwise) and (d) the Borrower and its Subsidiaries, on a consolidated basis, are “solvent” within the meaning given to that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this Section 3.14, the amount of any contingent liability at any time shall be computed as the amount that, in the light of all of the facts and circumstances existing at such time, represents the amount that would reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual pursuant to Financial Accounting Standards Board Statement No. 5).

#### SECTION 3.15 Senior Indebtedness.

The Loan Document Obligations constitute “Senior Indebtedness” (or any comparable term) under and as defined in the documentation governing any other Junior Financing.

#### SECTION 3.16 Federal Reserve Regulations.

None of the Borrower or any Restricted Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, to purchase or carry any margin stock or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

#### SECTION 3.17 Use of Proceeds.

The Borrower will use the proceeds of the Term Loans made on the Effective Date to directly or indirectly finance the Transactions and otherwise for general corporate purposes.



ARTICLE IV

CONDITIONS

SECTION 4.01 Effective Date.

The obligation of each Lender to make Loans hereunder on the Effective Date shall be subject to satisfaction of the following conditions (or waiver thereof in accordance with Section 9.02):

(a) The Term Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) otherwise, written evidence satisfactory to the Term Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Term Administrative Agent shall have received a written opinion (addressed to the Term Administrative Agent and the Lenders and dated the Effective Date) of each of (i) Kirkland & Ellis LLP, Delaware, New York and Texas counsel for the Loan Parties and (ii) Davis Wright Tremaine LLP, Alaska and Washington counsel for the Loan Parties, in each case in form and substance reasonably satisfactory to the Term Administrative Agent. The Borrower hereby requests each such counsel to deliver such opinions.

(c) The Term Administrative Agent shall have received a certificate of each Loan Party, dated the Effective Date, substantially in the form of Exhibit H with appropriate insertions, or otherwise in form and substance reasonably satisfactory to the Term Administrative Agent, executed by any Responsible Officer of such Loan Party, and including or attaching the documents referred to in paragraph (d) of this Section 4.01.

(d) The Term Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) copies of resolutions of the board of directors and/or similar governing bodies of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by its secretary, an assistant secretary or a Responsible Officer as being in full force and effect without modification or amendment and (iv) a good standing certificate (to the extent such concept exists) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Term Administrative Agent shall have received all fees and other amounts previously agreed in writing by the Joint Lead Arrangers and the Borrower to be due and payable on or prior to the Effective Date, including, to the extent invoiced at least three (3) Business Days prior to the Effective Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) The Collateral and Guarantee Requirement (other than in accordance with Section 5.14) shall have been satisfied and the Term Administrative Agent shall have received a completed Perfection Certificate dated the Effective Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby; provided that if, notwithstanding the use by the Borrower of commercially reasonable efforts without undue burden or expense to cause the Collateral and Guarantee Requirement to be satisfied on the Effective Date, the requirements thereof (other than (a) the execution and delivery of the Term Guarantee Agreement and the Term Collateral Agreement by the Loan Parties, (b) creation of and perfection of security interests in the Equity Interests of wholly-owned Domestic Subsidiaries that are Restricted Subsidiaries of the Borrower ( provided that such Equity Interests are not Excluded Assets or owned or held by an Excluded Subsidiary), to the extent received from the Acquired Company and (c) delivery of Uniform Commercial Code financing statements with respect to perfection of security interests in the assets of the Loan Parties that may be perfected by the filing of a financing statement under the Uniform Commercial Code) are not satisfied as of the Effective Date, the satisfaction of such requirements shall not be a condition to the availability of the initial Loans on the Effective Date (but shall be required to be satisfied as promptly as practicable after the Effective Date and in any event within the period specified therefor in Schedule 5.14 or such later date as the Term Administrative Agent may otherwise reasonably agree).

(g) Since April 13, 2015, there shall not have occurred a Material Adverse Effect (as defined in the Acquisition Agreement) with respect to the Acquired Companies.

(h) The Joint Lead Arrangers shall have received the Audited Financial Statements, the Unaudited Financial Statements and the Pro Forma Financial Statements.

(i) (A) The Specified Acquisition Agreement Representations shall be true and correct in all material respects on and as of the Effective Date and (B) the Specified Representations shall be true and correct in all material respects on and as of the Effective Date.

(j) The Acquisition shall have been consummated, or substantially simultaneously with the initial funding of Loans on the Effective Date, shall be consummated, in all material respects in accordance with the terms of the Acquisition Agreement, without giving effect to any modifications, amendments, consents or waivers by the Acquired Company to or of the Acquisition Agreement that are materially adverse to the Joint Lead Arrangers without the consent of each Joint Lead Arranger (such consent not to be unreasonably withheld, delayed or conditioned and provided that the Joint Lead Arrangers shall be deemed to have consented to such amendment, waiver or consent unless they shall object thereto within 48 hours after notice of such proposed amendment, waiver or consent) (it being understood that (x) any substantive modification, amendment, consent or waiver to the definition of Material Adverse Effect (as defined in the Acquisition Agreement as in effect on April 13, 2015) shall be deemed to be materially adverse to the interest of the Lenders and the Joint Lead Arrangers, (y) any increase in the purchase price of the Acquisition shall be deemed not to be materially adverse to the Joint Lead Arrangers so long as such increase is funded by an increase in the Equity Issuance, and (z) any

reduction in the purchase price of the Acquisition shall not be deemed to be material and adverse to the interests of the Joint Lead Arrangers but shall be allocated to reduce the Term Loans and the Unsecured Notes pro rata).

(k) The Refinancing shall have been consummated, or substantially concurrently with the initial funding of Loans on the Effective Date, shall be consummated.

(l) The Lenders shall have received a certificate from the chief financial officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions, substantially in the form of Exhibit S.

(m) The Term Administrative Agent and the Joint Lead Arrangers shall have received, at least three (3) Business Days prior to the Effective Date, all documentation and other information about the Loan Parties as shall have been reasonably requested in writing at least ten (10) Business Days prior to the Effective Date by the Term Administrative Agent or the Joint Lead Arrangers that they shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

(n) The Equity Issuance shall have been consummated, or substantially concurrently with, or prior to, the initial funding of Loans on the Effective Date, shall be consummated.

(o) The ABL Loan Documents shall have been executed and delivered by all of the ABL Loan Parties stated to be party thereto and the Borrower shall have received no less than \$700,000,000 of gross proceeds from the issuance of the Unsecured Notes in accordance with the Unsecured Notes Indenture.

(p) The Grantor Intercreditor Agreement Joinder to the ABL/Bond Intercreditor Agreement and the Pari Passu Intercreditor Agreement shall have been duly executed and delivered by all of the Loan Parties stated to be party thereto.

Notwithstanding the foregoing, the obligations of the Lenders to make Loans hereunder shall not become effective unless each of the foregoing conditions shall have been satisfied (or waived pursuant to Section 9.02) at or prior to 5:00 p.m., New York City time, on the Effective Date (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

For purposes of determining whether the conditions set forth in this Section 4.01 have been satisfied, by releasing its signature page hereto or to an Assignment and Assumption, the Term Administrative Agent and each Lender party hereto shall be deemed to have consented to, approved, accepted or be satisfied with each document or other matter required hereunder to be consented to or approved by, or acceptable or satisfactory to, the Term Administrative Agent or such Lender, as the case may be.

ARTICLE V

AFFIRMATIVE COVENANTS

Lenders that: From and after the Effective Date and until the Termination Date, the Borrower covenants and agrees with the

SECTION 5.01 Financial Statements and Other Information.

The Borrower will furnish to the Term Administrative Agent, on behalf of each Lender:

(a) on or before the date that is one hundred and twenty-five (125) days after the end of each fiscal year of the Borrower (or, in the case of financial statements for the fiscal year ending December 31, 2015, on or before the date that is one hundred and fifty (150) days after the end of such fiscal year), audited consolidated balance sheet and audited consolidated statements of operations and comprehensive income, shareholders' equity and cash flows of the Borrower and its Subsidiaries as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or another independent public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than with respect to, or resulting from, (A) an upcoming maturity date of any Indebtedness occurring within one year from the time such opinion is delivered or (B) any actual failure to satisfy a financial maintenance covenant or any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition as of the end of and for such year and results of operations and cash flows of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ended June 30, 2015, on or before the date that is sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, in the case of financial statements for the fiscal quarters ended June 30, 2015 and ending September 30, 2015, on or before the date that is ninety (90) days after the end of such fiscal quarter), unaudited consolidated balance sheet and unaudited consolidated statements of operations and comprehensive income, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition as of the end of and for such fiscal quarter and such portion of the fiscal year and results of operations and cash flows of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a) and (b) above, the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(d) not later than five days after any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) certifying as to whether a Default then exists and, if a Default does then exist, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) in the case of financial statements delivered under paragraph (a) above, setting forth a reasonably detailed calculation of, beginning with the financial statements for the fiscal year of the Borrower ending December 31, 2016 of Excess Cash Flow for such fiscal year and (iii) in the case of financial statements delivered under paragraph (a) above, setting forth a reasonably detailed calculation of the Net Proceeds received during the applicable period by or on behalf of the Borrower or any of its Restricted Subsidiaries in respect of any event described in clause (a) of the definition of the term "Prepayment Event" and the portion of such Net Proceeds that has been invested or are intended to be reinvested in accordance with the proviso in Section 2.11(c);

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Term Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) filed by the Borrower or any Restricted Subsidiary with the SEC or with any national securities exchange; and

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Term Administrative Agent on its own behalf or on behalf of any Lender may reasonably request in writing.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Form 10-K or 10-Q (or the equivalent), as applicable, of the Borrower (or a parent company thereof) filed with the SEC within the applicable time periods required by applicable law and regulations; provided that (i) to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Borrower and its Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 5.01(a), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than with respect to, or resulting from, (i) an upcoming maturity date of any Indebtedness occurring within one year

from the time such opinion is delivered or (ii) any actual failure to satisfy a financial maintenance covenant or any potential inability to satisfy a financial maintenance covenant on a future date or in a future period).

Documents required to be delivered pursuant to Section 5.01(a), (b) or (e) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 9.01 (or otherwise notified pursuant to Section 9.01(d)); 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 Term Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Term Administrative Agent). The Term Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Term Administrative Agent and maintaining its copies of such documents.

Notwithstanding anything to the contrary herein, neither the Borrower nor any Subsidiary shall be required to deliver, disclose, permit the inspection, examination or making of copies of or excerpts from, or any discussion of, any document, information, or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Term Administrative Agent (or any Lender (or their respective representatives or contractors)) is prohibited by applicable law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product, (iv) with respect to which any Loan Party owes confidentiality obligations (to the extent not created in contemplation of such Loan Party's Obligations under this Section 5.01) to any third party or (v) that relates to any investigation by any Governmental Authority to the extent (x) such information is identifiable to a particular individual and the Borrower in good faith determines such information should remain confidential or (y) the information requested is not factual in nature.

The Borrower hereby acknowledges that (a) the Term Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to the Borrower's or its Affiliates' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Term Administrative Agent, the Joint Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (y) all Borrower Materials marked "PUBLIC" are permitted to be made

available through a portion of the Platform designated “Public Side Information”; and (z) the Term Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”; provided that the Borrower’s failure to comply with this sentence shall not constitute a Default or an Event of Default under this Agreement or the Loan Documents. Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials as “PUBLIC” . Each Loan Party hereby acknowledges and agrees that, unless the Borrower notifies the Term Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 5.01(a), (b), (c) and (d) above are hereby deemed to be suitable for distribution, and to be made available, to all Lenders and may be treated by the Term Administrative Agent and the Lenders as not containing any Material Non-Public Information.

#### SECTION 5.02 Notices of Material Events.

Promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof, the Borrower will furnish to the Term Administrative Agent (for distribution to each Lender through the Term Administrative Agent) written notice of the following:

(a) the occurrence of any Default;

(b) to the extent permissible by Requirements of Law, the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of the Borrower or any Subsidiary, affecting the Borrower or any Subsidiary or the receipt of a written notice of an Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a written statement of a Responsible 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.

#### SECTION 5.03 Information Regarding Collateral.

(a) The Borrower will furnish to the Term Administrative Agent prompt (and in any event within thirty (30) days or such longer period as reasonably agreed to by the Term Administrative Agent) written notice of any change (i) in any Loan Party’s legal name (as set forth in its certificate of organization or like document), (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization or (iii) in any Loan Party’s organizational identification number to the extent that such Loan Party is organized or owns Mortgaged Property in a jurisdiction where an organizational identification number is required to be included in a UCC financing statement for such jurisdiction.

(b) Not later than five days after delivery of financial statements pursuant to Section 5.01(a), the Borrower shall deliver to the Term Administrative Agent a certificate

executed by a Responsible Officer of the Borrower (i) setting forth the information required pursuant to Paragraphs 1, 6, 7, 8, 9 and 10 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Effective Date or the date of the most recent certificate delivered pursuant to this Section 5.03, (ii) identifying any Wholly Owned Restricted Subsidiary that has become, or ceased to be, a Material Subsidiary or an Excluded Subsidiary during the most recently ended fiscal quarter and (iii) certifying that all notices required to be given prior to the date of such certificate by Section 5.03 have been given.

#### SECTION 5.04 Existence; Conduct of Business.

The Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, Intellectual Property and Governmental Approvals material to the conduct of its business, except to the extent (other than with respect to the preservation of the existence of the Borrower) that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

#### SECTION 5.05 Payment of Taxes, etc.

The Borrower will, and will cause each Restricted Subsidiary to, pay all Taxes (whether or not shown on a Tax return) imposed upon it or its income or properties or in respect of its property or assets, before the same shall become delinquent or in default, except where (a) the same are being contested in good faith by an appropriate proceeding diligently conducted by the Borrower or any of its Subsidiaries or (b) the failure to make payment would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

#### SECTION 5.06 Maintenance of Properties.

The Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition (subject to casualty, condemnation and ordinary wear and tear), except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### SECTION 5.07 Insurance.

(a) The Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment or the management of the Borrower) are reasonable and prudent in light of the size and nature of its business, and will furnish to the Lenders, upon written request from the Term Collateral Agent, information presented in



reasonable detail as to the insurance so carried. The Borrower shall cause (i) each such general liability policy of insurance (other than directors and officers policies, workers compensation policies and business interruption insurance) to name the Term Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or mortgagee endorsement that names the Term Collateral Agent, on behalf of the Secured Parties as the loss payee or mortgagee thereunder.

(b) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) furnish to the Lenders, upon written request from the Term Collateral Agent, information presented in reasonable detail as to the flood insurance so carried.

#### SECTION 5.08 Books and Records; Inspection and Audit Rights.

The Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account in which entries that are full, true and correct in all material respects and are in conformity with GAAP (or applicable local standards) consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Borrower or its Restricted Subsidiary, as the case may be. The Borrower will, and will cause each Restricted Subsidiary to, permit any representatives designated by the Term Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, (i) such representatives shall use commercially reasonable efforts to avoid interruption of the normal business operations of the Borrower and its Subsidiaries and (ii) excluding any such visits and inspections during the continuation of an Event of Default, only the Term Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Term Administrative Agent and the Lenders under this Section 5.08 and the Term Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default and such time shall be at the Borrower's expense; provided, further that (a) when an Event of Default exists, the Term Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice and (b) the Term Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

#### SECTION 5.09 Compliance with Laws.

The Borrower will, and will cause each Restricted Subsidiary to, comply with all Requirements of Law (including ERISA and other applicable pension laws, Environmental Laws and the USA PATRIOT Act) with respect to it, its property and operations, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### SECTION 5.10 Use of Proceeds.

The Borrower will use the proceeds of the Term Loans, together with cash on hand, proceeds of the Unsecured Notes and proceeds of the Equity Issuance, to directly or indirectly finance the Transactions and for other general corporate purposes. The Borrower shall use the Net Proceeds of the Refinancing Term Loans (as defined in the First Amendment) to prepay in full the principal amount of all Existing Term Loans (as defined in the First Amendment), other than Exchanged Term Loans (as defined in the First Amendment).

