UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON D.C. 20549

Form 10-Q

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

For the quarterly period ended September 30, 2022

OR

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

Commission File Number
001-36462

Heritage Insurance Holdings, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**45-5338504**
(State of Incorporation)	**(IRS Employer Identification No.)**

1401 N. Westshore Blvd
Tampa, FL 33607
(Address, including zip code, of principal executive offices)

(727) 362-7200
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	HRTG	New York Stock Exchange

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

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

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

Large accelerated filer	☐	Accelerated filer	☐	Emerging growth company	☒		☐
Non-accelerated filer	☐	Smaller reporting company	☐				

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

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

The aggregate number of shares of the Registrant's Common Stock outstanding on November 7, 2022 was 25,876,390.

HERITAGE INSURANCE HOLDINGS, INC.
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FORWARD-LOOKING STATEMENTS

Statements in this Quarterly Report on Form 10-Q ("Form 10-Q") or in documents incorporated by reference that are not historical facts are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements about (i) our ability to meet our investment objectives and to manage and mitigate market risk with respect to our investments; (ii) the expected positive impact of our strategic initiatives on our future financial results, including focus on profitability, exposure management, rate adequacy and our ability to create value for our shareholders; (iii) our ability to achieve consistent long-term quarterly earnings and drive shareholder value; (iv) expected continued changes in our portfolio to reduce exposure and generate long term returns; (v) the expected benefits of excess and surplus insurance products; (vi) expected losses from Hurricane Ian (vii) the adequacy of our reinsurance program and our ability to diversify risk and safeguard our financial position; (viii) business and risk management strategies, including acquisitions, strategic investments and risk diversification; (ix) our estimates with respect to tax and accounting matters including the impact on our financial statements; (x) future dividends, if any; (xi) our expectations related to our financing activities; (xii) the sufficiency of our liquidity to pay our insurance company affiliates' claims and expenses, as well as to satisfy commitments in the event of unforeseen events; (xiii) the sufficiency of our capital resources, together with cash provided from our operations, to meet currently anticipated working capital requirements and the source of funds needed to fund our business and risk management strategies; (xiv) the potential effects of the seasonality of our business, including effects on our reinsurance business and financial results; (xv) our ability to successfully mitigate the effects of inflation on our business; (xvi) our intentions with respect to our credit risk investments; (xvii) the future impact of the COVID-19 pandemic; and (xviii) the potential effects of our current legal proceedings.

These statements are based on current expectations, estimates and projections about the industry and market in which we operate, and management's beliefs and assumptions. Without limiting the generality of the foregoing, words such as "may," "will," "expect," "believe," "anticipate," "intend," "could," "would," "estimate," or "continue" or the negative variations thereof or comparable terminology are intended to identify forward-looking statements. Forward-looking statements are not guarantees of future performance and involve certain known and unknown risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statements. The risks and uncertainties include, without limitation:

- the possibility that actual losses may exceed reserves;
- the concentration of our business in coastal states, which could be impacted by hurricane losses or other significant weather-related events such as northeastern winter storms;
- our exposure to catastrophic weather events;
- inherent uncertainty of our models and our reliance on such models as a tool to evaluate risk;
- the fluctuation in our results of operations;
- increased costs of reinsurance, non-availability of reinsurance, non-collectability of reinsurance and our ability to obtain reinsurance on terms and at a cost acceptable to us;
- increased competition, competitive pressures, and market conditions;
- our failure to accurately assess and price the risks we underwrite;
- continued and increase impact of abusive and unwarranted claims;
- our failure to identify suitable business acquisitions, effectively manage our growth and integrate acquired companies;
- our failure to execute our diversification strategy;
- our reliance on independent agents to write insurance policies for us on a voluntary basis and our ability to attract and retain agents;
- the failure of our claims department to effectively manage or remediate claims;
- low renewal rates and failure of such renewals to meet our expectations;
- our inability to maintain our financial stability rating;
- our ability to access sufficient liquidity or obtain additional financing to fund our operations and expand our business;
- our inability to generate investment income;
- effects of emerging claim and coverage issues relating to legal, judicial, environmental and social conditions;
- the failure of our risk mitigation strategies or loss limitation methods;

- lack of effectiveness of exclusions and loss limitation methods in the insurance policies we assume or write;
- the regulation of our insurance operations;
- changes in regulations and our failure to meet increased regulatory requirements, including minimum capital and surplus requirements;
- climate change, health crisis, severe weather conditions and other catastrophe events;
- litigation or regulatory actions;
- regulation limiting rate increases or that require us to participate in loss sharing or assessments;
- the terms of our indebtedness and our inability to comply with the financial and other covenants of our debt facilities;
- our ability to maintain effective internal controls over financial reporting;
- certain characteristics of our common stock;
- the continued and potentially prolonged impact of COVID-19 on the economy, demand for our products and our operations, including measures taken by the governmental authorities to address COVID-19, which may precipitate or exacerbate other risks and/or uncertainties;
- disruptions to our independent distribution agency channel;
- failure of our information technology systems or those of our key service providers and unsuccessful development and implementation of new technologies;
- a lack of redundancy in our operations;
- our failure to attract and retain qualified employees and independent agents or our loss of key personnel; and
- the impact of macroeconomic and geopolitical conditions, including the impact of supply chain constraints, inflationary pressures, labor availability and the conflict between Russia and Ukraine.

Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or operating results.

These forward-looking statements are subject to numerous risks, uncertainties and assumptions about us described in our filings with the Securities and Exchange Commission (the "SEC"). The forward-looking statements we make in our Form 10-Q are valid only as of the date of our Form 10-Q and may not occur in light of the risks, uncertainties and assumptions that we describe from time to time in our filings with the SEC. A detailed discussion of these and other risks and uncertainties that could cause actual results and events to differ materially from our forward-looking statements is included in the section entitled "Risk Factors" in Part I, Item 1A in our Annual Report on Form 10-K for the year ended December 31, 2021. Except as required by applicable law, we undertake no obligation and disclaim any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

PART I – FINANCIAL INFORMATION

Item 1 – Financial Statements

HERITAGE INSURANCE HOLDINGS, INC.
Condensed Consolidated Balance Sheets
(Amounts in thousands, except per share and share amounts)

	September 30, 2022	*December 31, 2021*
ASSETS	*(unaudited)*	
Fixed maturities, available-for-sale, at fair value (amortized cost of $704,365 and $675,245)	$ 633,192	$ 669,354
Equity securities, at fair value, (cost $1,514 and $1,415)	1,514	1,415
Other investments, net	17,084	23,929
Total investments	651,790	694,698
Cash and cash equivalents	297,548	359,337
Restricted cash	6,265	5,415
Accrued investment income	3,517	3,167
Premiums receivable, net	76,126	71,925
Reinsurance recoverable on paid and unpaid claims, net of allowance for credit losses of $45	866,625	269,391
Prepaid reinsurance premiums	381,368	265,873
Income tax receivable	13,760	11,739
Deferred income tax asset, net	14,637	—
Deferred policy acquisition costs, net	100,649	93,881
Property and equipment, net	22,784	17,426
Right-of-use lease asset, net	25,218	27,753
Intangibles, net	51,163	55,926
Goodwill	—	91,959
Other assets	11,133	12,272
Total Assets	$ 2,522,583	$ 1,980,762
LIABILITIES AND STOCKHOLDERS' EQUITY		
Unpaid losses and loss adjustment expenses	$ 1,209,352	$ 590,166
Unearned premiums	651,913	590,419
Reinsurance payable	278,298	191,728
Long-term debt, net	121,283	120,757
Deferred income tax liability, net	—	9,426
Advance premiums	37,855	24,504
Accrued compensation	8,067	8,014
Lease liability	28,901	31,172
Accounts payable and other liabilities	69,217	71,525
Total Liabilities	$ 2,404,886	$ 1,637,711
Commitments and contingencies (Note 17)		
Stockholders' Equity:		
Common stock, $0.0001 par value, 50,000,000 shares authorized, 25,923,930 shares issued and 25,898,930 outstanding at September 30, 2022 and 26,803,511 shares issued and 26,753,511 outstanding at December 31, 2021	3	3
Additional paid-in capital	334,246	332,797
Accumulated other comprehensive loss, net of taxes	(54,573)	(4,573)
Treasury stock, at cost, 11,890,599 and 10,536,737 shares at September 30, 2022 and December 31, 2021	(130,286)	(123,557)
Retained (deficit) earnings	(31,693)	138,381
Total Stockholders' Equity	117,697	343,051
Total Liabilities and Stockholders' Equity	$ 2,522,583	$ 1,980,762

See accompanying notes to unaudited condensed consolidated financial statements.

HERITAGE INSURANCE HOLDINGS, INC.
Condensed Consolidated Statements of Operations and Other Comprehensive Loss
(Unaudited)
(Amounts in thousands, except per share and share amounts)

	For the Three Months Ended September 30,		*For the Nine Months Ended September 30,*	
	2022	***2021***	***2022***	***2021***
REVENUES:				
Gross premiums written	$ 304,501	$ 274,178	$ 952,981	$ 886,059
Change in gross unearned premiums	3,458	20,231	(61,442)	(35,593)
Gross premiums earned	307,959	294,409	891,539	850,466
Ceded premiums earned	(148,266)	(131,964)	(420,645)	(399,323)
Net premiums earned	159,693	162,445	470,894	451,143
Net investment income	2,887	1,548	7,050	3,797
Net realized losses	(3)	(6)	(121)	(926)
Other revenue	2,916	3,421	10,049	10,835
Total revenues	165,493	167,408	487,872	464,849
EXPENSES:				
Losses and loss adjustment expenses	155,849	129,632	397,409	328,376
Policy acquisition costs, net of ceding commission income [(1)]	39,194	35,984	115,826	109,183
General and administrative expenses, net of ceding commission income[(2)]	17,758	17,169	54,947	52,490
Goodwill impairment	—	—	91,959	—
Total expenses	212,801	182,785	660,141	490,049
Operating Loss	(47,308)	(15,377)	(172,269)	(25,200)
Interest expense, net	2,027	2,150	5,750	5,953
Loss before income taxes	(49,335)	(17,527)	(178,019)	(31,153)
Benefit for income taxes	(1,095)	(1,117)	(11,155)	(5,644)
Net loss	$ (48,240)	$ (16,410)	$ (166,864)	$ (25,509)
OTHER COMPREHENSIVE LOSS				
Change in net unrealized losses on investments	(17,471)	(1,344)	(65,403)	(8,316)
Reclassification adjustment for net realized investment losses (gains)	3	6	121	(96)
Income tax expense related to items of other comprehensive losses	4,089	310	15,282	1,950
Total comprehensive loss	$ (61,619)	$ (17,438)	$ (216,864)	$ (31,971)
Weighted average shares outstanding				
Basic	26,369,265	27,938,028	26,536,700	27,902,814
Diluted	26,369,265	27,938,028	26,536,700	27,902,814
Loss per share				
Basic	$ (1.83)	$ (0.59)	$ (6.29)	$ (0.91)
Diluted	$ (1.83)	$ (0.59)	$ (6.29)	$ (0.91)

(1) Policy acquisition costs includes $11.7 million and $34.9 million of ceding commission income for the three and nine months ended September 30, 2022 and $12.0 million and $35.2 million for the three and nine months of September 30, 2021, respectively.

(2) General and administration includes $3.8 million and $11.5 million of ceding commission income for the three and nine months ended September 30, 2022 and $4.0 million and $11.6 million for the three and nine months ended September 30, 2021, respectively.

See accompanying notes to unaudited condensed consolidated financial statements.

HERITAGE INSURANCE HOLDINGS, INC.
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)
(Amounts in thousands, except share amounts)

	Common Shares	*Par Value*	*Additional Paid-In Capital*	*Retained (Deficit) Earnings*	*Treasury Shares*	*Accumulated Other Comprehensive Loss*	*Total Stockholders' Equity*
Balance at December 31, 2021	26,753,511	$ 3	$ 332,797	$ 138,381	$ (123,557)	$ (4,573)	$ 343,051
Net unrealized change in investments, net of tax	—	—	—	—	—	(24,321)	(24,321)
Shares tendered for income taxes withholding	(9,849)	—	(89)	—	—	—	(89)
Restricted stock vested	25,000	—	—	—	—	—	—
Issued restricted stock	397,176	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	505	—	—	—	505
Stock buy-back	(721,118)	—	—	—	(5,000)	—	(5,000)
Cash dividends declared ($0.06 per common stock)	—	—	—	(1,621)	—	—	(1,621)
Net loss	—	—	—	(30,759)	—	—	(30,759)
Balance at March 31, 2022	26,444,720	$ 3	$ 333,213	$ 106,001	$ (128,557)	$ (28,894)	$ 281,766
Net unrealized change in investments, net of tax	—	—	—	—	—	(12,300)	(12,300)
Adjustment to shares tendered for income taxes withholding	—	—	31	—	—	—	31
Issued restricted stock	99,376	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	503	—	—	—	503
Cash dividends declared ($0.06 per common stock)	—	—	—	(1,588)	—	—	(1,588)
Net loss	—	—	—	(87,866)	—	—	(87,866)
Balance at June 30, 2022	26,544,096	$ 3	$ 333,747	$ 16,547	$ (128,557)	$ (41,194)	$ 180,546
Net unrealized change in investments, net of tax	—	—	—	—	—	(13,379)	(13,379)
Adjustment to shares tendered for income taxes withholding	—	—	—	—	—	—	—
Forfeiture on restricted stock	(12,422)	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	499	—	—	—	499
Stock buy-back	(632,744)	—	—	—	(1,729)	—	(1,729)
Cash dividends declared ($0.06 per common stock)	—	—	—	—	—	—	—
Net loss	—	—	—	(48,240)	—	—	(48,240)
Balance at September 30, 2022	25,898,930	$ 3	$ 334,246	$ (31,693)	$ (130,286)	$ (54,573)	$ 117,697

	Common Shares	*Par Value*	*Additional Paid-In Capital*	*Retained Earnings*	*Treasury Shares*	*Accumulated Other Comprehensive (Loss) Income*	*Total Stockholders' Equity*
Balance at December 31, 2020	27,748,606	$ 3	$ 331,867	$ 219,782	$ (115,365)	$ 6,057	$ 442,344
Net unrealized change in investments, net of tax	—	—	—	—	—	(8,202)	(8,202)
Shares tendered for income taxes withholding	(12,500)	—	(127)	—	—	—	(127)
Restricted stock vested	25,000	—	—	—	—	—	—
Issued restricted stock	143,817	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	260	—	—	—	260
Cash dividends declared ($0.06 per common stock)	—	—	—	(1,679)	—	—	(1,679)
Net loss	—	—	—	(5,148)	—	—	(5,148)
Balance at March 31, 2021	27,904,923	$ 3	$ 332,000	$ 212,955	$ (115,365)	$ (2,145)	$ 427,448
Net unrealized change in investments, net of tax	—	—	—	—	—	2,768	2,768
Restricted stock vested	—	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	287	—	—	—	287
Issued restricted stock	42,018	—	—	—	—	—	—
Cash dividends declared ($0.06 per common stock)	—	—	—	(1,680)	—	—	(1,680)
Net loss	—	—	—	(3,950)	—	—	(3,950)
Balance at June 30, 2021	27,946,941	$ 3	$ 332,287	$ 207,325	$ (115,365)	$ 623	$ 424,873
Net unrealized change in investments, net of tax	—	—	—	—	—	(1,028)	(1,028)
Shares tendered for income taxes withholding	(6,473)	—	(45)	—	—	—	(45)
Restricted stock vested	10,267	—	—	—	—	—	—
Stock-based compensation on restricted stock	—	—	320	—	—	—	320
Stock buy-back	(148,109)	—	—	—	(1,005)	—	(1,005)
Cash dividends declared ($0.06 per common stock)	—	—	—	(1,680)	—	—	(1,680)
Net loss	—	—	—	(16,410)	—	—	(16,410)
Balance at September 30, 2021	27,802,626	$ 3	$ 332,562	$ 189,235	$ (116,370)	$ (405)	$ 405,025

See accompanying notes to unaudited condensed consolidated financial statements.

HERITAGE INSURANCE HOLDINGS, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(Amounts in thousands)