#### SECTION 5.11 Additional Subsidiaries.

(a) If (i) any additional Restricted Subsidiary is formed or acquired after the Effective Date, (ii) any Restricted Subsidiary ceases to be an Excluded Subsidiary or (iii) the Borrower, at its option, elects to cause a Domestic Subsidiary, or to the extent reasonably acceptable to the Term Administrative Agent, a Foreign Subsidiary that is not a Wholly Owned Subsidiary (including any consolidated Affiliate in which the Borrower and its Subsidiaries own no Equity Interest) to become a Subsidiary Loan Party, then, the Borrower will, within 30 days (or such longer period as may be agreed to by the Term Administrative Agent in its reasonable discretion) after such newly formed or acquired Restricted Subsidiary is formed or acquired or such Restricted Subsidiary ceases to be an Excluded Subsidiary or the Borrower has made such election, notify the Term Administrative Agent thereof, and will cause such Restricted Subsidiary (unless such Restricted Subsidiary is an Excluded Subsidiary) to satisfy the Collateral and Guarantee Requirement with respect to such Restricted Subsidiary and with respect to any Equity Interest in or Indebtedness of such Restricted Subsidiary owned by or on behalf of any Loan Party within 30 days after such notice (or such longer period as the Term Administrative Agent shall reasonably agree) and the Term Administrative Agent shall have received a completed Perfection Certificate (or supplement thereto) with respect to such Restricted Subsidiary signed by a Responsible Officer, together with all attachments contemplated thereby.

(b) Within 45 days (or such longer period as otherwise provided in this Agreement or as the Term Administrative Agent may reasonably agree) after the Borrower identifies any new Material Subsidiary pursuant to Section 5.03(b), all actions (if any) required to be taken with respect to such Subsidiary in order to satisfy the Collateral and Guarantee Requirement shall have been taken with respect to such Subsidiary, to the extent not already satisfied pursuant to Section 5.11(a).

(c) Notwithstanding the foregoing, in the event any real property would be required to be mortgaged pursuant to this Section 5.11, the Borrower shall be required to comply with the "Collateral and Guarantee Requirement" as it relates to such real property within 90 days,

following the formation or acquisition of such real property or such Restricted Subsidiary or the identification of such new Material Subsidiary, or such longer time period as agreed by the Term Administrative Agent in its reasonable discretion.

#### SECTION 5.12 Further Assurances.

(a) Subject to (i) the proviso to Section 4.01(f) solely with respect to the Effective Date and (ii) the last paragraph of the definition of “Collateral and Guarantee Requirement”, the Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Term Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) If, after the Effective Date, any material assets (other than Excluded Assets), including any owned (but not leased or ground-leased) Material Real Property or improvements thereto or any interest therein, are acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Term Security Document that become subject to the Lien created by such Term Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will notify the Term Administrative Agent thereof, and, if requested by the Term Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Term Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section and as required pursuant to the “Collateral and Guarantee Requirement,” all at the expense of the Loan Parties and subject to the last paragraph of the definition of the term “Collateral and Guarantee Requirement.” In the event any Material Real Property is mortgaged pursuant to this Section 5.12(b), the Borrower or such other Loan Party, as applicable, shall be required to comply with the “Collateral and Guarantee Requirement” and paragraph (a) of this Section 5.12 within 90 days following the acquisition of such Material Real Property or such longer time period as agreed by the Term Administrative Agent in its reasonable discretion.

#### SECTION 5.13 Designation of Subsidiaries.

The Borrower may at any time after the Effective Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately after such designation on a Pro Forma Basis, no Event of Default shall have occurred and be continuing and (ii) no Subsidiary may be designated as an Unrestricted Subsidiary or continue as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of any other Material Indebtedness of the Borrower. The designation of any Subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower’s or its Subsidiary’s (as applicable) investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary 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 Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

#### SECTION 5.14 Certain Post-Closing Obligations.

As promptly as practicable, and in any event within the time periods after the Effective Date specified in Schedule 5.14 or such later date as the Term Administrative Agent agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Effective Date, the Borrower and each other Loan Party shall deliver the documents or take the actions specified on Schedule 5.14 that would have been required to be delivered or taken on the Effective Date, in each case except to the extent otherwise agreed by the Term Administrative Agent pursuant to its authority as set forth in the definition of the term "Collateral and Guarantee Requirement."

#### SECTION 5.15 Maintenance of Rating of the Borrower and the Facilities.

The Loan Parties shall use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any particular rating) from S&P and a public corporate family rating (but not any particular rating) from Moody's, in each case in respect of the Borrower and (ii) a public rating (but not any particular rating) in respect of the Loans from each of S&P and Moody's.

#### SECTION 5.16 Lines of Business.

The Borrower and its Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, reasonably related or ancillary to any of the foregoing.

#### SECTION 5.17 Transactions with Affiliates.

The Borrower will not, and will not permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) (A) (x) transactions between or among the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction and (y) any merger, amalgamation or consolidation with any direct or indirect parent of the Borrower; provided that such parent entity shall have no material liabilities and no material assets other than cash, Permitted Investments and the Equity Interests of the Borrower and such merger, amalgamation or consolidation is otherwise consummated in compliance with this Agreement and (B) transactions involving aggregate payment or consideration of less than \$75,000,000, (ii) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (iii) the payment of fees and expenses related to the Transactions, (iv) the payment of management, consulting, advisory and monitoring fees to the Investors (or management companies of the Investors) in an aggregate amount in any fiscal year not to exceed 2.5 % of Consolidated EBITDA for the most recently

ended Test Period for which financial statements have been delivered pursuant to Section 5.01(a) or (b), (v) issuances of Equity Interests of the Borrower to the extent otherwise permitted by this Agreement, (vi) employment and severance arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Sections 6.04(b) and 6.04(n)), (vii) payments by the Borrower and its Restricted Subsidiaries pursuant to tax sharing agreements among the Borrower (and any such parent thereof) and its Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, to the extent such payments are permitted by Section 6.07, (viii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the Board of Directors, officers and employees of the Borrower (or any direct or indirect parent thereof) and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (ix) transactions pursuant to permitted agreements in existence or contemplated on the Effective Date and set forth on Schedule 5.17 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, (x) [reserved], (xi) payments to or from, and transactions with, any joint venture in the ordinary course of business (including, without limitation, any cash management activities related thereto), (xii) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and which are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (xiii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with or any Qualified Securitization Facility, (xiv) payments made in connection with the Transactions, (xv) customary payments by the Borrower and any Restricted Subsidiaries to the Investors made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or financings), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower and any other Restricted Subsidiary in good faith and (xvi) any other (A) Indebtedness permitted under Section 6.01 and Liens permitted under Section 6.02; provided that such Indebtedness and Liens are on terms which are fair and reasonable to the Borrower and its Subsidiaries as determined by the majority of disinterested members of the board of directors of the Borrower and (B) transactions permitted under Section 6.04, Investments permitted under Section 6.03 and Restricted Payments permitted under Section 6.07.

## ARTICLE VI

### NEGATIVE COVENANTS

From and after the Effective Date and until the Termination Date, the Borrower covenants and agrees with the Lenders that:

#### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of the Borrower and any of the Restricted Subsidiaries under the Loan Documents (including any Indebtedness incurred pursuant to Section 2.20 or 2.21);

(ii) (x) Indebtedness outstanding on the Effective Date and listed on Schedule 6.01 and any Permitted Refinancing thereof and (y) intercompany Indebtedness outstanding on the Effective Date and any Permitted Refinancing thereof; provided that any such intercompany Indebtedness of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party shall be subordinated in right of payment to the Secured Obligations;

(iii) Guarantees by the Borrower and its Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder; provided that (A) such Guarantee is otherwise permitted by Section 6.04, (B) no Guarantee by any Restricted Subsidiary of any Junior Financing, the Secured Notes or the Unsecured Notes shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Loan Document Obligations pursuant to the Term Guarantee Agreement and (C) if the Indebtedness being Guaranteed is subordinated to the Loan Document Obligations, such Guarantee shall be subordinated to the Guarantee of the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(iv) Indebtedness of the Borrower owing to any Restricted Subsidiary or of any Restricted Subsidiary owing to any other Restricted Subsidiary or the Borrower, to the extent permitted by Section 6.04; provided that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be subordinated to the Loan Document Obligations (to the extent any such Indebtedness is outstanding at any time after the date that is thirty (30) days after the Effective Date or such later date as the Term Administrative Agent may reasonably agree) (but only to the extent permitted by applicable law and not giving rise to adverse tax consequences) on terms (i) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit I or (ii) otherwise reasonably satisfactory to the Term Administrative Agent;

(v) (A) Indebtedness (including Capital Lease Obligations and purchase money indebtedness) incurred, issued or assumed by the Borrower or any Restricted Subsidiary to finance the acquisition, purchase, lease, construction, repair, replacement or improvement of fixed or capital property, equipment or other assets; provided that such Indebtedness is incurred concurrently with or within 270 days after the applicable acquisition, purchase,

lease, construction, repair, replacement or improvement, and (B) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clause (A) (or successive Permitted Refinancings thereof); provided, further that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed the greater of (A) \$75,000,000 and (B) 20.0% of Consolidated EBITDA for the most recently ended Test Period as of such time;

(vi) Indebtedness in respect of Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(vii) (A) Indebtedness of the Borrower, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary) either (a) incurred or issued and/or (b) assumed after the Effective Date in connection with any Permitted Acquisition or any other Investment not prohibited by Section 6.04; provided that, with respect to clause (a) above, (i) to the extent such obligor or guarantor is a Loan Party, such Indebtedness is secured by the Collateral on a pari passu basis (but without regard to the control of remedies) with the Secured Obligations and is subject to the terms of a Customary Intercreditor Agreement, (ii) after giving effect to each such incurrence and/or issuance of such Indebtedness on a Pro Forma Basis, the Consolidated Senior Secured First Lien Net Leverage Ratio as of such time is less than or equal to either (x) 3.75 to 1.00 or (y) the Consolidated Senior Secured First Lien Net Leverage Ratio immediately prior to such Permitted Acquisition or Investment (and related issuance and/or incurrence of Consolidated Senior Secured First Lien Indebtedness) and (iii) with respect to any such newly incurred Indebtedness, (1) such Indebtedness does not mature earlier than the Term Maturity Date as of the Effective Date (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing which does not mature earlier than the Term Maturity Date as of the Effective Date), (2) such Indebtedness does not have a shorter Weighted Average Life to Maturity than the remaining Term Loans (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing Indebtedness which does not have a shorter Weighted Average Life to Maturity than such remaining Term Loans) and (3) the other terms and conditions of such Indebtedness shall be as determined by the Borrower and the lenders providing such Indebtedness (subject to the restrictions and exceptions set forth above); and with respect to clause (b) above, such Indebtedness is and remains the obligation of the Person and/or such Person's subsidiaries that are acquired and such Indebtedness was not incurred in anticipation of such Permitted Acquisition or Investment; and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A); provided further that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (vii)(A)(a) or (vii)(B) (together with the aggregate principal amount of Indebtedness incurred in reliance Section 6.01(a)(viii) and outstanding of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan

Party) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of \$75,000,000 and 20.0% of Consolidated EBITDA for the most recently ended Test Period as of such time;

(viii) (A) Indebtedness of the Borrower, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary (or any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary) either (a) incurred or issued and/or (b) assumed after the Effective Date in connection with any Permitted Acquisition or any other Investment not prohibited by Section 6.04; provided that, with respect to clause (a) above, (i) such Indebtedness is either (1) to the extent such obligor or guarantor is a Loan Party, secured by the Collateral on a junior or subordinated basis to the Secured Obligations and the agent for such Indebtedness has become a party to a Customary Intercreditor Agreement or (2) unsecured, (ii) after giving effect to each such incurrence and/or issuance of such Indebtedness on a Pro Forma Basis, (1) if such Indebtedness is secured on a junior or subordinated basis to the Secured Obligations, the Consolidated Senior Secured Net Leverage Ratio as of such time is either (x) less than or equal to 4.50 to 1.00 or (y) less than or equal to the Consolidated Senior Secured Net Leverage Ratio immediately prior to such Permitted Acquisition or Investment (and related incurrence and/or issuance of Indebtedness) and (2) if such Indebtedness is unsecured, either (x) the Total Net Leverage Ratio as of such time is either (I) less than or equal to 6.00 to 1.00 or (II) less than or equal to the Total Net Leverage Ratio immediately prior to such Permitted Acquisition or Investment (and related incurrence and/or issuance of Indebtedness) or (y) the Interest Coverage Ratio as of such time is either (I) not less than 2.00 to 1.00 or (II) not less than the Interest Coverage Ratio immediately prior to such Permitted Acquisition or Investment (and related incurrence and/or issuance of Indebtedness) and (iii) with respect to any such newly incurred Indebtedness, (1) such Indebtedness does not mature earlier than the Term Maturity Date as of the Effective Date (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing which does not mature earlier than the Term Maturity Date as of the Effective Date), (2) such Indebtedness does not have a shorter Weighted Average Life to Maturity than the remaining Term Loans (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing Indebtedness which does not have a shorter Weighted Average Life to Maturity than such remaining Term Loans) and (3) the other terms and conditions of such Indebtedness shall be as determined by the Borrower and the lenders providing such Indebtedness (subject to the restrictions and exceptions set forth above); and with respect to clause (b) above, such Indebtedness is and remains the obligation of the Person and/or such Person's subsidiaries that are acquired and such Indebtedness was not incurred in anticipation of such Permitted Acquisition or Investment; and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A); provided further that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (viii)(A)(a) or (viii)(B) (solely with respect to any Permitted Refinancing of any Indebtedness incurred pursuant to clause (viii)(A)(a)) (together with the aggregate principal amount of Indebtedness incurred in



reliance Section 6.01(a)(vii) and outstanding of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of \$75,000,000 and 20.0% of Consolidated EBITDA for the most recently ended Test Period as of such time;

(ix) Settlement Indebtedness;

(x) Indebtedness in respect of Cash Management Obligations and other Indebtedness in respect of netting services, automated clearinghouse arrangements, overdraft protections and similar arrangements, in each case, in connection with deposit accounts or from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xi) Indebtedness consisting of obligations under deferred compensation (including indemnification obligations, obligations in respect of purchase price adjustments, earn-outs, incentive non-competes and other contingent obligations) or other similar arrangements incurred or assumed in connection with the Acquisition, any Permitted Acquisition, any other Investment or any Disposition, in each case, permitted under this Agreement;

(xii) Indebtedness of the Borrower or any of the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary after the Effective Date (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary); provided that, at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xii) shall not exceed the sum of the greater of \$190,000,000 and 50.0% of Consolidated EBITDA for the most recently ended Test Period as of such time;

(xiii) (A) Indebtedness of the Borrower or any of the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary after the Effective Date (or of any Person not previously a Restricted Subsidiary that is merged or consolidated with or into the Borrower or a Restricted Subsidiary) in an aggregate amount not to exceed (i) \$75,000,000 plus (ii) unlimited additional Indebtedness; provided that, with respect to clause (ii), (I) (x) if such Indebtedness is secured by the Collateral on a pari passu basis, after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, the Consolidated Senior Secured First Lien Net Leverage Ratio as of such time is less than or equal to 3.75 to 1.00, (y) if such Indebtedness is secured on a junior or subordinated basis to the Secured Obligations, after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, the Consolidated Senior Secured Net Leverage Ratio as of such time is less than or equal to 4.50 to 1.00 and (z) if such Indebtedness is unsecured, after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, either (1) the Total Net Leverage Ratio as of such time is less than or equal to 6.00 to 1.00 or (2) the Interest Coverage Ratio as of such time is no less than 2.00 to 1.00 and (II) such Indebtedness complies with the Required Additional Debt Terms and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A); provided further that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted

Subsidiary that is not a Loan Party outstanding in reliance on this clause (xiii) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of \$75,000,000 and 20.0% of Consolidated EBITDA for the most recently ended Test Period as of such time;

(xiv) Indebtedness of the Borrower or any of the Restricted Subsidiaries in an aggregate principal amount not greater than the aggregate amount of cash contributions made to the capital of the Borrower or any other Restricted Subsidiary (to the extent Not Otherwise Applied) after the Effective Date; provided that (i) the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (xiv) (together with the aggregate principal amount of Indebtedness incurred in reliance on Section 6.01(a)(xiii) and outstanding of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party) shall not exceed, at the time of incurrence thereof, the greater of \$40,000,000 and 10.0% of Consolidated EBITDA for the most recently Test Period as of such time;

(xv) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvi) Indebtedness supported by a letter of credit, in a principal amount not to exceed the face amount of such letter of credit;