	For the Nine Months Ended September 30,	
	2022	***2021***
OPERATING ACTIVITIES		
Net loss	$ (166,864)	$ (25,509)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Stock-based compensation	1,507	866
Bond amortization and accretion	2,561	3,018
Amortization of original issuance discount on debt	919	1,454
Goodwill impairment	91,959	—
Depreciation and amortization	6,233	6,345
Allowance for bad debt	10	106
Net realized investment losses (gains)	121	(96)
Net change for unrealized losses in other investments	—	1,022
Deferred income taxes, net	(8,781)	(2,862)
Changes in operating assets and liabilities:		
Accrued investment income	(350)	(305)
Premiums receivable, net	(4,211)	2,488
Prepaid reinsurance premiums	(115,495)	(92,354)
Reinsurance recoverable on paid and unpaid claims	(597,234)	8,663
Income taxes receivable, net	(2,021)	(3,266)
Deferred policy acquisition costs, net	(6,768)	(6,160)
Right of use leased asset	2,535	(22,192)
Other assets	1,139	(1,676)
Lease incentives	1,622	2,622
Unpaid losses and loss adjustment expenses	619,186	(23,195)
Unearned premiums	61,494	35,686
Reinsurance payable	86,570	162,812
Accrued interest	(160)	(15)
Accrued compensation	53	105
Advance premiums	13,351	15,073
Operating lease liabilities	(2,271)	23,809
Other liabilities	(585)	(13,667)
Net cash (used in) provided by operating activities	(15,480)	72,772
INVESTING ACTIVITIES		
Fixed maturity securities sales, maturities and paydowns	56,334	147,406
Purchases in other investments	(7,500)	—
Fixed maturity securities purchases	(88,137)	(258,548)
Return of capital in other investments	14,345	1,684
Equity securities reinvestments of dividends	(99)	—
Leasehold improvements	(3,539)	(2,622)
Proceeds from sale of assets	—	45
Cost of property and equipment acquired	(4,911)	(892)
Net cash used in investing activities	(33,507)	(112,927)
FINANCING ACTIVITIES		
Repayment of term note	(2,625)	(3,750)
Mortgage loan payments	(240)	(228)
Draw from credit facility	25,000	—
Proceeds from term loan facility	—	2,781
Repurchase of convertible notes	(22,529)	—
Purchase of treasury stock	(6,729)	(1,005)
Tax withholdings on share-based compensation awards	(58)	(171)
Dividends paid	(4,771)	(5,029)
Net cash used in financing activities	(11,952)	(7,402)
Decrease in cash, cash equivalents, and restricted cash	(60,939)	(47,557)
Cash, cash equivalents and restricted cash, beginning of period	364,752	446,383
Cash, cash equivalents and restricted cash, end of period	$ 303,813	$ 398,826
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Income taxes paid	$ 6,222	$ 489
Interest paid	$ 4,245	$ 4,214

Reconciliation of cash, cash equivalents, and restricted cash to condensed consolidated balance sheets.

	September 30, 2022	*December 31, 2021*
	(In thousands)	
Cash and cash equivalents	$ 297,548	$ 359,337
Restricted cash	6,265	5,415
Total	$ 303,813	$ 364,752

Restricted cash primarily represents funds held to meet regulatory requirements in certain states in which the Company operates.

See accompanying notes to unaudited condensed consolidated financial statements.

NOTE 1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The condensed consolidated financial statements include the accounts of Heritage Insurance Holdings, Inc. (together with its subsidiaries, the "Company"). These statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Certain financial information that is normally included in annual consolidated financial statements prepared in accordance with GAAP, but that is not required for interim reporting purposes, has been omitted. In the opinion of the Company's management, all material intercompany transactions and balances have been eliminated and all adjustments consisting of normal recurring accruals which are necessary for a fair statement of the financial condition and results of operations for the interim periods have been reflected. The accompanying interim condensed consolidated financial statements and related footnotes should be read in conjunction with the Company's audited consolidated financial statements and related footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021 filed on March 14, 2022 (the "2021 Form 10-K").

Significant accounting policies

a) Income Taxes

During a third quarter assessment of the Company's deferred tax position, a valuation allowance of $10.7 million was recorded against the Company's deferred tax asset as of September 30, 2022. Based on the Internal Revenue Code ("IRC") Section 953(d) election made for Osprey Re, the Company's captive reinsurer domiciled in Bermuda, the Company concluded a valuation allowance for its net deferred tax assets was necessary because those net deferred tax assets can only be applied to offset future taxable income of Osprey Re. Based on current available evidence, management does not believe there will be sufficient future Osprey Re taxable income over the next year in order to realize those net deferred tax assets. In the event Osprey Re recognizes future taxable income, the proportionate amount of the net operating loss carryforward will be used and an equivalent amount of the valuation allowance will reverse.

b) Changes to Significant Accounting Policies

The accounting policies of the Company are set forth in Note 1 to condensed consolidated financial statements contained in the Company's 2021 Form 10-K.

Reclassification

Certain prior year amounts reported on the condensed consolidated statements of cashflows have been reclassified to conform to the current year presentation.

Accounting Pronouncements adopted

In August 2020, the FASB issued ASU 2020-06, "*Accounting for Convertible Instruments and Contracts in an Entity's Own Equity"* . The ASU i)simplifies the accounting for convertible debt and convertible preferred stock by reducing the number of accounting models, and amends certain disclosures, ii) amends and simplifies the derivative scope exception guidance for contracts in an entity's own equity, including share-based compensation, and iii) amends the diluted earnings per share calculations for convertible instruments and contracts in an entity's own equity. The if-converted method will be the only permissible method for computing the dilutive effect of the convertible debt instruments. Interest expense no longer includes amortization of debt discount. The Company adopted the guidance of ASU 2020-06 on January 1, 2022, reporting no material impact to the Company's consolidated condensed financial statements or disclosures.

Accounting Pronouncements not yet adopted

In March 2022, the FASB issued ASU 2022-02, "2022-02 *Financial Instruments-Credit Losses*" (Topic 326): Troubled Debt Restructurings and Vintage Disclosures ("ASU 2022-02"). ASU 2022-02 requires that an entity disclose current-period gross write-offs by year of origination for financing receivables and net investments in leases. ASU 2022-02 is effective for annual periods beginning after December 15, 2022, including interim periods within those periods. Early adoption is permitted. The Company will adopt ASU 2022-02 during the first quarter of 2023 and will provide the required disclosures, if determined to be material.

The Company has documented the summary of its significant accounting policies in its Notes to the Audited Consolidated Financial Statements annual report on Form 10-K. There have been no material changes to the Company's accounting policies since the filing of that report.

No other new accounting pronouncements issued but not yet effective have had, or are expected to have, a material impact on the Company's results of operations or financial position.

NOTE 2. INVESTMENTS

Securities Available-for-Sale

The amortized cost, gross unrealized gains and losses, and fair value of the Company's debt securities available-for-sale are as follows for the periods presented:

September 30, 2022	*Cost or Adjusted / Amortized Cost*	*Gross Unrealized Gains*	*Gross Unrealized Losses*	*Fair Value*
Debt Securities Available-for-sale		*(In thousands)*		
U.S. government and agency securities [1]	$ 118,629	$ 11	$ 4,354	$ 114,286
States, municipalities and political subdivisions	105,221	1	13,037	92,185
Special revenue	290,424	47	34,153	256,318
Industrial and miscellaneous	190,091	44	19,732	170,403
Total	$ 704,365	$ 103	$ 71,276	$ 633,192

(1) Includes securities at September 30, 2022 with a carrying amount of $26.4 million that were pledged as collateral for the advance agreement entered into with a financial institution in 2018. The Company is permitted to withdraw or exchange any portion of the pledged collateral over the minimum requirement at any time.

December 31, 2021	*Cost or Adjusted / Amortized Cost*	*Gross Unrealized Gains*	*Gross Unrealized Losses*	*Fair Value*
Debt Securities Available-for-sale		*(In thousands)*		
U.S. government and agency securities [1]	$ 73,923	$ 184	$ 282	$ 73,825
States, municipalities and political subdivisions	106,727	242	1,270	105,699
Special revenue	291,005	1,084	3,520	288,569
Hybrid securities	99	—	—	99
Industrial and miscellaneous	203,491	636	2,965	201,162
Total	$ 675,245	$ 2,146	$ 8,037	$ 669,354

(1) Includes securities at December 31, 2021 with a carrying amount of $22.5 million that were pledged as collateral for the advance agreement entered into with a financial institution in 2018. The Company is permitted to withdraw or exchange any portion of the pledged collateral over the minimum requirement at any time.

Net Realized (Losses)Gains

The following table presents net realized (losses) gains on the Company's debt securities available-for-sale for the three and nine months ended September 30, 2022 and 2021, respectively:

	2022		*2021*	
Three Months Ended September 30,	*Gains (Losses)*	*Fair Value at Sale*	*Gains (Losses)*	*Fair Value at Sale*
		(In thousands)		
Debt Securities Available-for-Sale				
Total realized gains	$ —	$ 50	$ 2	$ 3,470
Total realized losses	(3)	110	(8)	226
Net realized (losses) and gains	$ (3)	$ 160	$ (6)	$ 3,696

	2022		*2021*	
Nine Months Ended September 30,	*Gains (Losses)*	*Fair Value at Sale*	*Gains (Losses)*	*Fair Value at Sale*
		(In thousands)		
Debt Securities Available-for-Sale				
Total realized gains	$ 32	$ 2,451	$ 106	$ 24,265
Total realized losses	(153)	6,206	(10)	1,043
Net realized (losses) and gains	$ (121)	$ 8,657	$ 96	$ 25,308

As of September 30, 2021, the Company recorded on its condensed consolidated statement of operations in net realized (losses) gains an impairment of approximately $1.0 million on its REIT investment which is excluded from the table above.

The table below summarizes the Company's debt securities at September 30, 2022 by contractual maturity periods. Actual results may differ as issuers may have the right to call or prepay obligations, with or without penalties, prior to the contractual maturity of those obligations.