(xvii) Indebtedness consisting of Permitted ABL Debt and the Secured Notes, and any Permitted Refinancing thereof;

(xviii) Permitted Unsecured Refinancing Debt, and any Permitted Refinancing thereof;

(xix) Permitted First Priority Refinancing Debt and Permitted Second Priority Refinancing Debt, and any Permitted Refinancing of any of the foregoing;

(xx) Indebtedness of the Borrower or any Subsidiary Loan Party issued in lieu of Incremental Facilities consisting of one or more series of (i) secured or unsecured bonds, notes or debentures (which bonds, notes or debentures, if secured, may be secured either by Liens pari passu with the Liens on the Collateral securing the Secured Obligations (but without regard to control of remedies) or by Liens having a junior priority relative to the Liens on the Collateral securing the Secured Obligations), or (ii) secured or unsecured loans (which loans, if secured, must be secured either by Liens pari passu with the Liens on the Collateral securing the Secured Obligations or by Liens having a junior priority relative to the Liens on the Collateral securing the Secured Obligations) (and any Registered Equivalent Notes issued in exchange therefor) (the “Incremental Equivalent Debt”); provided that (i) the aggregate principal amount of all such Indebtedness incurred pursuant to this clause shall not exceed at the time of incurrence the Incremental Cap at such time, (ii) such Indebtedness complies with the Required Additional Debt Terms and (iii) such indebtedness shall not have a shorter Weighted Average Life to Maturity than the

remaining Term Loans; provided that if such Incremental Equivalent Debt is a term loan that is not subordinated in right of payment to the Loan Document Obligations and that is secured by a Lien on the Collateral that ranks pari passu in right of security with the Term Loans, the Term Loans shall be subject to the “most favored nation” pricing adjustment (if applicable) set forth in the proviso to Section 2.20(b)(d) as if such Incremental Equivalent Debt were an Incremental Term Loan or an Incremental Revolving Loan incurred hereunder;

(xxi) Indebtedness of any Restricted Subsidiary that is not a Loan Party; provided that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance of this clause (xxi) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of \$40,000,000 and 10.0% of Consolidated EBITDA for the most recently ended Test Period;

(xxii) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, warehouse receipts, bankers’ acceptances or similar instruments issued or created in the ordinary course of business or consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims;

(xxiii) Indebtedness and obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practice;

(xxiv) (x) Indebtedness representing deferred compensation or stock-based compensation owed to employees, consultants or independent contractors of the Borrower or its Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice and (y) Indebtedness consisting of obligations of the Borrower (or any direct or indirect parent thereof) or its Restricted Subsidiaries under deferred compensation to employees, consultants or independent contractors of the Borrower (or any direct or indirect parent thereof) or its Restricted Subsidiaries or other similar arrangements incurred by such Persons in connection with the Transactions and Permitted Acquisitions or any other Investment permitted by this Agreement;

(xxv) Indebtedness consisting of promissory notes issued by the Borrower or any Restricted Subsidiary to future, current or former officers, directors, employees, managers and consultants or their respective estates, spouses or former spouses, successors, executors, administrators, heirs, legatees or distributees, in each case to finance the purchase or redemption of Equity Interests of the Borrower (or any direct or indirect parent thereof) to the extent permitted by Section 6.07(a);

(xxvi) Indebtedness incurred in connection with a Qualified Securitization Facility;

(xxvii) Indebtedness consisting of the Unsecured Notes and any Permitted Refinancing thereof;

(xxviii) [reserved];

(xxix) (x) Indebtedness in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money and (y) Indebtedness in respect of intercompany obligations of the Borrower or any Restricted Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(xxx) Indebtedness to a customer to finance the acquisition of any equipment necessary to perform services for such customer; provided that the terms of such Indebtedness are consistent with those entered into with respect to similar Indebtedness prior to the Effective Date, including that (x) the repayment of such Indebtedness is conditional upon such customer ordering a specific volume of goods and (y) such Indebtedness does not bear interest or provide for scheduled amortization or maturity;

(xxxi) Indebtedness incurred in connection with any sale-leaseback transaction; and

(xxxii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxi) above.

(b) The Borrower will not, and will not permit any Restricted Subsidiary to, issue any preferred Equity Interests or any Disqualified Equity Interests, except (A) in the case of the Borrower, preferred Equity Interests that are Qualified Equity Interests and (B)(x) preferred Equity Interests issued to and held by the Borrower or any Restricted Subsidiary and (y) preferred Equity Interests issued to and held by joint venture partners after the Effective Date; provided that in the case of this clause (y) any such issuance of preferred Equity Interests shall be deemed to be incurred Indebtedness and subject to the provisions set forth in Section 6.01(a).

#### SECTION 6.02 Liens.

The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned (but not leased) or hereafter acquired (but not leased) by it, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Encumbrances;

(iii) Liens existing on the Effective Date; provided that any Lien securing Indebtedness or other obligations in excess of \$5,000,000 individually shall only be permitted if set forth on Schedule 6.02 (unless such Lien is permitted by another clause in this Section 6.02) and any modifications, replacements, renewals or extensions thereof; provided further that such modified, replacement, renewal or extension Lien does not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.01 and (2) proceeds and products thereof;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); provided that (A) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for replacements, additions, accessions and improvements to such property and the proceeds and the products thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof and customary security deposits and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for replacements, additions, accessions and improvements to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; provided further that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) (i) easements, leases, licenses, subleases or sublicenses granted to others (including licenses and sublicenses of Intellectual Property) that do not (A) interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (B) secure any Indebtedness and (ii) any interest or title of a lessor or licensee under any lease (including financing statements regarding property subject to lease) or license entered into by the Borrower or any Restricted Subsidiary not in violation of this Agreement; provided that with respect to this clause (ii), such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor);

(vi) 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;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (B) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or (C) in favor of a banking or other financial institution or entity, or electronic payment service provider, encumbering deposits (including the right of setoff);

(viii) Liens (A) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.04 to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under

Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) Liens on property or other assets of any Restricted Subsidiary that is not a Loan Party, which Liens secure Indebtedness of such Restricted Subsidiary or another Restricted Subsidiary that is not a Loan Party, in each case permitted under Section 6.01(a);

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Restricted Subsidiary and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) Liens existing on property or other assets at the time of its acquisition or existing on the property or other assets of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date and any modifications, replacements, renewals or extensions thereof; provided that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, and (B) such Lien does not extend to or cover any other assets or property (other than any replacements of such property or assets and additions and accessions thereto, the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition);

(xii) rights of consignors of goods, whether or not perfected by the filing of a financing statement or other registration, recording or filing;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by any of the Borrower or any Restricted Subsidiaries in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term "Permitted Investments";

(xv) 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;

(xvi) Liens that are contractual rights of setoff (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xvii) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Liens securing Indebtedness permitted under Section 6.01(a)(xix) or 6.01(a)(xx);

(xx) Liens on real property other than the Mortgaged Properties;

(xxi) Settlement Liens;

(xxii) Liens securing Indebtedness permitted under Section 6.01(a)(vii), (viii) or (xii);

(xxiii) Liens securing Indebtedness permitted under Section 6.01(a)(xiii) or 6.01(a)(xxviii); provided that such Indebtedness shall be subject to a Customary Intercreditor Agreement;

(xxiv) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; provided such satisfaction or discharge is permitted hereunder;

(xxv) Receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxvi) Liens on Equity Interests of any joint venture or Unrestricted Subsidiary (a) securing obligations of such joint venture or Unrestricted Subsidiary or (b) pursuant to the relevant joint venture agreement or arrangement;

(xxvii) Liens on cash or Permitted Investments securing Swap Agreements in the ordinary course of business submitted for clearing in accordance with applicable Requirements of Law; provided that the aggregate outstanding amount of obligations secured by Liens existing in reliance on this clause (xxvii) shall not exceed \$25,000,000;

(xxviii) other Liens; provided that at the time of the granting thereof and after giving Pro Forma Effect to any such Lien and the obligations secured thereby (including the use of proceeds thereof) the lesser of (x) the aggregate outstanding face amount of obligations secured by Liens existing in reliance on this clause (xxviii) and (y) the fair market value of the assets securing such obligations shall not exceed the greater of \$75,000,000 and 20.0% of Consolidated EBITDA for the Test Period then last ended;

(xxix) Liens securing Indebtedness permitted under Section 6.01(a)(xvii) so long as such Liens are subject to a Customary Intercreditor Agreement;

(xxx) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility; and

(xxxi) Liens in connection with sale-leaseback transactions.

#### SECTION 6.03 Fundamental Changes.

(a) The Borrower will not, and will not permit any other Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve (which, for the avoidance of doubt, shall not restrict the Borrower or any Restricted Subsidiary from changing its organizational form), except that:

(i) any Restricted Subsidiary may merge or consolidate with (A) the Borrower; provided that the Borrower shall be the continuing or surviving Person, or (B) any one or more other Restricted Subsidiaries; provided that when any Subsidiary Loan Party is merging or consolidating with another Restricted Subsidiary (1) the continuing or surviving Person shall be a Subsidiary Loan Party or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is otherwise permitted under Section 6.04;

(ii) (A) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (B) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(iv) the Borrower may merge or consolidate with (or Dispose of all or substantially all of its assets to) any other Person; provided that (A) the Borrower shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger or consolidation is not the Borrower or is a Person into which the Borrower has been liquidated (or, in connection with a Disposition of all or substantially all of the Borrower's assets, if the transferee of such assets) (any such Person, the "Successor Borrower"), (1) the Successor Borrower shall be an entity organized or existing under the laws of a Covered Jurisdiction, (2) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form and substance reasonably



satisfactory to the Term Administrative Agent, (3) each Loan Party other than the Borrower, unless it is the other party to such merger or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Term Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Borrower's obligations under this Agreement and (4) the Borrower shall have delivered to the Term Administrative Agent a certificate of a Responsible Officer and an opinion of counsel, each stating that such merger or consolidation complies with this Agreement; provided further that (y) if such Person is not a Loan Party, no Event of Default (or, to the extent related to a Permitted Acquisition or any Investment not prohibited by Section 6.04, no Specified Event of Default) shall exist after giving effect to such merger or consolidation and (z) if the foregoing requirements are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents; provided further that the Borrower will use commercially reasonable efforts to provide any documentation and other information about the Successor Borrower as shall have been reasonably requested in writing by any Lender through the Term Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including Title III of the USA PATRIOT Act;

(v) any Restricted Subsidiary may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; provided that the continuing or surviving Person shall be the Borrower or a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12;

(vi) any Restricted Subsidiary may effect a merger, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05; and

(vii) the Borrower and its Restricted Subsidiaries may consummate the Acquisition.

#### SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

The Borrower will not, and will not permit any Restricted Subsidiary to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made and purchases of assets, in the ordinary course of business consistent with past practice;

(b) loans, advances and other credit extensions to officers, members of the Board of Directors and employees of the Borrower and its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation (including moving expenses and costs of replacement homes), business machines or supplies, automobiles and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of the Borrower (or any direct or indirect parent thereof) ( provided that

the amount of such loans and advances made in cash to such Person shall be contributed to the Borrower in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding under this clause (iii) at any time not to exceed \$40,000,000;

(c) Investments by the Borrower in any Restricted Subsidiary and Investments by any Restricted Subsidiary in any of the Borrower or any other Restricted Subsidiary; provided that, in the case of any Investment by a Loan Party in a Restricted Subsidiary that is not a Loan Party, no Event of Default shall have occurred and be continuing or would result therefrom;

(d) Investments consisting of (i) extensions of trade credit and accommodation guarantees in the ordinary course of business and (ii) loans and advances to customers; provided that the aggregate principal amount of such loans and advances outstanding under this clause (ii) at any time shall not exceed \$10,000,000;

(e) Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 6.04(e) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) Investments existing on the Effective Date by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; provided that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04(e) or as otherwise permitted by this Section 6.04;

(f) Investments in Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(h) Permitted Acquisitions;

(i) the Transactions;

(j) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers in the ordinary course of business;

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(l) (i) loans and advances to the Borrower (or any direct or indirect parent thereof) (x) in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent

permitted to be made to the Borrower (or such parent) in accordance with Section 6.07(a) and (y) to the extent the proceeds thereof are contributed or loaned or advanced to any Restricted Subsidiary and (ii) Investments or Guarantees with respect to any direct or indirect parent of the Borrower that could otherwise be made as a Restricted Payment under Section 6.07, so long as the amount of such Investment or Guarantee is deducted from the amount available to be made as a Restricted Payment under the applicable clause of Section 6.07;

(m) additional Investments and other acquisitions; provided that at the time any such Investment or other acquisition is made, the aggregate outstanding amount of such Investment or acquisition made in reliance on this clause (m), together with the aggregate amount of all consideration paid in connection with all other Investments and acquisitions made in reliance on this clause (m) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other Investment or acquisition previously made under this clause (m)), shall not exceed the sum of (A) the greater of \$190,000,000 and 50.0% of Consolidated EBITDA for the most recently ended Test Period after giving Pro Forma Effect to the making of such Investment or other acquisition, plus (B) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment;

(n) advances of payroll payments to employees in the ordinary course of business;

(o) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests of the Borrower (or any direct or indirect parent thereof);

(p) Investments of a Subsidiary acquired after the Effective Date or of a Person merged or consolidated with any Subsidiary in accordance with this Section 6.04 and Section 6.03 after the Effective Date or that otherwise becomes a Subsidiary ( provided that if such Investment is made under Section 6.04(h), existing Investments in subsidiaries of such Subsidiary or Person shall comply with the requirements of Section 6.04(h)) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(q) receivables owing to the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(r) Investments (A) for utilities, security deposits, leases and similar prepaid expenses incurred in the ordinary course of business and (B) trade accounts created, or prepaid expenses accrued, in the ordinary course of business;

(s) non-cash Investments in connection with tax planning and reorganization activities; provided that after giving effect to any such activities, the security interests of the Lenders in the Collateral, taken as a whole, would not be materially impaired;

(t) additional Investments so long as at the time of any such Investment and after giving effect thereto, on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 4.00 to 1.00;

(u) Investments consisting of Indebtedness, Liens, fundamental changes, Dispositions and Restricted Payments permitted (other than by reference to this Section 6.04(u)) under Sections 6.01, 6.02, 6.03, 6.05 and 6.07, respectively;

(v) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower;

(w) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case in the ordinary course of business;

(x) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(y) Investments by an Unrestricted Subsidiary entered into prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”;

(z) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower are necessary or advisable to effect any Qualified Securitization Facility or any repurchase obligation in connection therewith, including, without limitation, Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Facilities or any related Indebtedness;

(aa) Investments in the ordinary course of business in connection with Settlements;

(bb) Investments arising as a result of sale-leaseback transactions; and

(cc) Investments in joint ventures and Unrestricted Subsidiaries in an aggregate principal amount outstanding at any time not to exceed the greater of \$75,000,000 and 20.0% of Consolidated EBITDA for the most recently ended Test Period as of such time.