	At September 30, 2022			
	Cost or Amortized Cost	Percent of Total	Fair Value	Percent of Total
Maturity dates:			(In thousands)	
Due in one year or less	$ 95,442	14 %	$ 93,586	15 %
Due after one year through five years	342,738	49 %	313,712	50 %
Due after five years through ten years	199,300	28 %	165,917	26 %
Due after ten years	66,885	9 %	59,977	9 %
Total	$ 704,365	100 %	$ 633,192	100 %

Net Investment Income

The following table summarizes the Company's net investment income by major investment category for the three and nine months ended September 30, 2022 and 2021, respectively:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(In thousands)		(In thousands)	
Debt securities	$ 2,992	$ 1,986	$ 7,695	$ 5,164
Equity securities	—	—	—	—
Cash and cash equivalents	273	17	433	72
Other investments	135	514	447	1,101
Net investment income	3,400	2,517	8,575	6,337
Less: Investment expenses	513	969	1,525	2,540
Net investment income, less investment expenses	$ 2,887	$ 1,548	$ 7,050	$ 3,797

The following tables present, for all debt securities available-for-sale in an unrealized loss position (including securities pledged) and for which no credit loss allowance been established to date, the aggregate fair value and gross unrealized loss by length of time the security has continuously been in an unrealized loss position at September 30, 2022 and December 31, 2021, respectively:

	Less Than Twelve Months			Twelve Months or More		
September 30, 2022	Number of Securities	Gross Unrealized Losses	Fair Value	Number of Securities	Gross Unrealized Losses	Fair Value
Debt Securities Available-for-sale						
U.S. government and agency securities	93	$ 4,023	$ 98,801	5	$ 331	$ 8,911
States, municipalities and political subdivisions	61	5,166	39,273	64	7,871	47,766
Special revenue	378	15,277	121,001	153	18,876	103,038
Industrial and miscellaneous	190	7,376	98,431	103	12,356	66,066
Total fixed maturity securities	**722**	**$ 31,842**	**$ 357,506**	**325**	**$ 39,434**	**$ 225,781**

	Less Than Twelve Months			Twelve Months or More		
December 31, 2021	Number of Securities	Gross Unrealized Losses	Fair Value	Number of Securities	Gross Unrealized Losses	Fair Value
Debt Securities Available-for-sale						
U.S. government and agency securities	43	$ 282	$ 57,420	—	$ —	$ —
States, municipalities and political subdivisions	98	1,270	80,972	—	—	—
Special revenue	253	3,485	195,450	14	35	1,214
Industrial and miscellaneous	191	2,387	146,746	18	578	11,598
Total fixed maturity securities	**585**	**$ 7,424**	**$ 480,588**	**32**	**$ 613**	**$ 12,812**

The Company completes a detailed analysis each quarter to assess whether the decline in the fair value of any investment below its cost basis is the result of a credit loss. All available-for-sale securities with unrealized losses are reviewed. The Company considers

many factors in completing its quarterly review of securities with unrealized losses for credit-related impairment to determine whether a credit loss exists, including the extent to which fair value is below cost, the implied yield to maturity, rating downgrades of the security and whether or not the issuer has failed to make scheduled principal or interest payments. The Company also takes into consideration information about the financial condition of the issuer and industry factors that could negatively impact the capital markets.

If the decline in fair value of an available-for-sale security below its amortized cost is considered to be the result of a credit loss, the Company compares the estimated present value of the cash flows expected to be collected to the amortized cost of the security. For the three and nine months ending September 30, 2022, management concluded that the decline in the fair value was not a result of credit losses but rather as a direct result from the increase in the market interest rates. Therefore, the Company did not have an allowance for credit losses as of September 30, 2022 or December 31, 2021.

Quarterly, the Company considers whether it intends to sell an available-for-sale security or if it is more likely than not that it will be required to sell the security before recovery of its amortized costs. In these instances, a decline in fair value is recognized in net income based on the fair value of the security at the time of assessment, resulting in a new cost basis for the security.

Other Investments

Non-Consolidating Variable Interest Entities ("VIEs")

The Company makes passive investments in limited partnerships ("LPs"), which are accounted for using the equity method, with income reported in earnings. The Company also makes passive investments in a Real Estate Investment Trust ("REIT") and an Insurtech company, which are accounted for using the measurement alternative method, which is reported at cost less impairment (if any), plus or minus changes from observable price changes.

The following table summarizes the carrying value and maximum loss exposure of the Company's non-consolidated VIEs at September 30, 2022 and December 31, 2021:

	As of September 30, 2022		***As of December 31, 2021***	
	Carrying Value	***Maximum Loss Exposure***	***Carrying Value***	***Maximum Loss Exposure***
		(in thousands)		
Investments in non-consolidated VIEs - Equity Method	$ 3,517	$ 3,517	$ 3,852	$ 3,852
Investments in non-consolidated VIEs - Amortized Cost	$ 8,490	$ 8,490	$ 15,000	$ 15,000
Investments in non-consolidated VIEs - Measure Alternative	$ 5,077	$ 5,077	$ 5,077	$ 5,077
Total non-consolidated VIEs	$ 17,084	$ 17,084	$ 23,929	$ 23,929

No agreements exist requiring the Company to provide additional funding to any of the non-consolidated VIEs in excess of the Company's initial investment.

NOTE 3. FAIR VALUE OF FINANCIAL MEASUREMENTS

Fair value is determined based on the exchange price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date.

The Company is required to use an established hierarchy for fair value measurements based upon the inputs to the valuation and degree to which they are observable or not observable in the market. The three levels in the hierarchy are as follows:

- ***Level 1*** – Unadjusted quoted prices are available in active markets for identical assets/liabilities as of the reporting date.
- ***Level 2*** – Valuations based on observable inputs, such as quoted prices for similar assets or liabilities at the measurement date; quoted prices in the markets that are not active; or other inputs that are observable, either directly or indirectly.
- ***Level 3*** – Pricing inputs are unobservable and significant to the overall fair value measurement, and the determination of fair value requires significant management judgment or estimation.

The highest priority is assigned to Level 1 inputs and the lowest priority to Level 3 inputs. The Company did not hold any Level 3 assets or liabilities as of September 30, 2022 or December 31, 2021.

The following table presents information about the Company's assets measured at fair value on a recurring basis. The Company assesses the levels for the investments at each measurement date, and transfers between levels are recognized on the actual date of the

event or change in circumstances that caused the transfer in accordance with the Company's accounting policy regarding the recognitions of transfers between levels of the fair value hierarchy.

The tables below present the balances of the Company's invested assets measured at fair value on a recurring basis:

September 30, 2022	*Total*	*Quoted Prices in Active Markets for Identical Assets (Level 1)*	*Significant Other Observable Inputs (Level 2)*	*Significant Unobservable Inputs (Level 3)*
Invested Assets:		*(in thousands)*		
Debt Securities Available-for-sale				
U.S. government and agency securities	$ 114,286	$ —	$ 114,286	$ —
States, municipalities and political subdivisions	92,185	—	92,185	—
Special revenue	256,318	—	256,318	—
Industrial and miscellaneous	170,403	—	170,403	—
Total investments	$ 633,192	$ —	$ 633,192	$ —

December 31, 2021	*Total*	*Quoted Prices in Active Markets for Identical Assets (Level 1)*	*Significant Other Observable Inputs (Level 2)*	*Significant Unobservable Inputs (Level 3)*
Invested Assets:		*(in thousands)*		
Debt Securities Available-for-sale				
U.S. government and agency securities	$ 73,825	$ 364	$ 73,461	$ —
States, municipalities and political subdivisions	105,699	—	105,699	—
Special revenue	288,569	—	288,569	—
Hybrid securities	99	—	99	—
Industrial and miscellaneous	201,162	—	201,162	—
Total investments	$ 669,354	$ 364	$ 668,990	$ —

Financial Instruments excluded from the fair value hierarchy

The carrying value of premium receivables and accounts payable, accrued expense, revolving loans and borrowings under the Company's senior secured credit facility approximate their fair value. The rate at which revolving loans and borrowings under the Company's senior secured credit facility bear interest resets periodically at market interest rates.

Non-recurring fair value measurements

The Company determines the fair value of the goodwill and intangible assets using a combination of a discounted cash flow approach and market approaches, which contain significant unobservable inputs and therefore are considered a Level 3 fair value measurement. The unobservable inputs in the analysis generally include future cash flow projections and a discount rate.

For the year ended December 31, 2021, the Company recorded a goodwill impairment following its annual valuation review of approximately $61 million. In the second quarter of 2021, the Company recognized an impairment in other investments of approximately $1.0 million based on the estimated fair value of the Company's ownership interest. During the second quarter of 2022, Management concluded that it had a full impairment of its remaining goodwill and that the carrying value of $92.0 million should be written off based on the following factors: (i) disruptions in the equity markets, specifically for property and casualty insurance companies, largely due to recent weather-related catastrophe events; (ii) elevated loss ratios for property insurers in the Company's markets; and (iii) the Company's market cap was below book value.

NOTE 4. OTHER COMPREHENSIVE LOSS

The following table is a summary of other comprehensive loss and discloses the tax impact of each component of other comprehensive loss for the three and nine months ended September 30, 2022 and 2021, respectively:

	For the Three Months Ended September 30,					
	2022			*2021*		
	Pre-tax	*Tax*	*After-tax*	*Pre-tax*	*Tax*	*After-tax*
	(in thousands)					
Other comprehensive loss						
Change in unrealized losses on investments, net	$ (17,471)	$ 4,090	$ (13,381)	$ (1,344)	$ 311	$ (1,033)
Reclassification adjustment of realized losses (gains) included in net loss	3	(1)	2	6	(1)	5
Effect on other comprehensive loss	$ (17,468)	$ 4,089	$ (13,379)	$ (1,338)	$ 310	$ (1,028)

	For the Nine Months Ended September 30,					
	2022			*2021*		
	Pre-tax	*Tax*	*After-tax*	*Pre-tax*	*Tax*	*After-tax*
	(in thousands)					
Other comprehensive loss						
Change in unrealized losses on investments, net	$ (65,403)	$ 15,310	$ (50,093)	$ (8,316)	$ 1,928	$ (6,388)
Reclassification adjustment of realized losses (gains) included in net loss	121	(28)	93	(96)	22	(74)
Effect on other comprehensive loss	$ (65,282)	$ 15,282	$ (50,000)	$ (8,412)	$ 1,950	$ (6,462)

NOTE 5. LEASES

The Company has entered into operating and financing leases primarily for real estate and vehicles. The Company will determine whether an arrangement is a lease at inception of the agreement. The operating leases have terms of one to ten years, and often include one or more options to renew. These renewal terms can extend the lease term from two to ten years and are included in the lease term when it is reasonably certain that the Company will exercise the option. The Company considers these options in determining the lease term used in establishing the Company's right-of-use assets and lease obligations. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

Because the rate implicit in each operating lease is not readily determinable, the Company uses its incremental borrowing rate to determine present value of the lease payments. The Company used the implicit rates within the finance leases.

Components of the Company's lease costs for the three and nine months ended September 30, 2022 and 2021 were as follows (in thousands):

	Three Months Ended September 30, 2022	*Three Months Ended September 30, 2021*
Amortization of ROU assets - Finance leases	$ 651	$ 647
Interest on lease liabilities - Finance leases	244	263
Variable lease cost (cost excluded from lease payments)	287	112
Operating lease cost (cost resulting from lease payments)	350	339
Total lease cost	$ 1,532	$ 1,361

	Nine Months Ended September 30, 2022	*Nine Months Ended September 30, 2021*
Amortization of ROU assets - Finance leases	$ 1,943	$ 1,321
Interest on lease liabilities - Finance leases	739	524
Variable lease cost (cost excluded from lease payments)	713	373
Operating lease cost (cost resulting from lease payments)	1,055	1,018
Total lease cost	$ 4,450	$ 3,236

Supplemental cash flow information and non-cash activity related to the Company's operating and financing leases were as follows (in thousands):

	At September 30, 2022	*At September 30, 2021*
Finance lease - Operating cash flows	$ 737	$ 31
Finance lease - Financing cash flows	$ 1,540	$ 100
Operating lease - Operating cash flows (fixed payments)	$ 1,188	$ 1,123
Operating lease - Operating cash flows (liability reduction)	$ 942	$ 840

Supplemental balance sheet information related to the Company's operating and financing leases as of September 30, 2022 were as follows (in thousands):

	Balance Sheet Classification	*September 30, 2022*	*December 31, 2021*
Right-of-use assets - operating	Right-of-use lease asset, net	$ 4,437	$ 5,035
Right-of-use assets - finance	Right-of-use lease asset, net	$ 20,781	$ 22,718
Lease liability - operating	Lease liability	$ 5,821	$ 6,551
Lease liability - finance	Lease liability	$ 23,080	$ 24,621

Weighted-average remaining lease term and discount rate for the Company's operating and financing leases for the periods presented below were as follows:

	September 30, 2022	*September 30, 2021*
Weighted average lease term - Finance leases	8.37 yrs.	9.34 yrs.
Weighted average lease term - Operating leases	5.68 yrs.	6.40 yrs.
Weighted average discount rate - Finance leases	4.2 %	4.2 %
Weighted average discount rate - Operating leases	5.4 %	5.3 %

Maturities of lease liabilities by fiscal year for the Company's operating and financing leases were as follows (in thousands):

	September 30, 2022
2022 remaining	$ 1,161
2023	4,592
2024	4,263
2025	3,970
2026	3,990
Thereafter	16,225
Total lease payments	34,201
Less: imputed interest	(5,300)
Present value of lease liabilities	$ 28,901

NOTE 6. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consisted of the following at September 30, 2022 and December 31, 2021:

	September 30, 2022	*December 31, 2021*
	(In thousands)	
Land	$ 2,582	$ 2,582
Building	10,141	10,141
Computer hardware and software	12,089	7,204
Office furniture and equipment	1,381	1,355
Tenant and leasehold improvements	10,172	8,255
Vehicle fleet	720	720
Total, at cost	37,085	30,257
Less: accumulated depreciation and amortization	(14,301)	(12,831)
Property and equipment, net	$ 22,784	$ 17,426

Depreciation and amortization expense for property and equipment was approximately $544,900 and $736,000 for the three months ended September 30, 2022 and 2021, respectively and $1.5 million and $1.6 million for the nine months ended September 30, 2022 and 2021, respectively. The Company's real estate consists of 15 acres of land, two buildings with a gross area of 88,378 square feet and a parking garage.

NOTE 7. GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill and Intangible Assets

At September 30, 2022 and December 31, 2021, goodwill was $0 and $92.0 million and intangible assets were $51.2 million and $55.9 million, respectively. The Company has determined the useful life of the other intangible assets to range between 2.5-15 years. Intangible assets include $1.3 million relating to insurance licenses which is classified as an indefinite lived intangible and is subject to annual impairment testing concurrent with goodwill.

	Goodwill
	(in thousands)
Balance as of December 31, 2021	$ 91,959
Goodwill acquired	—
Impairment	(91,959)
Balance as of September 30, 2022	$ —

Management tests goodwill and other intangible assets for impairment annually during the fourth quarter, or more frequently should events or changes in circumstances indicate that goodwill or the Company's other intangible assets might be impaired. During the second quarter of 2022, management determined a triggering event occurred for which it deemed an interim evaluation of goodwill was appropriate and concluded the remaining balance of its goodwill was fully impaired. The carrying value of $92.0 million was written off based on the following factors: (i) disruptions in the equity markets, specifically for property and casualty insurance companies, largely due to recent weather-related catastrophe events; (ii) elevated loss ratios for property insurers in the Company's markets; and (iii) the Company's market cap was below book value. These factors reduced the Company's previously modeled fair value of the Company and resulted in a $92.0 million goodwill impairment charge, as of the second quarter of 2022, most of which was not tax deductible.

Other Intangible Assets

The Company's intangible assets consist of brand, agent relationships, renewal rights, customer relations, trade names, non-competes and insurance licenses.

Amortization expense of the Company's intangible assets for three months ended September 30, 2022 and 2021 was $1.6 million and for the nine months ended September 30, 2022 and 2021 was $4.8 million. No impairment in the value of amortizing or non-amortizing intangible assets was recognized during the three and nine months ended September 30, 2022 or 2021.

Estimated annual pretax amortization of intangible assets for each of the next five years and thereafter is as follows (in thousands):

Year	***Amount***
2022 - remaining	$ 1,588
2023	$ 6,351
2024	$ 6,351
2025	$ 6,315
2026	$ 6,114
Thereafter	$ 23,129
Total	$ 49,848

NOTE 8. LOSS PER SHARE

The following table sets forth the computation of basic and diluted loss per share ("EPS") for the periods indicated.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Basic loss per share:				
Net loss attributable to common stockholders (000's)	$ (48,240)	$ (16,410)	$ (166,864)	$ (25,509)
Weighted average shares outstanding	26,369,265	27,938,028	26,536,700	27,902,814
Basic loss per share:	**$ (1.83)**	**$ (0.59)**	**$ (6.29)**	**$ (0.91)**
Diluted loss per share:				
Net loss attributable to common stockholders (000's)	$ (48,240)	$ (16,410)	$ (166,864)	$ (25,509)
Weighted average shares outstanding	26,369,265	27,938,028	26,536,700	27,902,814
Total weighted average dilutive shares	26,369,265	27,938,028	26,536,700	27,902,814
Diluted loss per share:	**$ (1.83)**	**$ (0.59)**	**$ (6.29)**	**$ (0.91)**

The Company had 196,914 and 2,677,355 antidilutive shares as of September 30, 2022 and 2021, respectively. The convertible notes were excluded from the computations because the conversion price on these notes was greater than the average market price of our common shares during each of the respective periods, and therefore, would be anti-dilutive to earnings per share under the "if converted" method under the guidance of ASU 2020-06, adopted by the Company on January 1, 2022.