#### SECTION 6.05 Asset Sales.

The Borrower will not, and will not permit any Restricted Subsidiary to, (i) voluntarily sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors’ qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing

Equity Interests to the Borrower or a Restricted Subsidiary in compliance with Section 6.04(c)) (each, a “ Disposition ” and the term “ Dispose ” as a verb has the corresponding meaning), except:

(a) Dispositions of obsolete, damaged, used, surplus or worn out property, whether now owned or hereafter acquired, and Dispositions of non-core assets or property, (including assets or property no longer used or useful, or economically practicable to maintain, in the conduct of the core or principal business of the Borrower and its Restricted Subsidiaries) (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse, go abandoned, or be invalidated);

(b) Dispositions of inventory and other assets (including Settlement Assets) in the ordinary course of business or consistent with past practice or held for sale or no longer used in the ordinary course of business and immaterial assets (considered in the aggregate) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(e) Dispositions permitted by Section 6.03, Investments permitted by Section 6.04, Restricted Payments permitted by Section 6.07 and Liens permitted by Section 6.02;

(f) Dispositions of property acquired by the Borrower or any of the Restricted Subsidiaries pursuant to sale-leaseback transactions;

(g) Dispositions of Permitted Investments;

(h) Dispositions or forgiveness of accounts receivable in the ordinary course of business in connection with the collection or compromise thereof (including sales to factors or other third parties);

(i) leases, subleases, service agreements, product sales, licenses or sublicenses (including licenses and sublicenses of Intellectual Property), in each case that do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(j) transfers of property subject to Casualty Events;

(k) Dispositions of property to Persons other than Restricted Subsidiaries (including the sale or issuance of Equity Interests of a Restricted Subsidiary) for fair market value (as determined by a Responsible Officer of the Borrower in good faith) not otherwise permitted under this Section 6.05; provided that with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of \$50,000,000, the Borrower or any Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Permitted Investments; provided, however, that solely for the purposes of this clause (k), (A) any liabilities (as shown on the most recent balance sheet of the Borrower or such Restricted Subsidiary or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Loan Document Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, shall be deemed to be cash, (B) any securities, notes or other obligations or assets received by the Borrower or such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received) within one hundred and eighty (180) days following the closing of the applicable Disposition, shall be deemed to be cash, (C) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Disposition (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries), to the extent that the Borrower and all of the Restricted Subsidiaries (to the extent previously liable thereunder) are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Disposition, shall be deemed to be cash and (D) any Designated Non-Cash Consideration received by the Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate fair market value (as determined by a Responsible Officer of the Borrower in good faith), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (k) that is at that time outstanding, not in excess of \$50,000,000 at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value (as determined in good faith by the Borrower) of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) Dispositions of any assets (including Equity Interests) (A) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of the Borrower and its Restricted Subsidiaries and/or (B) made to obtain the approval of any applicable antitrust authority in connection with a Permitted Acquisition;

(n) any Disposition of accounts receivable, Securitization Assets, any participations thereof, or related assets in connection with or any Qualified Securitization Facility;

(o) transfers of condemned property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement; and

(p) any Disposition of the Equity Interests of any Immaterial Subsidiary or Unrestricted Subsidiary.

SECTION 6.06 [Reserved].

SECTION 6.07 Restricted Payments; Certain Payments of Indebtedness.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(i) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other Restricted Subsidiary; provided that in the case of any such Restricted Payment by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, such Restricted Payment is made to the Borrower, any Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests;

(ii) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;

(iii) Restricted Payments made to consummate the Transactions;

(iv) repurchases of Equity Interests in the Borrower (or any direct or indirect parent of the Borrower) or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price or withholding taxes payable in connection with the exercise of such options or warrants or other incentive interests;

(v) Restricted Payments to the Borrower, which the Borrower may use to redeem, acquire, retire, repurchase or settle its Equity Interests (or any options, warrants, restricted stock or stock appreciation rights or similar securities issued with respect to any such Equity Interests) or Indebtedness or to service Indebtedness incurred by the Borrower or any direct or indirect parent companies of the Borrower to finance the redemption, acquisition, retirement, repurchase or settlement of such Equity Interest or Indebtedness (or make Restricted Payments to allow any of the Borrower’s direct or indirect parent companies to so redeem, retire, acquire or repurchase their Equity Interests or their Indebtedness or to service Indebtedness incurred by the Borrower to finance the redemption, acquisition, retirement, repurchase or settlement of such Equity Interests or

Indebtedness or to service Indebtedness incurred to finance the redemption, retirement, acquisition or repurchase of such Equity Interests or Indebtedness), held directly or indirectly by current or former officers, managers, consultants, members of the Board of Directors, employees or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement in an aggregate amount after the Effective Date together with the aggregate amount of loans and advances to the Borrower made pursuant to Section 6.04(m) in lieu of Restricted Payments permitted by this clause (v) not to exceed \$75,000,000 in any calendar year with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$150,000,000 in any calendar year (without giving effect to the following proviso); provided that such amount in any calendar year may be increased by (1) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower (or any direct or indirect parent thereof and contributed to the Borrower) or the Restricted Subsidiaries after the Effective Date, or (2) the amount of any bona fide cash bonuses otherwise payable to members of the Board of Directors, consultants, officers, employees, managers or independent contractors of the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year; provided further that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from members of the Board of Directors, consultants, officers, employees, managers or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower (or any direct or indirect parent thereof) will not be deemed to constitute a Restricted Payment for purposes of this Section 6.07 or any other provisions of this Agreement.

(vi) other Restricted Payments made by the Borrower; provided that, at the time of making such Restricted Payments, on a Pro Forma Basis, the Total Net Leverage Ratio is equal to or less than 4.00 to 1.00;

(vii) the Borrower and its Restricted Subsidiaries may make Restricted Payments in cash to the Borrower (or any direct or indirect parent thereof):

(A) as distributions by any Restricted Subsidiary to the Borrower (or any direct or indirect parent of the Borrower) in amounts required for the Borrower (or any direct or indirect parent of the Borrower) to pay with respect to any taxable period in which the Borrower and/or any of its Subsidiaries is a member of (or is a flow-through entity for U.S. federal income tax purposes owned directly or indirectly by one or more such members of) a consolidated, combined, unitary or similar tax group (a "Tax Group") of which the Borrower or any other direct or



indirect parent of the Borrower is the common parent, U.S. federal, state and local and foreign taxes that are attributable to the taxable income of the Borrower and/or its Subsidiaries; provided that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount of such taxes that the Borrower and its Subsidiaries would have been required to pay if they were a stand-alone Tax Group with the Borrower as the corporate common parent of such stand-alone Tax Group (collectively, “Tax Distributions”);

(B) the proceeds of which shall be used by any direct or indirect parent of the Borrower to pay (or to make Restricted Payments to allow any direct or indirect parent of the Borrower to pay) (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business, (2) any reasonable and customary indemnification claims made by members of the Board of Directors or officers, employees, directors, managers, consultants or independent contractors of the Borrower (or any parent thereof) attributable to the ownership or operations of the Borrower’s Restricted Subsidiaries, (3) fees and expenses (x) due and payable by any of the Borrower and its Restricted Subsidiaries and (y) otherwise permitted to be paid by the Borrower and its Restricted Subsidiaries under this Agreement, (4) to the extent constituting a Restricted Payment, amounts due and payable pursuant to any investor management agreement entered into with the Investors after the Effective Date in an aggregate amount not to exceed the amount permitted to be paid pursuant to Section 5.17(iv) and (5) amounts that would otherwise be permitted to be paid pursuant to Section 5.17(iii) or (xi);

(C) the proceeds of which shall be used by any direct or indirect parent of the Borrower to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(D) to finance any Investment made by the Borrower (or any direct or indirect parent of the Borrower) that, if made by the Borrower, would be permitted to be made pursuant to Section 6.04; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) the Borrower (or any direct or indirect parent of the Borrower) shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests but not including any loans or advances made pursuant to Section 6.04(b)) to be contributed to the Borrower or its Restricted Subsidiaries or (2) the Person formed or acquired to merge into or consolidate with the Borrower or any of the Restricted Subsidiaries to the extent such merger or consolidation is permitted in Section 6.03) in order to consummate such Investment, in each case in accordance with the requirements of Sections 5.11 and 5.12;

(E) the proceeds of which shall be used to pay (or to make Restricted Payments to allow the Borrower or any direct or indirect parent thereof to pay) fees and expenses related to any equity or debt offering;

(F) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of the Borrower or any direct or indirect parent company of the Borrower to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries; and

(G) the proceeds of which shall be used to make payments permitted by clause (b)(iv) and (b)(v) of Section 6.07;

(viii) in addition to the foregoing Restricted Payments, the Borrower may make additional Restricted Payments, in an aggregate amount, when taken together with the aggregate amount of loans and advances previously made pursuant to Section 6.04(m) in lieu of Restricted Payments permitted by this clause (viii), not to exceed the sum of (A) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment; provided that amounts pursuant to clause (b) of the definition of "Available Amount" may only be used to fund a Restricted Payment pursuant to this clause (viii)(A) to the extent that the Interest Coverage Ratio on a Pro Forma Basis after giving effect thereto is at least 2.00 to 1.00, plus (B) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment;

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests;

(x) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options and the vesting of restricted stock and restricted stock units;

(xi) the Borrower may (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, manager or consultant (or their respective controlled Affiliates or permitted transferees) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or required withholding or similar taxes;

(xiii) the distribution, by dividend or otherwise, of shares of Equity Interests of, or Indebtedness owed to the Borrower (or any direct or indirect parent thereof) or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are Permitted Investments);

(xiv) the declaration and payment of Restricted Payments on the Borrower's common stock (or the payment of Restricted Payments to any direct or indirect parent company of the Borrower to fund a payment of dividends on such company's common stock), following consummation of any public offering, of up to 6.0% per annum of the net cash proceeds of such public offering received by or contributed to the Borrower, other than public offerings registered on Form S-8;

(xv) any distributions or payments of Securitization Fees; and

(xvi) additional Restricted Payments in an amount not to exceed the greater of \$60,000,000 and 15.0% of Consolidated EBITDA for the most recently ended Test Period after giving Pro Forma Effect to the making of such Restricted Payment.

(b) The Borrower will not, and will not permit any Restricted Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Junior Financing, or any other payment (including any payment under any Swap Agreement) that has a substantially similar effect to any of the foregoing, except:

(i) payment of regularly scheduled interest and principal payments, mandatory offers to repay, repurchase or redeem, mandatory prepayments of principal premium and interest, and payment of fees, expenses and indemnification obligations, with respect to such Junior Financing, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

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

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parent companies, and any payment that is intended to prevent any Junior Financing from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code;

(iv) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount, not to exceed the sum of (A) an amount at the time of making any such prepayment, redemption, repurchase, defeasance or other payment and together with any other prepayments, redemptions, repurchases, defeasances and other payments made utilizing this subclause (A) not to exceed the greater of \$60,000,000 and 15.0% of Consolidated EBITDA for the most recently ended Test Period after giving Pro Forma Effect to the making of such prepayment, redemption, purchase, defeasance or other payment plus

(B) (x) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment; provided that amounts pursuant to clause (b) of the definition of “Available Amount” may only be used to fund any such prepayment, redemption, purchase, defeasance or other payment pursuant to this clause (iv)(B)(x) to the extent that the Interest Coverage Ratio on a Pro Forma Basis after giving effect thereto is at least 2.00 to 1.00 plus (y) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment;

(v) payments made in connection with the Transactions;

(vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity; provided that after giving effect to such prepayment, redemption, repurchase, defeasance or other payment, on a Pro Forma Basis, the Total Net Leverage Ratio is less than or equal to 4.00 to 1.00; and

(vii) prepayment of Junior Financing owed to the Borrower or a Restricted Subsidiary or the prepayment of Permitted Refinancing of such Indebtedness with the proceeds of any other Junior Financing.

SECTION 6.08 [Reserved].

SECTION 6.09 Restrictive Agreements.

The Borrower will not, and will not permit any Restricted Subsidiary to enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; provided that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (1) Requirements of Law, (2) any Loan Document, the ABL Loan Documents, the Secured Notes or the Unsecured Notes, (3) any documentation governing Incremental Equivalent Debt, (4) any documentation governing Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt or Permitted Second Priority Refinancing Debt, (5) any documentation governing Indebtedness incurred pursuant to Section 6.01(a)(xx), (xxi) or (xxvi) and (6) any documentation governing any Permitted Refinancing incurred to refinance any such Indebtedness referenced in clauses (1) through (5) above;

(b) customary restrictions and conditions existing on the Effective Date and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses and other contracts restricting the assignment thereof;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any Restricted Subsidiary;

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) restrictions set forth on Schedule 6.09 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(j) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted by Section 6.04;

(k) customary restrictions contained in leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto;

(l) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary; and

(m) customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

#### SECTION 6.10 Amendment of Junior Financing.

The Borrower will not, and will not permit any Restricted Subsidiary to, amend or modify the documentation governing any Junior Financing, in each case if the effect of such

amendment or modification is materially adverse to the Lenders; provided that such modification will not be deemed to be materially adverse if such Junior Financing could be otherwise incurred under this Agreement (including as Indebtedness that does not constitute a Junior Financing) with such terms as so modified at the time of such modification.

SECTION 6.11 [Reserved].

SECTION 6.12 Changes in Fiscal Periods.

The Borrower will not make any change in fiscal year; provided, however, that the Borrower may, upon written notice to the Term Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Term Administrative Agent, in which case, the Borrower and the Term Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

## ARTICLE VII

### EVENTS OF DEFAULT

SECTION 7.01 Events of Default.

If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party 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) any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Section 7.01) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any of the Restricted Subsidiaries in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made, and such incorrect representation or warranty (if curable) shall remain incorrect for a period of 30 days after written notice thereof from the Term Administrative Agent to the Borrower; provided that this clause (c) shall be limited on the Effective Date to the Specified Representations and the Specified Acquisition Agreement Representations;

(d) the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02, 5.04 (with respect to the existence of the Borrower or such Restricted Subsidiaries), 5.10, 5.14 or in Article VI (other than Section 6.12);

(e) the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Term Administrative Agent to the Borrower; provided that any Default or Event of Default which may occur as a result of the failure to timely meet any delivery requirements under the Loan Documents shall cease to exist upon any delivery otherwise in compliance with such requirement.

(f) the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period); provided that an event of default under the ABL Credit Agreement shall not constitute an Event of Default unless and until the ABL Lenders have actually declared all such obligations under the ABL Credit Agreement to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by the ABL Lenders on or before such date;

(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 all applicable grace periods having expired) 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 paragraph (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement) or (ii) termination events or similar events occurring under any Swap Agreement that constitutes Material Indebtedness (it being understood that paragraph (f) of this Section 7.01 will apply to any failure to make any payment required as a result of any such termination or similar event); provided that an event of default under the ABL Credit Agreement shall not constitute an Event of Default unless and until the ABL Lenders have actually declared all such obligations under the ABL Credit Agreement to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by the ABL Lenders on or before such date;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, court protection, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or of a material 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, examiner, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a material part of its assets, and, in any such case, such proceeding or petition shall continue undismissed and unstayed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, court protection, 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 paragraph (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a material part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors;

(j) one or more enforceable judgments for the payment of money in an aggregate amount in excess of \$50,000,000 (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) shall be rendered against the Borrower and any of the Restricted Subsidiaries or any combination thereof and the same shall remain undischarged for a period of 90 consecutive days during which execution shall not be effectively stayed, or any judgment creditor shall legally attach or levy upon assets of such Loan Party that are material to the businesses and operations of the Borrower and its Restricted Subsidiaries, taken as a whole, to enforce any such judgment;

(k) an ERISA Event occurs that has resulted or would reasonably be expected to result in a Material Adverse Effect;

(l) any Lien purported to be created under any Term Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, with the priority required by the applicable Term Security Documents, except (i) 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, (ii) as a result of the Term Administrative Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Term Security Documents or (B) file Uniform Commercial Code continuation statements or (iii) as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (iv) as a result of acts or omissions of the Term Administrative Agent or any Lender;

(m) any material provision of any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any Guarantees of the Loan Document Obligations by any Loan Party pursuant to the Term Guarantee Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents); or

(o) a Change of Control shall occur;



then, and in every such event (other than an event with respect to the Borrower described in paragraph (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Term Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in paragraph (h) or (i) of this Section 7.01, 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, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

For the avoidance of doubt, (i) any “going concern” or like qualification or exception in connection with an upcoming maturity date of any Indebtedness or any actual failure to satisfy a financial maintenance covenant or any potential inability to satisfy a financial maintenance covenant on a future date or in a future period or any projected Default or Event of Default in connection with financial statements delivered pursuant to Section 5.01(a) shall not be a Default or Event of Default, (ii) any Default or Event of Default which may have occurred shall cease to exist upon compliance with such requirement, including with respect to an Event of Default pursuant to (x) Section 7.01(a) or Section 7.01(b) upon payment of any overdue amounts and (y) the failure to timely meet any delivery requirements under the Loan Documents, upon any delivery otherwise in compliance with such requirement, and (iii) the failure of any representation or warranty (other than the Specified Representations and the Specified Acquisition Agreement Representations) to be true and correct on the Effective Date will not constitute a Default or Event of Default hereunder.

#### SECTION 7.02 Application of Proceeds.

After the exercise of remedies provided for in Section 7.01, any amounts received on account of the Secured Obligations shall be applied by the Term Administrative Agent in accordance with Section 4.02 of the Term Collateral Agreement and/or the similar provisions in the other Term Security Documents.