NOTE 9. DEFERRED REINSURANCE CEDING COMMISSION

The Company defers reinsurance ceding commission income, which is amortized over the effective period of the related insurance policies. For the three months ended September 30, 2022 and 2021, the Company allocated ceding commission income of $11.7 million and $12.0 million to policy acquisition costs and $3.8 million and $4.0 million to general and administrative expense, respectively. For the nine months ended September 30, 2022 and 2021, the Company allocated ceding commission income of $34.9 million and $35.2 million to policy acquisition costs and $11.5 million and $11.6 million to general and administrative expense, respectively.

The table below depicts the activity regarding deferred reinsurance ceding commission, included in accounts payable and other liabilities during the three and nine months ended September 30, 2022 and 2021.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(In thousands)			
Beginning balance of deferred reinsurance ceding commission income	$ 38,529	$ 39,940	$ 40,405	$ 39,995
Ceding commission deferred	17,046	17,659	46,110	48,447
Less: ceding commission earned	(15,486)	(15,978)	(46,426)	(46,821)
Ending balance of deferred reinsurance ceding commission income	$ 40,089	$ 41,621	$ 40,089	$ 41,621

NOTE 10. DEFERRED POLICY ACQUISITION COSTS

The Company defers certain costs in connection with written policies, called deferred policy acquisition costs (“DPAC”), which are amortized over the effective period of the related insurance policies.

The Company anticipates that its DPAC will be fully recoverable in the near term. The table below depicts the activity regarding DPAC for the three and nine months ended September 30, 2022 and 2021.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(In thousands)			
Beginning Balance	$ 99,468	$ 95,967	$ 93,881	$ 89,265
Policy acquisition costs deferred	39,194	47,976	139,028	144,380
Amortization	(38,013)	(48,518)	(132,260)	(138,220)
Ending Balance	$ 100,649	$ 95,425	$ 100,649	$ 95,425

NOTE 11. INCOME TAXES

The Company files a consolidated federal income tax return. Deferred federal income taxes reflect the future tax consequences of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year end. The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred taxes for temporary differences between the financial statement and tax return basis of assets and liabilities.

Deferred tax assets generally represent items that can be used as a tax deduction or credit in future years for which the Company has already recorded the tax benefit in its income statement. Deferred tax liabilities generally represent tax expense recognized in the Company's financial statements for which payment has been deferred or expenditures for which the Company has already taken a deduction in its tax return but have not yet been recognized in its financial statements. Under GAAP the Company is required to evaluate the recoverability of its deferred tax assets and establish a valuation allowance if necessary to reduce its deferred tax assets to an amount that is more likely than not to be realized. Significant judgment is required in determining whether valuation allowances should be established, as well as the amount of such allowances.

The Company establishes or adjusts valuation allowances for deferred tax assets when it estimates that it is more likely than not that future taxable income will be insufficient to realize the value of the deferred tax assets. The Company evaluates all significant available positive and negative evidence as part of its analysis. Negative evidence includes the existence of losses in recent years. Positive evidence includes the forecast of future taxable income and tax-planning strategies that would result in the realization of deferred tax assets. The underlying assumptions its uses in forecasting future taxable income require significant judgment and take into account the Company's recent performance. The ultimate realization of deferred tax assets depends on the generation of future taxable income during the periods in which temporary differences are deductible or creditable. If actual experience differs from these estimates and assumptions, the recognized deferred tax asset value may not be fully realized, resulting in an increase to income tax expense in its results of operations.

As of September 30, 2022. the Company recognized a valuation allowance of $10.7 million against the net deferred tax assets generated at its foreign domiciled captive reinsurer, Osprey Re. The Company can only realize those net deferred tax assets to the extent Osprey Re contributes future taxable income to the consolidated group. Management believes there is not sufficient evidence at the current time to realize the Osprey Re net deferred tax assets within the next calendar year. The valuation allowance is accounted for as an increase to income tax expense for the quarter. Osprey Re’s future taxable income can be used to apply against its net deferred tax assets to reduce taxable income and the valuation allowance will decrease proportionately resulting in a reduction of income tax expense. Changes in tax laws and rates may affect recorded deferred tax assets and liabilities and its effective tax rate in the future.

For the three months ended September 30, 2022 and 2021, the Company recorded a tax benefit of $1.1 million and $1.1 million, respectively, which corresponds to effective tax rates of 2.2% and 6.4%, respectively. For the nine months ended September 30, 2022 and 2021, the Company recorded an income tax benefit of $11.2 million and $5.6 million, respectively, which corresponds to effective tax rates of 6.3% and 18.1%, respectively. The effective tax rates for the three and nine months ended September 30, 2022 were impacted by the mostly non-deductible goodwill impairment charge taken in the second quarter of 2022 described in ***Note 7. Goodwill and Other Intangible Assets*** as well as the valuation allowance described above. Effective tax rates are dependent upon components of pre-tax earnings and the related tax effects. The effective tax rate for each period was also affected by various permanent tax differences, including disallowed executive compensation deductions which was further limited in 2018 and future years upon the enactment of H.R.1, commonly referred to as the Tax Cuts and Jobs Act (“Tax Act”). Additionally, the state effective income tax rate can also fluctuate as a result of changes in the geographic dispersion of the Company’s business. Finally, the effective tax rate can fluctuate throughout the year as estimates used in the tax provision for each quarter are updated as more information becomes available throughout the year.

The table below summarizes the significant components of the Company's net deferred asset (liability):

	September 30, 2022	*December 31, 2021*
Deferred tax assets:	*(In thousands)*	
Unearned premiums	$ 13,454	$ 15,805
Unearned commission	9,384	9,459
State net operating loss	1,490	1,222
Tax-related discount on loss reserve	4,799	3,872
Stock-based compensation	455	84
Accrued expenses	1,481	1,182
Leases	841	792
Unrealized losses	17,195	1,913
Federal net operating loss carryforward	15,752	—
Other	416	472
Valuation allowance	(10,650)	—
Total deferred tax asset	54,617	34,801
Deferred tax liabilities:		
Deferred acquisition costs	23,561	21,977
Prepaid expenses	118	177
Property and equipment	1,221	1,504
Note discount	225	187
Basis in purchased investments	666	34
Basis in purchased intangibles	—	14,550
Internal revenue code 481(a)-Accounting method change	1,104	4,416
Amortization of goodwill	11,459	—
Other	1,626	1,382
Total deferred tax liabilities	39,980	44,227
Net deferred tax asset (liability)	$ 14,637	$ (9,426)

As of September 30, 2022, the Company has a gross operating loss carryforward for federal and state income tax purposes of $20.7 million and $45.8 million, respectively, which will expire after 2042. The statute of limitations related to the Company's federal and state income tax returns remains open from the Company's filings for 2018 through 2021.

Osprey Re, our reinsurance affiliate, based in Bermuda, made an irrevocable election under IRC Section 953(d) to be treated as a domestic insurance company for U.S. Federal income tax purposes. As a result of this election, the Company's reinsurance subsidiary is subject to United States income tax as if it were a U.S. corporation. Furthermore, limitations may be imposed on the ability to utilize Osprey Re's deferred tax assets to the extent it has not contributed income to the consolidated group during its inclusion in the consolidated group.

NOTE 12. REINSURANCE

Overview

In order to limit the Company's potential exposure to individual risks and catastrophic events, the Company purchases significant reinsurance from third party reinsurers. Purchasing reinsurance is an important part of the Company's risk strategy, and premiums ceded to reinsurers is one of the Company's largest costs. The Company has strong relationships with reinsurers, which it attributes to its management's industry experience, disciplined underwriting, and claims management capabilities. For each of the twelve months beginning June 1, 2021 and 2022, the Company purchased reinsurance from the following sources: (i) the Florida Hurricane Catastrophe Fund, a state-mandated catastrophe fund ("FHCF") for Florida policies only, (ii) private reinsurers, all of which were rated "A-" or higher by A.M. Best Company, Inc. ("A.M. Best") or Standard & Poor's Financial Services LLC ("S&P") or were fully collateralized, and (iii) the Company's wholly-owned reinsurance subsidiary, Osprey Re Ltd. ("Osprey"). Additionally, for the 2022 hurricane season, the Company purchased a portion of the Company's catastrophe excess of loss reinsurance program from Citrus Re Ltd. ("Citrus Re), a Bermuda special purpose insurer formed in 2014, through the 2022-1 notes, which cover catastrophe losses incurred for specific states. In addition to purchasing excess of loss catastrophe reinsurance, the Company also purchased quota share, property per risk and facultative reinsurance. The Company's quota share program limits its exposure on catastrophe and non-catastrophe losses and provides ceding commission income. The Company's per risk programs limit its net exposure in the event of a severe non-catastrophe loss impacting a single location or risk. The Company also utilizes facultative reinsurance to supplement its per risk reinsurance program where the Company capacity needs dictate.