### ARTICLE VIII

#### ADMINISTRATIVE AGENT

#### SECTION 8.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints DBNY to act on its behalf as the Term Administrative Agent and Term Collateral Agent hereunder and under the other Loan Documents and authorizes the Term Administrative Agent to take such actions on its behalf and to

exercise such powers as are delegated to the Term Administrative Agent and Term Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Term Administrative Agent and the Term Collateral Agent, the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

(b) The Term Administrative Agent shall also act as the “Term Collateral Agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Term Collateral Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Term Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Term Administrative Agent and Term Collateral Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Term Security Documents, or for exercising any rights and remedies thereunder at the direction of the Term Administrative Agent, shall be entitled to the benefits of all provisions of this Article VIII and Article IX (including Section 9.03 as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

#### SECTION 8.02 Rights as a Lender.

The Person serving as the Term Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Term Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Term Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Term Administrative Agent hereunder and without any duty to account therefor to the Lenders.

#### SECTION 8.03 Exculpatory Provisions.

The Term Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Term Administrative Agent:

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

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

action that, in its opinion or the opinion of its counsel, may expose the Term Administrative Agent to liability or that is contrary to any Loan Document or applicable law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Term Administrative Agent or any of its Affiliates in any capacity;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Term Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02 and in the last paragraph of Section 7.01) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment; provided that the Term Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the Term Administrative Agent by the Borrower or a Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Term Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Term Administrative Agent.

#### SECTION 8.04 Reliance by Administrative Agent.

The Term Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Term Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Term Administrative Agent may presume that such condition is satisfactory to such Lender unless the Term Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Term Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts

selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### SECTION 8.05 Delegation of Duties.

The Term Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Term Administrative Agent. The Term Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Term Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

#### SECTION 8.06 Resignation of Administrative Agent.

Subject to the appointment and acceptance of a successor Term Administrative Agent as provided in this paragraph, the Term Administrative Agent may resign upon thirty (30) days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (such consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Term Administrative Agent gives notice of its resignation, then such resignation shall nevertheless be effective and the retiring Term Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Term Administrative Agent, which shall be an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank (the date upon which the retiring Term Administrative Agent is replaced, the "Resignation Effective Date"); provided that if the Term Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice.

If the Person serving as Term Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders and the Borrower may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Term Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Term Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) that in the case of any collateral security held by the Term Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Term Administrative Agent shall continue to hold such collateral security until such time as a successor Term Administrative Agent is

appointed and (ii) with respect to any outstanding payment obligations) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Term Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Term Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Term Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Term Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Term Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Term Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. The fees payable by the Borrower to a successor Term Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Term Administrative Agent was acting as Administrative Agent.

#### SECTION 8.07 Non-Reliance on Term Administrative Agent and Other Lenders.

Each Lender acknowledges that it has, independently and without reliance upon the Term Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Term Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption, Incremental Facility Amendment or Refinancing Amendment 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 Term Administrative Agent or the Lenders on the Effective Date.

No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Term Administrative Agent and Term Collateral Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Term Administrative Agent or Term Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Term Administrative Agent, the Term Collateral Agent or any Lender may be the purchaser or licensor

of any or all of such Collateral at any such sale or other disposition, and the Term Administrative Agent or Term Collateral Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Term Administrative Agent or Term Collateral Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

SECTION 8.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, neither any Joint Lead Arrangers nor any person named on the cover page hereof as a joint bookrunner shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Term Administrative Agent or a Lender hereunder.

SECTION 8.09 Term Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Term Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Term Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Term Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Term Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Term Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Term Administrative Agent and, if the Term Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Term Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Term Administrative Agent and its agents and counsel, and any other amounts due the Term Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Term Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender to authorize the Term Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

SECTION 8.10 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender or the Term Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Term Administrative Agent in accordance with Article VII for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Term Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 9.08 (subject to the terms of Section 2.18), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided further that if at any time there is no Person acting as Term Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Term Administrative Agent pursuant to Article VII and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.18, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 8.11 Withholding Taxes.

To the extent required by any applicable Requirements of Law (as determined in good faith by the Term Administrative Agent), the Term Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Term Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Term Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall indemnify and hold harmless the Term Administrative Agent (to the extent that the Term Administrative Agent has not already been reimbursed by the Loan Parties pursuant to Section 2.17 and without limiting any obligation

of the Loan Parties to do so pursuant to such Section) fully for all amounts paid, directly or indirectly, by the Term Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was 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 Term Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Term Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Term Administrative Agent under this Section 8.11. The agreements in this Section 8.11 shall survive the resignation and/or replacement of the Term Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations under any Loan Document.

## ARTICLE IX

### MISCELLANEOUS

#### SECTION 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone, 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 fax or other electronic transmission, as follows:

(i) if to the Borrower or the Term Administrative Agent, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 9.01; and

(ii) if to any other Lender, to it at its address (or fax number, telephone number or e-mail address) set forth in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain Material Non-Public Information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax 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 and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures reasonably approved by the Term Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Term Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.



Unless the Term 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), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. 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 ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Term Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Term Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and the Term Administrative Agent may change its address, electronic mail address, fax or telephone number for notices and other communications or website hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower and the Term Administrative Agent. In addition, each Lender agrees to notify the Term Administrative Agent from time to time to ensure that the Term Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Term Administrative Agent and Lenders. The Term Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Term Administrative Agent, each Lender

and the Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Term Administrative Agent may be recorded by the Term Administrative Agent and each of the parties hereto hereby consents to such recording.

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by the Term Administrative Agent or any Lender in exercising any right or power under this Agreement or any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Term Administrative Agent and the Lenders hereunder and under the other Loan Documents 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 Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, 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 shall not be construed as a waiver of any Default, regardless of whether the Term Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.20 with respect to any Incremental Facility Amendment, Section 2.21 with respect to any Refinancing Amendment or Section 2.24 with respect to any Permitted Amendment, neither this Agreement, any Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower, the Term Administrative Agent (to the extent that such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Term Administrative Agent under this Agreement, the Term Administrative Agent shall execute such waiver, amendment or other modification to the extent approved by the Required Lenders) and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Term Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan (it being understood that a waiver of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness of principal) or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that any change to the definition of Total Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Senior Secured First Lien Net Leverage Ratio or Interest Coverage Ratio or in the component definitions thereof

shall not constitute a reduction of interest or fees), provided that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay default interest pursuant to Section 2.13(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness of principal), or the date of any scheduled amortization payment of the principal amount of any Term Loan under Section 2.10 or the applicable Refinancing Amendment, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment (it being understood that a waiver of any Default or Event of Default shall not constitute an extension of any maturity date, date of any scheduled amortization payment or date for payment of interest or fees), without the written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section 9.02 without the written consent of each Lender directly and adversely affected thereby; provided that any such change which is in favor of a Class of Lenders holding Loans maturing after the maturity of other Classes of Lenders (and only takes effect after the maturity of such other Classes of Loans or Commitments) will require the written consent of the Required Lenders with respect to each Class directly and adversely affected thereby, (v) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release all or substantially all the value of the Guarantees under the Term Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender), (vii) release all or substantially all the Collateral from the Liens of the Term Security Documents, without the written consent of each Lender (other than a Defaulting Lender), except as expressly provided in the Loan Documents or (viii) amend or modify any provisions of Section 2.18(a) or Section 7.02 hereof or Section 4.02 of the Term Collateral Agreement and/or the similar provisions in the other Term Security Documents, in each case without the consent of each Lender directly and adversely affected thereby; provided further that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Term Administrative Agent without the prior written consent of the Term Administrative Agent, (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Term Administrative Agent to cure any ambiguity, omission, defect or inconsistency and (C) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders stating that would be required to consent thereto under this Section 9.02 if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Term Administrative Agent, the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion and (b)

guarantees, Term Security Documents and related documents in connection with this Agreement may be in a form reasonably determined by the Term Administrative Agent and may be, together with this Agreement and the other Loan Documents, amended and waived with the consent of the Term Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities or defects, (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents or (iv) to integrate any Incremental Facility or Credit Agreement Refinancing Indebtedness in a manner consistent with this Agreement and the other Loan Documents.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders (and, to the extent any Proposed Change requires the consent of Lenders holding Loans of any Class pursuant to clause (iv), (ix) or (xi) of paragraph (b) of this Section 9.02, the consent of a Majority in Interest of the outstanding Loans of such Class) to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a “Non-Consenting Lender”), then, so long as the Lender that is acting as Term Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Term Administrative Agent, (i) if no Specified Event of Default exists, permanently prepay all of the Loans of any Class owing by it to, and terminating any Commitments of, such Non-Consenting Lender or (ii) require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment), provided that, with respect to this clause (ii), (a) the Borrower shall have received the prior written consent of the Term Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding par principal amount of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (including pursuant to Section 2.11(a)(i)) from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) unless waived, the Borrower or such Eligible Assignee shall have paid to the Term Administrative Agent the processing and recordation fee specified in Section 9.04(b).

(d) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Term Loans of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); provided that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification

requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender (other than an Affiliated Debt Fund) hereby agrees that, for purposes of any plan of reorganization, such Affiliated Lender will be deemed to have voted in the same proportion as non-Affiliated Lenders voting on such matter; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion in connection with any plan of reorganization (a) to the extent any such plan of reorganization proposes to treat any Secured Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Secured Obligations held by Lenders that are not Affiliates of the Borrower, (b) that would deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled or (c) if such plan of reorganization does not require the consent of each Lender or each affected Lender.

#### SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay, if the Effective Date occurs and the Transactions have been consummated, (i) all reasonable and documented and invoiced out-of-pocket costs and expenses incurred by the Term Administrative Agent, the Joint Lead Arrangers and their respective Affiliates (without duplication) (limited, in the case of (x) legal fees and expenses, to the reasonable, documented and invoiced fees, charges and disbursements of Cahill Gordon & Reindel LLP and to the extent reasonably determined by the Term Administrative Agent to be necessary, one firm of local counsel in each relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of an actual conflict of interest where the Indemnitee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional conflicts counsel for the affected Indemnitees similarly situated and (y) the fees and expenses of any other advisor or consultant, to the reasonable, documented and invoiced fees, charges and disbursements of such advisor or consultant, but solely to the extent that such consultant or advisor has been retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed)), in each case, in connection with the syndication of the credit facilities provided for herein, and the preparation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (ii) all reasonable and documented and invoiced out-of-pocket costs and expenses incurred by the Term Administrative Agent, any Joint Lead Arranger or any Lender, including the fees, charges and disbursements of counsel for the Term Administrative Agent, the Joint Lead Arrangers and the Lenders (without duplication) (limited, in the case of (x) legal fees and expenses, to the reasonable, documented and invoiced fees, charges and disbursements of Cahill Gordon & Reindel LLP and to the extent reasonably determined by the Term Administrative Agent to be necessary, one local counsel in each relevant material jurisdiction and, in the case of an actual conflict of interest where the Indemnitee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional conflicts counsel for the affected Indemnitees similarly situated and (y) the fees and expenses of any other advisor or consultant, to the reasonable, documented and invoiced fees, charges and disbursements of such advisor or consultant, but solely to the extent that such consultant or advisor has been retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed), in connection with the enforcement or protection of any rights

or remedies (A) in connection with the Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Laws), including its rights under this Section 9.03 or (B) in connection with the Loans made hereunder, including all such out-of-pocket costs and expenses incurred during any workout, restructuring or negotiations in respect of such Loan.

(b) Without duplication of the expense reimbursement obligations pursuant to clause (a) above, the Borrower shall indemnify the Term Administrative Agent, each Lender, the Joint Lead Arrangers and each Related Party (other than Excluded Affiliates to the extent acting in their capacities as such) of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented and invoiced out-of-pocket fees and expenses (limited, in the case of (x) legal fees and expenses, to the reasonable, documented and invoiced fees, charges and disbursements of one counsel for all Indemnitees and to the extent reasonably determined by the Term Administrative Agent to be necessary, one local counsel in each relevant material jurisdiction and, in the case of an actual conflict of interest where the Indemnatee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional conflicts counsel for the affected Indemnitees similarly situated and (y) the fees and expenses of any other advisor or consultant, to the reasonable, documented and invoiced fees, charges and disbursements of such advisor or consultant, but solely to the extent that such consultant or advisor has been retained with the Borrower’s consent (such consent not to be unreasonably withheld or delayed)), incurred by or asserted against any Indemnatee by any third party or by the Borrower or any Subsidiary to the extent arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any Loan Document or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, the syndication of the credit facilities provided for herein, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any Subsidiary, or any other Environmental Liability related in any way to the Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any Subsidiary or their Affiliates and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, costs or related expenses (w) resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee or its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (x) resulted from a material breach of the Loan Documents by such Indemnatee or its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) arise from disputes between or among Indemnitees (other than disputes involving claims against the Term Administrative Agent or the Joint Lead Arrangers, in each case, in their respective capacities) that do not involve an act or omission by the Borrower or any Restricted Subsidiary or (z) any settlement effected without the Borrower’s prior written consent, but if settled with the Borrower’s prior written consent (such consent not to be unreasonably withheld or delayed), the Borrower will indemnify and hold harmless each Indemnatee from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement in accordance

with this paragraph; provided further that (1) the Borrower shall not, without the prior written consent of the applicable Indemnitee (which consent shall not be unreasonably withheld, delayed or conditioned), effect any settlement of any pending or threatened claim, litigation, investigation or proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (a) such settlement includes a full and unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability on claims that are the subject matter of such claim, litigation, investigation or proceeding and (b) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of such Indemnitee and (2) to the extent of any amounts paid to an Indemnitee in respect of this Section 9.03, such Indemnitee, by its acceptance of the benefits hereof, agrees to refund and return any and all amounts paid by the Borrower to it if, pursuant to the operation of any of the foregoing clauses (w) through (z), such Indemnitee was not entitled to receipt of such amount.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Term Administrative Agent or any Lender under paragraph (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Term Administrative Agent or such Lender, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Term Administrative Agent or such Lender in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the outstanding Term Loans at such time. The obligations of the Lenders under this paragraph (c) are subject to the last sentence of Section 2.02(a) (which shall apply *mutatis mutandis* to the Lenders' obligations under this paragraph (c)).

(d) To the extent permitted by applicable law, no party hereto nor any Affiliate of any party hereto, nor any officer, director, employee, agent, controlling person, advisor or other representative of the foregoing or any successor or permitted assign of any of the foregoing shall assert, and each hereby waives, any claim against any other such Person on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages, but in any event including, without limitation, any loss of profits, business or anticipated savings) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby or thereby, or any act or omission or event occurring in connection therewith and each such Person further agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

(e) In case any proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Borrower of the commencement of any proceeding; provided, however, that the failure to do so will not relieve the Borrower from any liability that it may have to such Indemnitee hereunder, except to the extent that the Borrower is materially prejudiced by such failure.

(f) Notwithstanding anything to the contrary in this Agreement, to the extent permitted by applicable law, no party hereto or an Indemnitee shall assert, and each hereby waives, any claim against any other Person for any direct or actual damages arising from the use by unintended recipients of information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems (including the Internet) in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; except to the extent that such direct or actual damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties.

(g) All amounts due under this Section 9.03 shall be payable not later than ten (10) Business Days after written demand therefor; provided, however, that any Indemnitee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, 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 the acknowledgement of the Term Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no assignment shall be made to any Defaulting Lender or any of its Subsidiaries, or any Persons who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii) and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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, Participants (to the extent provided in paragraph (c) of this Section 9.04), the Indemnitees and, to the extent expressly contemplated hereby, the Related Parties of each of the Term Administrative Agent 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 paragraphs (b)(ii) and (f) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent (except with respect to assignments to competitors (as described in the definition of “Disqualified Lenders”) of the Borrower) not to be unreasonably withheld or delayed) of (A) the Borrower; provided that no consent of the Borrower shall be required for an assignment (w) by any Joint Lead Arranger (or its affiliate) to the extent that an assignment by such Joint Lead Arranger (or such affiliate) is made in the primary syndication to Eligible Assignees to whom the Borrower has consented or to any other Joint Lead Arranger (or its affiliate), (x) by a Term Lender to any Lender or an Affiliate of any Lender, (y) by a Term Lender to an Approved Fund or (z) if a Specified Event of Default has occurred and is continuing; provided further that no assignee contemplated by the immediately preceding proviso shall be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable



assignor would have been entitled to receive with respect to the assignment made to such assignee, unless the assignment to such assignee is made with the Borrower's prior written consent; provided further that the Borrower shall have the right to withhold its consent to any assignment if in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority and (B) the Term Administrative Agent; provided that no consent of the Term Administrative Agent shall be required for an assignment of a Term Loan to (x) a Lender, an Affiliate of a Lender or an Approved Fund or (y) subject to Section 9.04(f) and (g), an Affiliated Lender, the Borrower or any of its Subsidiaries. Notwithstanding anything in this Section 9.04 to the contrary, if the Borrower has not given the Term Administrative Agent written notice of its objection to an assignment of Term Loans within ten (10) Business Days after written notice of such assignment, the Borrower shall be deemed to have consented to such assignment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Term Administrative Agent) shall not be less than \$1,000,000 (and integral multiples thereof), unless the Borrower and the Term Administrative Agent otherwise consent (in each case, such consent not to be unreasonably withheld or delayed); provided that no such consent of the Borrower shall be required if a Specified 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 (B) shall not be construed to prohibit 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 Term Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Term Administrative Agent or, if previously agreed with the Term Administrative Agent, manually execute and deliver to the Term Administrative Agent an Assignment and Assumption, and, in each case, together with a processing and recordation fee of \$3,500; provided that the Term Administrative Agent, in its sole discretion, may elect to waive or reduce such processing and recordation fee; provided further that any such Assignment and Assumption shall include a representation by the assignee that the assignee is not a Disqualified Lender or, to the assignee's knowledge, an Affiliate of a Disqualified Lender (other than any bona fide debt investment fund Affiliate of a Disqualified Lender who is disqualified solely as a result of being a competitor of the Borrower and its Subsidiaries); provided further that assignments made pursuant to Section 2.19(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective and (D) the assignee, if it shall not be a Lender, shall deliver to the Term Administrative Agent any tax forms required by Section 2.17(e) and 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.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.04, 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 (and subject to the obligations and limitations of) Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section 9.04.

(iv) The Term Administrative Agent, acting for this purpose as an 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, premium, interest and fees amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Notwithstanding the foregoing, in no event shall the Term Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender, nor shall the Term Administrative Agent be obligated to monitor the aggregate amount of the Loans or Incremental Loans held by Affiliated Lenders. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Term Administrative Agent 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. In addition, the Term Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Term Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words "execution," "signed," "signature" and words of like import in any Assignment and Assumption 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 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.

(c) (i) Any Lender may, without the consent of the Borrower or the Term Administrative Agent, sell participations to one or more banks or other Persons (other than to a Person that is not an Eligible Assignee) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Term Administrative Agent 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 any other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(iii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the obligations and limitations thereof and Section 2.19, it being understood that any tax forms required by Section 2.17(e) shall be provided solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) 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 related interest amounts) of each participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”). The entries in the Participant Register shall be conclusive, absent manifest error, and the parties hereto 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. No Lender shall have any obligation to disclose all or any portion of its Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans or other obligations under the Loan Documents) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary in connection with a Tax audit or other proceeding to establish that any Loan or other obligation under the Loan Documents is in registered form for U.S. federal income tax purposes.

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent (not to be unreasonably withheld or delayed).

(d) Any Lender may, without the consent of the Borrower or the Term Administrative Agent, 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 or other “central” bank, and this Section 9.04 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.

(e) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Term Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Term Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Term Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(f) Notwithstanding anything to the contrary herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement to an Affiliated Lender subject to the following limitations:

(i) Affiliated Lenders (other than Affiliated Debt Funds) will not receive information provided solely to Lenders by the Term Administrative Agent or any Lender and will not be permitted to attend or participate in meetings attended solely by the Lenders and the Term Administrative Agent, other than the right to receive notices of Borrowings, notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(ii) for purposes of any amendment, waiver or modification of any Loan Document (including such modifications pursuant to Section 9.02), or, subject to Section 9.02(e), any plan of reorganization pursuant to the U.S. Bankruptcy Code, that in either case does not require the consent of each Lender or each affected Lender or does not adversely affect such Affiliated Lender in any material respect as compared to other Lenders, or that would deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled, Affiliated Lenders will be deemed to have voted in the same proportion as the Lenders that are not Affiliated Lenders voting on such matter; and each Affiliated Lender hereby acknowledges, agrees and consents that if, for any reason, its vote to accept or reject any plan pursuant to the U.S. Bankruptcy Code is not deemed to have been so voted, then such vote will be (x) deemed not to be in good faith and (y) “designated” pursuant to Section 1126(e) of the U.S. Bankruptcy Code such that the vote is not counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the U.S. Bankruptcy Code; provided that Affiliated Debt Funds will not be subject to such voting limitations and will be entitled to vote as any other Lender; provided

that Affiliated Debt Funds may not, in the aggregate, account for more than 49.9% of the “Required Lenders” in any Required Lender vote under the Facilities;

(iii) the aggregate principal amount of Term Loans purchased by assignment pursuant to this Section 9.04 and held at any one time by Affiliated Lenders (other than Affiliated Debt Funds) may not exceed 25.0% of the aggregate principal amount of all Term Loans outstanding at the time of such purchase, after giving effect to any substantially simultaneous cancellations thereof;

(iv) Affiliated Lenders shall clearly identify themselves as an Affiliated Lender in the loan assignment documentation. In no event shall the Term Administrative Agent be obligated to ascertain, monitor or inquire as to whether any lender is an Affiliated Lender or Affiliated Debt Fund nor shall the Term Administrative Agent be obligated to monitor the number of Affiliated Lenders or Affiliated Debt Funds or the aggregate amount of Term Loans or Incremental Term Loans or the aggregate amount of Incremental Revolving Loans held by Affiliated Lenders or Affiliated Debt Funds;

(v) Affiliated Lenders (other than Affiliated Debt Funds) will not be permitted to vote on matters requiring a Required Lender vote, and the Term Loans held by Affiliated Lenders (other than Affiliated Debt Funds) shall be disregarded in determining (x) other Lenders’ commitment percentages (y) matters submitted to Lenders for consideration that do not require the consent of each Lender or each affected Lender or do not adversely affect such Affiliated Lender in any material respect as compared to other Lenders that are not Affiliated Lenders; provided that the commitments of any Affiliated Lender shall not be increased, the Interest Payment Dates and the dates of any scheduled amortization payments (including at maturity) owed to any Affiliated Lender hereunder will not be extended and the amounts owing to any Affiliated Lender hereunder will not be reduced without the consent of such Affiliated Lender; and

(vi) each Lender making such assignment to such Affiliated Lender acknowledges and agrees that in connection with such assignment, (1) such Affiliated Lender then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on the Borrower, any of its Subsidiaries, the Term Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender’s lack of knowledge of the Material Non-Public Information and (3) none of the Borrower, its Subsidiaries, the Term Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against the Borrower, its Subsidiaries, the Term Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Term Administrative Agent or the other Lenders.

(g) Any Lender may, at any time, assign all or a portion of its Term Loans to the Borrower or any of its Subsidiaries, through (x) Dutch auctions or other offers to purchase open to

all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.11(a)(ii) or other customary procedures acceptable to the Term Administrative Agent and/or (y) open market purchases on a non-pro rata basis, provided that (i) any Term Loans that are so assigned will be automatically and irrevocably cancelled and the aggregate principal amount of the tranches and installments of the relevant Term Loans then outstanding shall be reduced by an amount equal to the principal amount of such Term Loans, (ii) no Event of Default shall have occurred and be continuing and (iii) each Lender making such assignment to the Borrower or any of its Subsidiaries acknowledges and agrees that in connection with such assignment, (1) the Borrower or its Subsidiaries then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on the Borrower, any of its Subsidiaries, the Term Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender's lack of knowledge of the Material Non-Public Information and (3) none of the Borrower, its Subsidiaries, the Term Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against the Borrower, its Subsidiaries, the Term Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Term Administrative Agent or the other Lenders.

(h) Notwithstanding the foregoing, no assignment may be made or participation knowingly sold to a Disqualified Lender without the prior written consent of the Borrower; provided that, upon inquiry by any Lender to the Term Administrative Agent as to whether a specified potential assignee or prospective participant is on the list of Disqualified Lenders, the Term Administrative Agent shall be permitted to disclose to such Lender whether such specific potential assignee or prospective participant is on the list of Disqualified Lenders; provided further that inclusion on the list of Disqualified Lenders shall not apply retroactively to disqualify any persons that have previously acquired an assignment or participation in the Loan if such person was not included on the list of Disqualified Lenders at the time of such assignment or participation. Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if any Lender was a Disqualified Lender at the time of the assignment of any Loans or Commitments to such Lender, following written notice from the Borrower to such Lender and the Term Administrative Agent: (1) such Lender shall promptly assign all Loans and Commitments held by such Lender to an Eligible Assignee; provided that (A) the Term Administrative Agent shall not have any obligation to the Borrower, such Lender or any other Person to find such a replacement Lender, (B) the Borrower shall not have any obligation to such Disqualified Lender or any other Person to find such a replacement Lender or accept or consent to any such assignment to itself or any other Person subject to the Borrower's consent in accordance with Section 9.04(b)(i) and (C) the assignment of such Loans and/or Commitments, as the case may be, shall be at par plus accrued and unpaid interest and fees; (2) such Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of any Class), all affected Lenders (or all affected Lenders of any Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); provided that (x) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the

consent of all Lenders or each affected Lender that affects any Disqualified Lender adversely and in a manner that is disproportionate to other affected Lenders shall require the consent of such Disqualified Lender; and (3) no Disqualified Lender is entitled to receive information provided solely to Lenders by the Term Administrative Agent or any Lender or will be permitted to attend or participate in meetings attended solely by the Lenders and the Term Administrative Agent, other than the right to receive notices or Borrowings, notices or prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II.

(i) Notwithstanding the foregoing, any Affiliated Lender shall be permitted, at its option, to contribute any Term Loans so assigned to such Affiliated Lender pursuant to this Section 9.04 to the Borrower or any of its Subsidiaries for purposes of cancellation, which contribution may be made (with the Borrower's consent), in exchange for Qualified Equity Interests of the Borrower or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred pursuant to Section 6.01 at such time.

#### SECTION 9.05 Survival.

All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Term Administrative Agent 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 until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and all other amounts payable hereunder, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

#### SECTION 9.06 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Term Administrative Agent or the syndication of the Loans and Commitments 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 Term Administrative Agent and when the Term Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

#### SECTION 9.07 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. Without limiting the foregoing provisions of this Section 9.07, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Term Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### SECTION 9.08 Right of Setoff.

If a Specified Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of the Borrower (excluding, for the avoidance of doubt, any Settlement Assets except to effect Settlement Payments such Lender is obligated to make to a third party in respect of such Settlement Assets or as otherwise agreed in writing between the Borrower and such Lender) against any of and all the obligations of the Borrower then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Term Administrative Agent for further application in accordance with the provisions of Section 2.22 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 Term Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Term Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender shall notify the Borrower and the Term Administrative Agent of such setoff and application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section 9.08. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Notwithstanding the foregoing, no amount set off from any Loan Party (other than the Borrower) shall be applied to any Excluded Swap Obligation of such Loan Party (other than the Borrower).

#### SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of New York, except that (x) the interpretation of the definition of "Material Adverse Effect" (and whether or not a Material Adverse Effect has occurred) for the purpose of Section 4.01(g), (y) the determination of the accuracy of any Specified Acquisition Agreement



Representation and whether as a result of any inaccuracy thereof the Borrower or any of its Affiliates have the right to terminate its or their obligations under the Acquisition Agreement and (z) the determination of whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement shall in each case be determined pursuant to the Acquisition Agreement, which is governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Term Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

#### SECTION 9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

## SECTION 9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

## SECTION 9.12 Confidentiality.

(a) Each of the Term Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (other than Excluded Affiliates) and its and their respective directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors and any numbering, administration or settlement service providers (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 and any failure of such Persons acting on behalf of the Term Administrative Agent or the relevant Lender to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Term Administrative Agent or the relevant Lender, as applicable), (ii) to the extent requested by any regulatory authority or self-regulatory authority, required by applicable law or by any subpoena or similar legal process or in connection with the exercise of remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; provided that (x) solely to the extent permitted by law and other than in connection with routine audits and reviews by regulatory and self-regulatory authorities, each Lender and the Term Administrative Agent shall notify the Borrower as promptly as practicable of any such requested or required disclosure in connection with any legal or regulatory proceeding and (y) in the case of clause (ii) only, each Lender and the Term Administrative Agent shall use commercially reasonable efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, and provided further that in no event shall any Lender or the Term Administrative Agent be obligated or required to return any materials furnished by the Borrower or any Subsidiary of the Borrower, (iii) to any other party to this Agreement, (iv) subject to an agreement containing confidentiality undertakings substantially similar to those of this Section 9.12, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (B) any actual or prospective counterparty (or its advisors) to any Swap Agreement or derivative transaction relating to any Loan Party or its Subsidiaries and its obligations under the Loan Documents or (C) any pledgee referred to in Section 9.04(d), (v) if required by any rating agency; provided that prior to any such disclosure, such rating agency shall have agreed in writing to maintain the confidentiality of such Information, (vi) to service providers providing administrative and ministerial services solely in connection with the syndication and administration of the Loan Documents and the facilities (e.g., identities of parties, maturity dates, interest rates, etc.) on a confidential basis, or (vii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.12, (y) becomes available to the Term Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or any Subsidiary, which source is not known by the recipient of such information to be subject to a confidentiality obligation or (z) is independently developed by a Joint Lead Arranger. For the purposes hereof, "Information" means all information received from or on behalf of the Borrower relating to the Borrower, any other Subsidiary or their business, other than any such information that is available to the Term

Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary after the Effective Date, 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 9.12 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. Notwithstanding the foregoing, no such information shall be disclosed to a Disqualified Lender that constitutes a Disqualified Lender at the time of such disclosure without the Borrower's prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12(a)) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE TERM 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 TERM ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

#### SECTION 9.13 USA PATRIOT Act.

Each Lender that is subject to the USA PATRIOT Act and the Term Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Term Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

#### SECTION 9.14 Release of Liens and Guarantees.

(a) A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Term Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, (1) upon the

consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary (including pursuant to a permitted merger with a Subsidiary that is not a Loan Party or a designation as an Unrestricted Subsidiary) or becomes an Excluded Subsidiary or (2) upon the request of the Borrower, in connection with a transaction permitted under this Agreement, as a result of which such Subsidiary Loan Party ceases to be a Wholly Owned Subsidiary; provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. Upon any sale or other transfer by any Loan Party (other than to the Borrower or any Subsidiary Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Term Security Document in any Collateral, the security interests in such Collateral created by the Term Security Documents shall be automatically released. Upon the release of the Borrower or any Subsidiary Loan Party from its Guarantee in compliance with this Agreement, the security interest in any Collateral owned by the Borrower or such Subsidiary created by the Term Security Documents shall be automatically released. Upon the designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Agreement, the security interest created by the Term Security Documents in the Equity Interests of such Subsidiary shall automatically be released. Upon the Termination Date, all obligations under the Loan Documents and all security interests created by the Term Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section 9.14, the Term Administrative Agent or the Term Collateral Agent, as the case may be, shall 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 so long as the Borrower or applicable Loan Party shall have provided the Term Administrative Agent or the Term Collateral Agent, as the case may be, such certifications or documents as the Term Administrative Agent or the Term Collateral Agent, as the case may be, shall reasonably request in order to demonstrate compliance with this Agreement.

(b) The Term Administrative Agent or the Term Collateral Agent, as the case may be, will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to subordinate its Lien on any property granted to or held by the Term Administrative Agent or the Term Collateral Agent, as the case may be, under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(iv).

(c) Each of the Lenders irrevocably authorizes the Term Administrative Agent or the Term Collateral Agent, as the case may be, to provide any release or evidence of release, termination or subordination contemplated by this Section 9.14. Upon request by the Term Administrative Agent or the Term Collateral Agent, as the case may be, at any time, the Required Lenders will confirm in writing the Term Administrative Agent's authority or the Term Collateral Agent's authority, as the case may be, to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under any Loan Document, in each case in accordance with the terms of the Loan Documents and this Section 9.14.