Purchasing a sufficient amount of reinsurance to cover catastrophic losses from single or multiple events or significant non-catastrophe losses is an important part of the Company's risk strategy. Reinsurance involves transferring, or "ceding", a portion of the risk exposure on policies the Company writes to another insurer, known as a reinsurer. To the extent that the Company's reinsurers are

unable to meet the obligations they assume under the Company's reinsurance agreements, the Company remains liable for the entire insured loss.

The Company's reinsurance agreements are prospective contracts. The Company records an asset, prepaid reinsurance premiums, and a liability, reinsurance payable, for the entire contract amount upon commencement of the Company's new reinsurance agreements. The Company generally amortizes its catastrophe reinsurance premiums ratably over the 12-month contract period, which is June 1 through May 31. Its quota share reinsurance is amortized over the 12-month contract period and may be purchased on a calendar or fiscal year basis.

In the event that the Company incurs losses and loss adjustment expenses recoverable under its reinsurance program, the Company records amounts recoverable from its reinsurers on paid losses plus an estimate of amounts recoverable on unpaid losses. The estimate of amounts recoverable on unpaid losses is a function of its liability for unpaid losses associated with the reinsured policies; therefore, the amount changes in conjunction with any changes to its estimate of unpaid losses. As a result, a reasonable possibility exists that an estimated recovery may change significantly in the near term from the amounts included in the Company's condensed consolidated financial statements.

The Company's insurance regulators require all insurance companies, like us, to have a certain amount of capital and reinsurance coverage in order to cover losses and loss adjustment expenses upon the occurrence of a catastrophic event. The Company's reinsurance program provides reinsurance in excess of its state regulator requirements, which are based on the probable maximum loss that it would incur from an individual catastrophic event estimated to occur once in every 100 years based on its portfolio of insured risks. The nature, severity and location of the event giving rise to such a probable maximum loss differs for each insurer depending on the insurer's portfolio of insured risks, including, among other things, the geographic concentration of insured value within such portfolio. As a result, a particular catastrophic event could be a one-in-100-year loss event for one insurance company while having a greater or lesser probability of occurrence for another insurance company. The Company also purchases reinsurance coverage to protect against the potential for multiple catastrophic events occurring in the same year. The Company shares portions of its reinsurance program coverage among its insurance company affiliates.

2022-2023 Reinsurance Program

Catastrophe Excess of Loss Reinsurance

Effective June 1, 2022, the Company entered into catastrophe excess of loss reinsurance agreements covering Heritage Property & Casualty Insurance Company ("Heritage P&C"), Zephyr Insurance Company ("Zephyr") and Narragansett Bay Insurance Company ("NBIC"). The catastrophe reinsurance programs are allocated among traditional reinsurers, the Florida Hurricane Catastrophe Fund ("FHCF"), Citrus Re Ltd., and Osprey Re Ltd ("Osprey"), the Company's captive reinsurer. The FHCF covers Florida risks only and the Company elected to participate at 90% for the 2022 hurricane season. Osprey Re will provide reinsurance for a portion of the Heritage P&C, NBIC and Zephyr programs. The Company's third-party reinsurers are either rated "A-" or higher by A.M. Best or S&P or are fully collateralized, to reduce credit risk. Osprey Re is fully collateralized.

The reinsurance program, which is segmented into layers of coverage, protects the Company for excess property catastrophe losses and loss adjustment expenses. The 2022-2023 reinsurance program provides first event coverage up to $1.3 billion for Heritage P&C, first event coverage up to $1.2 billion for NBIC, and first event coverage up to $780.0 million for Zephyr. The Company's first event retention in a 1 in 100-year event would include retention for the respective insurance company as well as any retention by Osprey. The first event maximum retention up to a 1 in 100-year event for each insurance company subsidiary is as follows: Heritage P&C – $40.0 million, of which $35.0 million would be ceded to Osprey; NBIC – $30.0 million of which $30.0 million would be ceded to Osprey in a shared contract with Zephyr; and Zephyr – $40.0 million, of which $30.0 million would be ceded to Osprey in a shared contract with NBIC.

The Company is responsible for all losses and loss adjustment expenses in excess of the Company's reinsurance program. For second or subsequent catastrophic events, the Company's total available coverage depends on the magnitude of the first event, as the Company may have coverage remaining from layers that were not previously fully exhausted. An aggregate of $3.2 billion of limit purchased in 2022 includes reinstatement through the purchase of reinstatement premium protection. The amount of coverage, however, will be subject to the severity and frequency of such events.

The Company's estimated net cost for the 2022-2023 catastrophe excess of loss reinsurance programs was approximately $359.5 million. This cost estimate is based on projected exposures for which there is a true up as of August 31, 2022.

Additionally, the Company placed an occurrence contract for business underwritten by NBIC which covers all catastrophe losses excluding named storms, on December 31, 2021, expiring December 31, 2022. The limit on the contract is $20.0 million with a retention of $20.0 million and has one reinstatement available.

The Company placed an aggregate contract for the Company's business underwritten by NBIC which covers all catastrophe losses excluding named storms, on December 1, 2021, expiring March 31, 2022. The limit on the contract is $20.0 million with an aggregate retention of $21.0 million, with a $21.0 million per occurrence cap, and a $1.0 million franchise deductible.

Net Quota Share Reinsurance

The Company's Net Quota Share coverage is proportional reinsurance, which applies to business underwritten by NBIC, for which certain of the Company's other reinsurance (property catastrophe excess of loss and the second layer of the general excess of loss) inures to the quota share program. An occurrence limit of $20.0 million for catastrophe losses is in effect on the quota share program, subject to certain aggregate loss limits that vary by reinsurer. The amount and rate of ceding commissions slide, within a prescribed minimum and maximum, depending on loss performance. The Net Quota Share program was renewed on December 31, 2021 ceding 50.0% of the net premiums and losses and 5% of the prior year quota share is in run off.

Per Risk Coverage

For losses arising from business underwritten by Heritage P&C and losses arising from commercial residential business underwritten by NBIC, excluding losses from named storms, the Company purchased property per risk coverage for losses and loss adjustment expenses in excess of $1.0 million per claim. The limit recovered for an individual loss is $9.0 million and total limit for all losses is $27.0 million. There are two reinstatements available with additional premium due based on the amount of the layer exhausted. For losses arising from commercial residential business underwritten by NBIC, the Company also purchased property per risk coverage for losses and loss adjustments expenses in excess of $750,000 per claim. The limit recovered for an individual loss is $250,000 and total limit for all losses is $750,000. There are two reinstatements available with additional premium due based on the amount of the layer exhausted.

In addition, the Company purchased facultative reinsurance for losses in excess of $10.0 million for any properties it insured where the total insured value exceeded $10.0 million. This coverage applies to losses arising from business underwritten by Heritage P&C and losses arising commercial residential business underwritten by NBIC, excluding losses from named storms.

General Excess of Loss

The Company's general excess of loss reinsurance protects business underwritten by NBIC and Zephyr multi-peril policies from single risk losses. For the contract period of July 1, 2021 through June 30, 2022, the coverage is in two layers in excess of the Company's retention of the first $500,000 of loss. The first layer is $250,000 excess $500,000 for property and casualty losses and the second layer for property losses is $2.75 million excess $750,000. The second layer for casualty losses is $1.25 million excess $750,000. For the contract period of July 1, 2022 through June 30, 2023, the coverage for property losses is $2.75 million excess $750,000 and for casualty losses is $1.25 million excess $750,000.

In addition, the Company purchased facultative reinsurance for losses underwritten by NBIC in excess of $3.5 million.

*For a detailed discussion of the Company's **2021-2022 Reinsurance Program** please refer to Part II, Item 8, "Financial Statements and Supplementary Data" and "**Note 12. Reinsurance**" in the Company's 2021 Form 10-K.*

Effect of Reinsurance

The Company's reinsurance arrangements had the following effect on certain items in the condensed consolidated statement of income for the three and nine months ended September 30, 2022 and 2021:

	Three Months Ended September 30,		*Nine Months Ended September 30,*	
	2022	*2021*	*2022*	*2021*
	(In thousands)		*(In thousands)*	
Premium written:				
Direct	$ 304,501	$ 274,178	$ 952,981	$ 886,059
Ceded	(60,885)	(53,505)	(536,139)	(491,677)
Net	$ 243,616	$ 220,673	$ 416,842	$ 394,382
Premiums earned:				
Direct	$ 307,959	$ 294,409	$ 891,539	$ 850,466
Ceded	(148,266)	(131,964)	(420,645)	(399,323)
Net	$ 159,693	$ 162,445	$ 470,894	$ 451,143
Loss and Loss Adjustment Expenses				
Direct	$ 809,993	$ 195,099	$ 1,147,243	$ 483,382
Ceded	(654,144)	(65,467)	(749,834)	(155,006)
Net	$ 155,849	$ 129,632	$ 397,409	$ 328,376

NOTE 13. RESERVE FOR UNPAID LOSSES

The Company determines the reserve for unpaid losses on an individual-case basis for all incidents reported. The liability also includes amounts which are commonly referred to as incurred but not reported, or "IBNR", claims as of the balance sheet date. The

Company estimates its IBNR reserves by projecting its ultimate losses using industry accepted actuarial methods and then deducting actual loss payments and case reserves from the projected ultimate losses. Hurricane Ian struck Florida as a strong Category 4 hurricane on September 28, 2022. Gross catastrophe losses from Hurricane Ian are estimated to be of $655.4 million with net retained losses of $40.0 million. Gross losses from Hurricane Irma caused an increase in the ending balance as indicated below.