#### SECTION 9.15 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Term Administrative Agent, the Joint Lead Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Term Administrative Agent, the Joint Lead Arrangers and the Lenders on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Term Administrative Agent, the Joint Lead Arrangers and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary for the Borrower, any of its Affiliates or any other Person and (B) none of the Term Administrative Agent, the Joint Lead Arrangers and the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Term Administrative Agent, the Joint Lead Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Term Administrative Agent, the Joint Lead Arrangers and the Lenders has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Term Administrative Agent, the Joint Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### SECTION 9.16 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Term Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged or received by the Term Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

#### SECTION 9.17 Intercreditor Agreements.

(a) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Customary Intercreditor Agreements, (b) in the event of

any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the Customary Intercreditor Agreements, on the other hand, the terms and provisions of the relevant Customary Intercreditor Agreements shall control, and (c) each Lender authorizes the Term Administrative Agent and/or the Term Collateral Agent to execute any such Customary Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

(b) Each Secured Party hereby agrees that the Term Administrative Agent and/or Term Collateral Agent may enter into any intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01 and defined terms referenced therein) on its behalf and agrees to be bound by the terms thereof and, in each case, consents and agrees to the appointment of DBNY (or its affiliated designee, representative or agent) on its behalf as collateral agent, respectively, thereunder.

SECTION 9.18 Effect of Amendment and Restatement of the Existing Credit Agreement.

As of the Second Amendment Effective Date, this Agreement shall amend, and restate the Existing Credit Agreement, but shall not constitute a novation thereof or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. The Existing Credit Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto.

*[ Remainder of Page Intentionally Left Blank. ]*

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

**BUILDERS FIRSTSOURCE, INC.,**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to  
Builders FirstSource, Inc.  
Term Loan Credit Agreement

---

**DEUTSCHE BANK AG NEW YORK BRANCH** , in its capacities as  
Term Administrative Agent and a Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to  
Builders FirstSource, Inc.  
Term Loan Credit Agreement



## BUILDERS FIRSTSOURCE, INC.

## AMENDED AND RESTATED DIRECTOR COMPENSATION POLICY

(as amended effective January 1, 2016)

The Board of Directors (the “Board”) of Builders FirstSource, Inc. (the “Company”) has adopted the following amended and restated compensation policy for purposes of compensating those directors of the Company who meet the eligibility requirements described herein (the “Eligible Directors”). This compensation policy has been developed to compensate the Eligible Directors of the Company for their time, commitment and contributions to the Board. In order to qualify as an Eligible Director for purposes of receiving compensation under this policy (i) the director cannot concurrently be employed in any capacity by the Company or any of its subsidiaries; and (ii) unless otherwise determined by the Nominating Committee of the Board, the director cannot concurrently be employed by or affiliated with (a) JLL Partners, JLL Associates G.P. V, L.L.C, or JLL Building Holdings, LLC or any of their affiliates, or (b) Warburg Pincus & Co., Warburg Pincus LLC, or Warburg Pincus Private Equity IX, L.P. or any of their affiliates. For purposes of this policy, the term “affiliate” shall have the meaning ascribed to it in Rule 12b-2 promulgated under the Securities Exchange Act of 1934.

**CASH COMPENSATION****Retainers for Serving on the Board**

Eligible Directors shall be paid an annual retainer of \$ 80,000, payable in quarterly installments, for each year of his or her service on the Board (each a “Service Year”). Service Years will commence on August 1<sup>st</sup> and end on July 31<sup>st</sup> of each calendar year.

**Retainers for Serving as Chairpersons or Members of a Board Committee**

An Eligible Director who serve as a chairperson or as a member of the Audit Committee, the Compensation Committee or the Nominating Committee of the Board shall be paid additional annual retainers for service in such roles in the following amounts:

<u>Name of Committee</u>	<u>Chairman</u>	<u>Member</u>
Audit Committee	\$30,000	\$5,000
Compensation Committee	\$20,000	\$5,000
Nominating Committee	\$10,000	\$5,000

Such retainers shall be payable in quarterly installments for each Service Year in which such Eligible Director serves as the chairperson or as a member of the foregoing Board committees. A chairperson of a committee shall not be paid an additional retainer for also serving as a member of that committee. Eligible Directors shall not be paid any additional retainers for attendance at meetings of the Board or its committees.

## **EQUITY-BASED COMPENSATION**

At the start of each Service Year, Eligible Directors (“Grantees”) shall receive equity-based compensation awards with a value at the time of issuance of approximately \$120,000. Such awards shall be made in the form of restricted stock units related to the Company’s common stock and shall be granted by the Board pursuant to a form of restricted stock unit award agreement under the Company’s 2007 Incentive Plan, or the 2014 Incentive Plan (or any successor plans), as amended from time to time. The restricted stock units shall vest on the first anniversary of the grant date, with any unvested units being forfeited to the Company.

### **Initial Grants for New Eligible Directors**

Following (i) the initial appointment or election of each new Eligible Director to the Board, or (ii) a change in status which causes an ineligible director to qualify as an Eligible Director under this policy, a grant of restricted stock units related to the Company’s common stock will be made to such Eligible Director for that initial partial Service Year with a value at the time of issuance of approximately \$120,000, prorated for that portion of the Service Year in which such Eligible Director will serve on the Board. Such grants shall be made as of (i) the date of commencement of Board service for a new Eligible Director, or (ii) the date a serving director becomes an Eligible Director, or (iii) such other date as the Board shall determine. The restricted stock units will vest on the first anniversary of the grant date, with any unvested restricted stock units being forfeited to the Company.

### **Vesting Upon Departure of a Director**

If a Grantee shall cease to be a Director of the Company due to death, disability or retirement during the one-year vesting period applicable to any restricted stock units granted hereunder, all restricted stock units shall immediately vest and the stock certificates representing the shares underlying such restricted stock units shall be promptly delivered to the Grantee by the Company. If the Grantee shall cease to be a Director of the Company for any other reason during such one-year vesting period, any unvested restricted stock units shall be forfeited by the Grantee and such restricted stock units shall be cancelled.

## **TRAVEL EXPENSE REIMBURSEMENT**

Each of the Eligible Directors shall be entitled to receive reimbursement for reasonable travel expenses which they properly incur in connection with their functions and duties as a director.

## **AMENDMENTS, REVISION AND TERMINATION**

This policy may be amended, revised or terminated by the Board of Directors at any time and from time-to-time.

## EMPLOYMENT AGREEMENT

AGREEMENT made as of November 14, 2016, by and between Builders FirstSource, Inc., a Delaware corporation (the “Company”), and Peter M. Jackson (the “Executive”).

WHEREAS , the Company desires that Executive serve as the Senior Vice President and Chief Financial Officer of the Company, and Executive desires to hold such positions under the terms and conditions of this Agreement; and

WHEREAS , the Board of Directors of the Company (the “Company Board”) has approved and authorized the Company to enter into this Agreement with Executive.

NOW, THEREFORE , in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties agree as follows:

1. Employment . The Company hereby employs Executive, and Executive hereby accepts employment with the Company, upon the terms and subject to the conditions set forth herein.

2. Term .

(a) Subject to Section 2(b) hereof, the term of employment by the Company of Executive pursuant to this Agreement (as the same may be extended, the “Term”) shall commence on November 14, 2016 (the “Effective Date”), and terminate on the first anniversary thereof.

(b) Commencing on the first anniversary of the Effective Date and on each subsequent anniversary thereof, the Term shall automatically be extended for one (1) additional year unless, not later than ninety days (90) prior to any such anniversary date, either party hereto shall have notified the other party hereto in writing that such extension shall not take effect.

3. Position . During the Term, Executive shall serve as the Senior Vice President and Chief Financial Officer of the Company, supervising the financial operations and affairs of the Company and performing such other duties as the Company Board shall determine.

4. Duties . During the Term, Executive shall devote his full time and attention during normal business hours to the business and affairs of the Company, except vacations in accordance with the Company’s policies and for illness or incapacity, in accordance with Section 8 hereof.

5. Salary and Bonus .

(a) During the Term, the Company shall pay to Executive a base salary at the rate of \$425,000 per year (the “Base Salary”), subject to adjustments pursuant to the terms of Section 5(b) hereof.

---

(b) On or prior to each anniversary hereof during the Term (assuming the Term of the Agreement is extended pursuant to Section 2(b) hereof), the Company Board or the Compensation Committee of the Company Board (the "Compensation Committee") shall review the Base Salary and may, in its sole discretion, increase the Base Salary based upon performance and merit. Executive's Base Salary shall not be decreased below the amount set forth in Section 5(a) hereof. The Base Salary shall be payable to Executive in substantially equal installments in accordance with the Company's normal payroll practices, but in no event less often than semi-monthly.

(c) For each fiscal year during the Term hereof, Executive shall be eligible to receive an annual cash bonus equal to the amount provided for in the Company's Annual Cash Incentive Plan ("Annual Incentive Plan") (which generally provides for a target bonus percentage of 75% of Executive's Base Salary), which Annual Incentive Plan is approved by the Company Board or the Compensation Committee thereof. Executive's target bonus percentage under the Annual Incentive Plan shall not be reduced below 75% of his Base Salary. Annual cash bonuses shall be paid in the calendar year following the year to which the bonus relates, and not later than March 15 of such year. The 2016 annual cash bonus shall be prorated based on Executive's start date.

6. Sign-On Bonus. The Company agrees to pay Executive a one-time, conditional sign-on bonus in the amount of \$350,000, subject to required withholdings (the "Sign-On Bonus"), as follows: \$200,000 shall be paid within 30 days of the Effective Date, and \$150,000 shall be paid six months following the Effective Date, subject to Executive's continued employment with the Company through such date. In the event that Executive's employment with the Company is terminated by Executive for any reason or by the Company for Cause (as hereafter defined) prior to the one-year anniversary of the Effective Date, Executive shall be required to reimburse the Company for the full amount of the Sign-On Bonus received.

7. Equity Compensation. For each fiscal year during the Term hereof, beginning in 2017, Executive shall be granted an annual equity compensation award under the Company's long-term incentive plan or plans having a grant date fair value of approximately \$425,000.

8. Vacation, Holidays and Sick Leave. During the Term, Executive shall be entitled to paid vacation, paid holidays and sick leave in accordance with the Company's standard policies for its senior executive officers.

9. Business Expenses. During the Term, Executive shall be reimbursed for all reasonable and necessary business expenses incurred by him in connection with his employment, including, without limitation, expenses for travel and entertainment incurred in conducting or promoting business for the Company upon timely submission by Executive of receipts and other documentation as required by the Internal Revenue Code of 1986, as amended (the "Code"), and in accordance with the Company's normal expense reimbursement policies. With respect to Executive's rights under this Section 9, (i) the amount reimbursable in any one calendar year shall not affect the amount reimbursable in any other calendar year, (ii) the reimbursement of an eligible business expense must be made no later than December 31 of the year after the year in which the business expense was incurred, and (iii) such rights shall not be subject to liquidation or exchange for another benefit.

10. Health, Welfare and Related Benefits . During the Term, Executive and eligible members of his family shall be eligible to participate fully in all (a) health and dental benefits and insurance programs; (b) life and short- and long-term disability benefits and insurance programs; and (c) defined contribution and equity compensation programs , all as available to senior executive officers of the Company generally.

11. Confidentiality, Non-Competition .

(a) Executive acknowledges that: (i) the Executive has, and his employment hereunder will require that Executive continue to have, access to and knowledge of Confidential Information (as hereinafter defined); (ii) the direct and indirect disclosure of any such Confidential Information to existing or potential competitors of the Company or its subsidiaries would place the Company at a competitive disadvantage and would do damage, monetary or otherwise, to the Company's businesses; and (iii) the engaging by Executive in any of the activities prohibited by this Section 11 may constitute improper appropriation and/or use of such Confidential Information. Executive expressly acknowledges that the Confidential Information constitutes a protectable business interest of the Company.

As used herein, the term "Confidential Information" shall mean information of any kind, nature or description which is disclosed to or otherwise known to the Executive as a direct or indirect consequence of his association with the Company and its subsidiaries, which information is not generally known to the public or in the businesses in which such entities are engaged or which information relates to specific investment opportunities within the scope of their business which were considered by the Company or its subsidiaries during the Term. Assuming the foregoing criteria are met, Confidential Information includes, but is not limited to, information (including without limitation compilations) concerning the Company's and its subsidiaries' financial plans and performance, potential acquisitions, business plans and strategies, personnel information, information technology processes, research, development, and manufacturing of Company or its subsidiaries' products, existing or prospective customers, proposals made to existing or prospective customers or other information contained in bids or offers to such customers, the terms of any arrangements or agreements with customers, including the amounts paid for services or how pricing was developed by the Company or its subsidiaries, the layout, design and implementation of customer specific projects, the identity of suppliers or subcontractors, information regarding supplier or subcontractor pricing or contract terms, the composition or description of future services that are or may be provided by the Company or any of its subsidiaries, the Company's or any of its subsidiaries' financial, marketing and sales information, and technical expertise, formulas, source codes and know how developed by the Company or any of its subsidiaries, including the unique manner in which the Company or any of its subsidiaries conducts its business. Confidential Information also includes information disclosed to the Company or any of its subsidiaries by a third party that the Company or such subsidiary is required to treat as confidential. Notwithstanding the foregoing, "Confidential Information" shall not be deemed to include information which (i) is or becomes generally available to the public other than as a result of a disclosure by the Executive, (ii) becomes available to the Executive on a non-confidential basis from a source other than the Company or any of its subsidiaries, provided that such source is not bound by any contractual, legal or fiduciary obligation with respect to such information or (iii) was in the Executive's possession prior to being furnished by the Company or any of its subsidiaries.

(b) During the Term of this Agreement and for a period of one year after the termination of Executive 's employment hereunder (upon expiration of the Term or otherwise), Executive shall not, directly or indirectly, whether individually, as a director, stockholder, owner, manager, member, partner, employee, consultant, principal or agent of any business, or in any other capacity, use for his own account, utilize or make known, disclose, furnish or make available to any person, firm or corporation any of the Confidential Information, other than to authorized officers, directors and employees of the Company or its subsidiaries in the proper performance of the duties contemplated herein, or as required by a court of competent jurisdiction or other administrative or legislative body; provided that, prior to disclosing any of the Confidential Information to a court or other administrative or legislative body, Executive shall promptly notify the Company so that the Company may seek a protective order or other appropriate remedy. Executive agrees to return all Confidential Information, including all photocopies, extracts and summaries thereof, and any such information stored electronically on tapes, computer disks or in any other manner to the Company at any time upon request by the Company and upon the termination of his employment for any reason.

(c) During the Term of this Agreement and for a period of one year after termination of Executive's employment hereunder (upon expiration of the Term or otherwise), Executive shall not engage in competition (or assist any other Person in engaging in competition) with the Company or any of its subsidiaries, directly or indirectly (either individually, by any form of ownership, or as a director, manager, member, officer, principal, agent, employee, employer, advisor, consultant, lender, member, shareholder, partner, or other representative in a Competing Business), in the Business of the Company in a Prohibited Location by performing services that are the same as or substantially similar to those services Executive performed for the Company or its subsidiaries at any time during the last two years of Executive's employment with the Company or its subsidiaries. "Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity. "Competing Business" means any business, regardless of form, that is directly engaged, in whole or in relevant part, in any business or enterprise that is the same as, or substantially the same as, the Business of the Company. The "Business of the Company" means the business of supplying, manufacturing, designing, constructing or installing structural and related building products, including without limitation roof and floor trusses, wall panels, stairs, windows, doors, engineered wood products, lumber and lumber sheet goods, millwork, kitchen cabinets, gypsum, siding, roofing, insulation, hardware and other building products. A "Prohibited Location" means any location within fifty (50) miles of any of the Company's or any of its subsidiaries' physical locations. For the purposes of this Agreement, the parties agree that homebuilders and any vendors supplying building products or services to the Company shall be deemed to be Competing Businesses.

(d) During the Term of this Agreement and for a period of two years after termination of Executive ' s employment hereunder (upon expiration of the Term or otherwise), Executive shall not directly or indirectly solicit or divert, or attempt to solicit or divert, (either on behalf of the Executive or any other Person) any person employed by the Company or any of its subsidiaries with whom Executive had contact in the course of his employment with the Company or its subsidiaries (each, a "Company Employee") to leave or reduce their employment with the Company or any of its subsidiaries or to work for Executive or any other Person, including, without limitation, a Competing Business . During the Term of this Agreement and for a period of two years after termination of Executive's employment hereunder (upon expiration of the Term or otherwise), Executive shall not directly or indirectly (either on behalf of the Executive or any other Person) hire any Company Employee or respond to inquiries seeking employment from any Company Employee. This paragraph only applies to persons who are actively employed as Company Employees or were Company Employees within one (1) year of the time of any such actual or attempted solicitation, hiring or inquiry. .

(e) Executive acknowledges that (A) in connection with rendering the services to be rendered by Executive hereunder, Executive will have access to and knowledge of Confidential Information, the disclosure of which would place the Company or its subsidiaries at a competitive disadvantage, causing irreparable injury, and (B) the services to be rendered by Executive hereunder are of a special and unique character, which gives this Agreement a peculiar value to the Company, the loss of which may not be reasonably or adequately compensated for by damages in an action at law, and that a material breach or threatened breach by Executive of any of the provisions contained in this Section 11 will cause the Company irreparable injury. Executive, therefore, agrees that the Company shall be entitled, in addition to any other right or remedy, to a temporary, preliminary and permanent injunction, without the necessity of proving the inadequacy of monetary damages or the posting of any bond or security, enjoining or restraining Executive from any such violation or threatened violations.

(f) Executive further acknowledges and agrees that due to the uniqueness of his services and confidential nature of the information he will possess, the covenants set forth herein are reasonable and necessary for the protection of the business and goodwill of the Company; and it is the intent of the parties hereto that if, in the opinion of any court of competent jurisdiction, any provision set forth in this Section 11 is not reasonable in any respect, such court shall have the right, power and authority to modify any and all such provisions in such a manner as to such court shall appear not unreasonable and to enforce the remainder of this Section 11 as so modified.

12. Termination of Agreement . The employment by the Company of Executive pursuant to this Agreement shall not be terminated prior to the end of the Term, except as set forth in this Section 12.

(a) By Mutual Consent .

(i) The employment by the Company of Executive pursuant to this Agreement may be terminated at any time by the mutual written agreement of the Company and Executive.

(ii) In the event that (i) Executive's employment is terminated by mutual consent pursuant to this Section 12(a), and (ii) Executive and the Company determine at that time that it is in their mutual best interest for Executive to continue to be bound after his termination by the provisions of Section 11 of this Agreement for the periods set forth therein, then the parties may enter into an agreement to that effect, in exchange for which Executive would be entitled to the compensation provided for in Section 12(e) hereof.

(b) Death. The employment by the Company of Executive pursuant to this Agreement shall be terminated upon the death of Executive, in which event Executive's spouse or heirs shall receive the following: (i) Executive's Base Salary and benefits to be paid or provided to Executive under this Agreement through the Date of Termination ("Accrued Obligations"), payable no later than thirty (30) days after the Date of Termination, (ii) continuation of Executive's Base Salary for a period of one (1) year after the Date of Termination, and (iii) continuation of the health benefits provided for pursuant to Section 10(a) hereof ("Health Benefits") and welfare benefits provided for pursuant to Section 10(b) hereof ("Welfare Benefits") for a period of one (1) year after the Date of Termination.

(c) Disability. The employment by the Company of Executive pursuant to this Agreement may be terminated by written notice to Executive at the option of the Company in the event that as a result of the Executive's incapacity due to physical or mental illness (which physical or mental illness shall be confirmed in writing by a physician or other medical expert acceptable to both parties), the Executive is unable to perform his duties, services and responsibilities hereunder or shall have been absent from his duties hereunder on a full-time basis for ninety (90) consecutive days or for an aggregate of ninety (90) days or more in any six (6) month period, and within thirty (30) days after notice is given by the Company (which notice may be delivered no earlier than thirty days prior to the expiration of such ninety (90) consecutive days or six month period, as the case may be), the Executive shall not have returned to the performance of his duties hereunder on a full-time basis. In the event the employment by the Company of Executive is terminated pursuant to this Section 12(c), Executive shall be entitled to receive the following: (i) the Accrued Obligations, payable no later than thirty (30) days after the Date of Termination, (ii) subject to Section 26 hereof, continuation of his Base Salary for a period of one (1) year after the Date of Termination, (iii) continuation of Health Benefits for a period of one (1) year after the Date of Termination, and (iv) subject to Section 26 hereof, continuation of Welfare Benefits for a period of one (1) year after the Date of Termination; provided, however, that amounts payable to Executive under this Section 12(c) shall be reduced by the proceeds of any short- and/or long-term disability payments under the Company plans referred to in Section 10 hereof to which Executive may be entitled during such period.

(d) By the Company for Cause. The employment of Executive pursuant to this Agreement may be terminated by the Company by written notice to Executive ("Notice of Termination") for Cause (as hereafter defined). In the event the employment by the Company of Executive is terminated pursuant to this Section 12(d), Executive shall be entitled to receive all Base Salary and benefits to be paid or provided to Executive under this Agreement through the Date of Termination and no more.



(e) By the Company Without Cause. The employment by the Company of Executive pursuant to this Agreement may be terminated by the Company at any time without Cause by delivery of a Notice of Termination to Executive. In the event the employment by the Company of Executive is terminated pursuant to this Section 12 (e), Executive shall be entitled to receive the following: (i) the Accrued Obligations, payable no later than thirty (30) days after the Date of Termination, (ii) subject to Section 26 hereof, continuation of his Base Salary for a period of one (1) year after the Date of Termination, (iii) continuation of Health Benefits for a period of one (1) year after the Date of Termination, (iv) subject to Section 26 hereof, continuation of Welfare Benefits for a period of one (1) year after the Date of Termination, and (v) subject to Section 26 hereof, an amount equal to his Average Bonus Compensation (as hereafter defined), payable in accordance with Section 12 (j).

(f) By Executive. The employment of Executive by the Company pursuant to this Agreement may be terminated by Executive by written notice to the Company of his resignation (a "Notice of Resignation") at any time. In the event the employment by the Company of Executive is terminated pursuant to this Section 12(f), Executive shall be entitled to receive all Base Salary and benefits to be paid or provided to Executive under this Agreement through the Date of Termination and no more; provided, however, that if Executive terminates his employment due to (i) a material adverse diminution of Executive's job title or responsibilities from those currently in effect; or (ii) a relocation of Executive's principal place of employment more than 100 miles from its current location without his consent, then Executive shall instead be entitled to the compensation provided for in Section 12(e) hereof.

(g) Non-Renewal. In the event that at any time during the Term (as it may be extended) the Company notifies Executive of its intent not to renew this Agreement pursuant to Section 2(b) hereof, and Executive then delivers a Notice of Resignation to the Company within ninety (90) days of receipt of such notice of non-renewal, Executive shall be entitled to receive the following: (i) the Accrued Obligations, payable no later than thirty (30) days after the Date of Termination, (ii) subject to Section 26 hereof, continuation of his Base Salary for a period of one (1) year after the Date of Termination, (iii) continuation of Health Benefits for a period of one (1) year after the Date of Termination, (iv) subject to Section 26 hereof, continuation of Welfare Benefits for a period of one (1) year after the Date of Termination, and (iv) subject to Section 26 hereof, an amount equal to his Average Bonus Compensation (as hereafter defined), payable in accordance with Section 12(j).

(h) Previously Earned Bonus. Notwithstanding any other provision of this Section 12, in the event that Executive's employment pursuant to this Agreement is terminated at a time when Executive shall have earned a bonus under the Annual Incentive Plan for performance during the prior fiscal year which has not yet been paid, Executive shall be paid such bonus in addition to the amounts otherwise provided for in this Section 12. Such bonus shall be paid in the fiscal year following the fiscal year for which it is earned, and not later than March 15 of such year, in accordance with the Company's normal practices.

(i) Date of Termination. Executive's Date of Termination shall be: (i) if the parties hereto mutually agree to terminate this Agreement pursuant to Section 12 (a) hereof, the date designated by the parties in such agreement; (ii) if Executive's employment by the Company is terminated pursuant to Section 12 (b), the date of Executive's death; (iii) if Executive's employment by the Company is terminated pursuant to Section 12 (c), the last day of the applicable period referred to in Section 12 (c) hereof; (iv) if Executive's employment by the Company is terminated pursuant to Section 12 (d), the date on which a Notice of Termination is given; and (v) if Executive's employment by the Company is terminated pursuant to Sections 12 (e), 12 (f) or 12 (g), the date the Notice of Termination or Notice of Resignation, as the case may be, is given.

(j) Payment of Post-Termination Compensation. After Executive's Date of Termination, all payments of Base Salary and Average Bonus Compensation to Executive pursuant to this Section 12 shall be paid in accordance with the Company's normal payroll practices, but in no event less often than semi-monthly. In the event of a breach by Executive of Section 11 of this Agreement during the applicable period following his Date of Termination, Executive agrees (i) that the Company shall have no further obligation to make any payments to Executive under Section 12 of the Agreement and (ii) that any payments of Base Salary or Average Bonus Compensation previously made to Executive after his Date of Termination shall be returned to the Company.

(k) Continuation of Welfare Benefits. With respect to Executive's rights to continuation of Welfare Benefits provided for in Sections 12(b), (c), (e) and (g), (i) the benefits provided in any one calendar year shall not affect the benefits provided in any other calendar year, (ii) the reimbursement of an eligible expense must be made no later than December 31 of the year after the year in which the business expense was incurred, and (iii) such rights shall not be subject to liquidation or exchange for another benefit.

### 13. Representations.

(a) The Company represents and warrants that this Agreement has been authorized by all necessary corporate action of the Company and is a valid and binding agreement of the Company enforceable against the Company in accordance with its terms.

(b) Executive represents and warrants that he is not a party to any agreement or instrument which would prevent him from entering into or performing his duties in any way under this Agreement and that this Agreement is a valid and binding agreement of Executive enforceable against Executive in accordance with its terms.

14. Successors. This Agreement is a personal contract and the rights and interests of Executive hereunder may not be sold, transferred, assigned, pledged, encumbered, or hypothecated by him, except as otherwise expressly permitted by the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by Executive and his personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Executive should die while any amount would still be payable to him hereunder had Executive continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to his devisee, legatee or other designee or, if there is no such designee, to his estate.

15. Entire Agreement. This Agreement contains all the understandings between the parties hereto pertaining to the matters referred to herein, and supersedes any other undertakings and agreements (other than any stock option, restricted stock unit agreement, or restricted stock agreement between Executive and the Company), whether oral or in writing, previously entered into by them with respect thereto. Executive represents that, in executing this Agreement, he does not rely and has not relied upon any representation or statement made by the Company not set forth herein with regard to the subject matter or effect of this Agreement or otherwise.

16. Termination; Amendment or Modification; Waiver .

(a) This Agreement may be terminated at any time by mutual written consent of the Company and Executive.

(b) No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing, signed by Executive and by a duly authorized officer of the Company. No waiver by any party hereto of any breach by another party hereto of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same time, any prior time or any subsequent time.

17. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, (ii) delivered by a nationally recognized commercial overnight delivery service, (iii) mailed postage prepaid by first class mail or (iv) transmitted by facsimile transmitted to the party concerned at the address or telecopier number set forth below:

To Executive at:

Builders FirstSource, Inc.  
2001 Bryan Street, Suite 1600  
Dallas, Texas 75201  
Attention: Peter M. Jackson

To the Company at:

Builders FirstSource, Inc.  
2001 Bryan Street, Suite 1600  
Dallas, Texas 75201  
Attention: General Counsel

Such notices shall be effective: (i) in the case of hand deliveries when received; (ii) in the case of an overnight delivery service, on the next business day after being placed in the possession of such delivery service, with delivery charges prepaid; (iii) in the case of mail, seven (7) days after deposit in the postal system, first class mail, postage prepaid; and (iv) in the case of facsimile notices, when electronic confirmation of receipt is received by the sender. Any party may change its address and telecopy number by written notice to the other given in accordance with this Section 17; provided, however, that such change shall be effective when received.

18. Severability. If any provision or clause of this Agreement or the application of any such provision or clause to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision or clause to such person or circumstances other than those to which it is so determined to be invalid and unenforceable, shall not be affected thereby, and each provision or clause hereof shall be validated and shall be enforced to the fullest extent permitted by law.

19. Survivorship. The respective rights and obligations of the parties hereunder shall survive any termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles.

21. Headings. All descriptive headings of sections and paragraphs in this Agreement are intended solely for convenience, and no provision of this Agreement is to be construed by reference to the heading of any section or paragraph.

22. Withholding. All payments to Executive under this Agreement shall be reduced by all applicable withholding required by federal, state or local law.

23. Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other parties, irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, the other parties shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance, in addition to all other remedies available to such other parties at law or in equity.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Definitions.

(a) “Cause” means the determination, in good faith, by the Company Board, after notice to Executive that one or more of the following events has occurred: (i) any act of gross negligence, fraud, willful misconduct or moral turpitude by Executive materially injuring the interest, business or reputation of the Company, or any of its parents, subsidiaries or affiliates; (ii) Executive’s conviction of any felony; (iii) Executive’s violation of the Company’s drug policy or material violation of the Company’s Code of Conduct; (iv) any misappropriation or embezzlement of the property of the Company, or any of its parents, subsidiaries or affiliates; or (v) any material breach by Executive of this Agreement, including, without limitation, a material breach of Section 11 hereof, which breach, to the extent it is capable of being cured, remains uncorrected for a period of thirty (30) days after receipt by Executive of written notice from the Company setting forth such breach.

(b) “ Average Bonus Compensation ” shall mean an amount equal to the average of the annual bonus amounts earned by Executive under the Company’s Annual Incentive Plan during the two most recent fiscal years ended prior to Executive’s Date of Termination.

26. Code Section 409A.

(a) Notwithstanding anything in this Agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable hereunder by reason of the occurrence of Executive’s separation from service, such amount or benefit will not be payable or distributable to Executive by reason of such separation from service unless (i) the circumstances giving rise to such separation from service meet any description or definition of “separation from service” in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any amount upon a separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the date, if any, on which an event occurs that constitutes a Section 409A-compliant “separation from service.”

(b) Notwithstanding anything in this Agreement to the contrary, if any amount or benefit specified herein as “subject to Section 26 hereof,” or any other amount or benefit that would otherwise constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Agreement by reason of the Executive’s separation from service during a period in which he is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Company under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, Executive’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of Executive’s death or the first day of the seventh month following Executive’s separation from service (the “Delay Period”); and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following Executive’s separation from service will be accumulated and Executive’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of Executive’s death or the end of the Delay Period, whereupon the accumulated amount will be paid or distributed to Executive and the normal payment or distribution schedule for any remaining payments or distributions will resume; and

(iii) to the extent that this Section 26(b) applies to the provision of Welfare Benefits, Executive shall be entitled to pay the full cost of premiums to maintain the Welfare Benefits during the Delay Period, and the Company shall pay to Executive an amount equal to the amount of such premiums promptly following the end of the Delay Period.

For purposes of this Agreement, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder.”

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF , the parties hereto have executed and delivered this Employment Agreement as of the date first above written.

**BUILDERS FIRSTSOURCE, INC.**

By: /s/ Floyd Sherman  
Floyd Sherman  
Chief Executive Officer

**EXECUTIVE**

/s/ Peter M. Jackson  
Peter M. Jackson



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S 3 (333-199955, 333-192596) and Forms S-8 (Nos. 333-128430, 333-147107, 333-169001 and 333-196363) of Builders FirstSource, Inc. of our report dated March 1, 2017, relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K. We also consent to the references to us under the heading "Selected Financial Data" in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Dallas, Texas  
March 1, 2017

**Certification of Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Floyd F. Sherman, certify that:

1. I have reviewed this report on Form 10-K of Builders FirstSource, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ FLOYD F. SHERMAN

Floyd F. Sherman

Chief Executive Officer

Date: March 1, 2017

**Certification of Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Peter M. Jackson, certify that:

1. I have reviewed this report on Form 10-K of Builders FirstSource, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ PETER M. JACKSON

Peter M. Jackson

Senior Vice President and Chief Financial Officer

Date: March 1, 2017

**Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350  
(Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)**

In connection with the annual report of Builders FirstSource, Inc. (the "Company") on Form 10-K for the period ended December 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Floyd F. Sherman, as Chief Executive Officer of the Company, and Peter M. Jackson, as Senior Vice President and Chief Financial Officer of the Company, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of our knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ FLOYD F. SHERMAN

\_\_\_\_\_  
Floyd F. Sherman  
Chief Executive Officer

/s/ PETER M. JACKSON

\_\_\_\_\_  
Peter M. Jackson  
Senior Vice President and Chief Financial Officer

Dated: March 1, 2017

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.