The table below summarizes the activity related to the Company's reserve for unpaid losses:

	Three Months Ended September 30,		*Nine Months Ended September 30,*	
	2022	*2021*	*2022*	*2021*
	(In thousands)			
Balance, beginning of period	$ 553,909	$ 625,979	$ 590,166	$ 659,341
Less: reinsurance recoverable on unpaid losses	235,239	366,879	301,757	397,688
Net balance, beginning of period	318,670	259,100	288,409	261,653
Incurred related to:				
Current year	156,855	130,425	395,921	331,374
Prior years	(1,006)	(793)	1,489	(2,998)
Total incurred	155,849	129,632	397,410	328,376
Paid related to:				
Current year	70,914	75,508	170,255	171,128
Prior years	24,088	27,273	136,047	132,950
Total paid	95,002	102,781	306,302	304,078
Net balance, end of period	379,517	285,951	379,517	285,951
Plus: reinsurance recoverable on unpaid losses	829,835	350,195	829,835	350,195
Balance, end of period	$ 1,209,352	$ 636,146	$ 1,209,352	$ 636,146

As of September 30, 2022, the Company reported $379.5 million in unpaid losses and loss adjustment expenses, net of reinsurance which included $266.8 million attributable to IBNR net of reinsurance recoverable, or 70.34% of net reserves for unpaid losses and loss adjustment expenses.

NOTE 14. LONG-TERM DEBT

Convertible Senior Notes

In August 2017 and September 2017, the Company issued in aggregate $136.8 million of 5.875% Convertible Senior Notes ("Convertible Notes") maturing on August 1, 2037, unless earlier repurchased, redeemed or converted. Interest is payable semi-annually in arrears, on February 1, and August 1 of each year.

As of September 30, 2022, the Company had $885,000 of the Convertible Notes outstanding, net of $21.1 million of Convertible Notes held by an insurance company subsidiary. For each of the nine-month periods ended September 30, 2022 and 2021, the Company made interest payments, net of affiliated Convertible Notes of approximately $1.0 million and $1.3 million, on the Convertible Notes, respectively.

Holders of the 5.875% Convertible Senior Notes due 2037 (the "Notes") issued by the Company had an optional put right, pursuant to the indenture governing the Notes, to require the Company to repurchase the aggregate principal amount of Notes that are validly tendered. The Company received notice from the Depositary for the Notes that, on July 29, 2022, $10,895,000 aggregate principal amount of the Notes has been validly tendered in accordance with the terms of the indenture and the Company's notice with respect to the optional put right of the Notes, and the Company directed the trustee to cancel the Notes tendered. Prior to this transaction, the outstanding balance as of September 30, 2022 of non-affiliated Notes was $11.8 million. On August 1, 2022, the Company made payments for the principal amount of the Notes tendered and unpaid interest in the aggregate amounts of $10.9 million and $320,041, respectively. The Company used $10.0 million from its revolving credit facility to replenish the cash used to pay the $10.9 million for the purchase of the tendered Notes.

In January 2022, the Company reacquired and retired $11.7 million of its outstanding Convertible Senior Notes. Payment was made in cash and the Convertible Notes were retired at the time of repurchase. In addition, the Company expensed $242,700 which represents the proportionate amount of the unamortized issuance and debt discount costs associated with this repurchase.

Senior Secured Credit Facility

The Company is party to a five-year, $150.0 million credit agreement (as amended from time to time, the "Credit Agreement") with a syndicate of lenders.

On November 7, 2022, the Company and its subsidiary guarantors entered into an amendment to the Credit Agreement to, among other things, (i) decrease the revolving credit facility from $75 million to $50 million, (ii) establish a new $25 million term loan facility to refinance loans outstanding under the existing revolving credit facility and to pay fees, costs and expenses related

thereto, (iii) reduce, from $50 million to $25 million, the aggregate amount of potential future increases to the revolving credit facility commitments and/or term loan commitments, (iii) modify the amortization of the existing term loan facility and new term loan facility to 10% per annum, paid quarterly, and (iii) increase the applicable margin for loans under the Credit Agreement to a range from 2.75% to 3.25% per annum for SOFR loans (plus a 0.10% credit adjustment spread) and based on a leverage ratio (an increase from the prior range of 2.50% to 3.00%). The Seventh Amendment also modified certain financial covenants in the Credit Agreement which may limit the Company's flexibility in connection with future financing transactions and in the allocation of capital in the future, including the Company's ability to pay dividends and make stock repurchases, and contribute capital to its insurance subsidiaries that are not parties to the Credit Agreement. For additional information regarding the changes to the financial covenants in the Credit Agreement, refer to ***Part II, Item 5, "Other Information"*** in this Quarterly Report on Form 10-Q.

The Credit Agreement, as amended, provides for (1) a five-year senior secured term loan facility in an aggregate principal amount of $100 million (the "Term Loan Facility") and (2) a five-year senior secured revolving credit facility in an aggregate principal amount of $50 million (inclusive of a sublimit for the issuance of letters of credit equal to the unused amount of the revolving credit facility and a sublimit for swingline loans equal to the lesser of $25 million and the unused amount of the revolving credit facility) (the "Revolving Credit Facility" and together with the Term Loan Facility, the "Credit Facilities").

Term Loan Facility. As amended by the Seventh Amendment, the principal amount of the Term Loan Facility amortizes in quarterly installments, which began with the close of the fiscal quarter ending March 31, 2019, in an amount equal to $1.9 million per quarter, payable quarterly, decreasing to $875,000 per quarter commencing with the quarter ending December 31, 2021, and increasing to $2.4 million per quarter commencing with the quarter ending December 31, 2022, with the remaining balance payable at maturity. The Term Loan Facility matures on July 28, 2026. As of September 30, 2022, there was $66.5 million in aggregate principal outstanding on the Term Loan Facility and as of November 7, 2022, after giving effect to the additional term loan advance that was used to refinance amounts outstanding under the Revolving Credit Facility and to pay fees, costs and expenses related thereto, there was $73.9 million in aggregate principal outstanding on the Term Loan Facility.

For the nine months ended September 30, 2022, the Company made principal and interest payments of approximately $2.6 million and $1.7 million, respectively and for the comparable period of 2021, the Company made interest payments of approximately $1.5 million on the Term Loan Facility.

On May 4, 2022, the Company and its subsidiary guarantors amended the Credit Agreement dated as of December 14, 2018 (as amended to date, the "Credit Agreement") by entering into the Sixth Amendment to Credit Agreement (the "Sixth Amendment") with the lenders party to the Credit Agreement, and Regions Bank, as administrative agent and collateral agent.

Pursuant to the Sixth Amendment, the consolidated fixed charge coverage ratio included in the Credit Agreement will be calculated based on the Company's consolidated tangible net worth, rather than the Company's consolidated net worth as was required under the existing Credit Agreement. Specifically, the Sixth Amendment provides that, effective as of March 31, 2022 and for future fiscal quarters, the Company's consolidated tangible net worth, which is gross of accumulated other comprehensive income, as of the end of a fiscal quarter may not be less than the sum of (1) $162,333,750, plus (2) 25% of the sum of the positive consolidated net income of the Company and its subsidiaries with respect to each full fiscal quarter, plus (3) 100% of the net cash proceeds of certain equity issuance transactions of the Company and its subsidiaries. All other material terms of the Credit Agreement remained unchanged.

Revolving Credit Facility. The Revolving Credit Facility allows for borrowings of up to $50 million inclusive of a sublimit for the issuance of letters of credit equal to the unused amount of the Revolving Credit Facility and a sublimit for swingline loans equal to the lesser of $25 million and the unused amount of the Revolving Credit Facility. As of September 30, 2022, we had $25.0 million in borrowings and a $22.6 million letters of credit outstanding under the Revolving Credit Facility. In connection with the incurrence of additional amounts under the Term Loan Facility pursuant to the Seventh Amendment, the borrowings under the Revolving Credit Facility were repaid in full.

At our option, borrowings under the Credit Facilities bear interest at rates equal to either (1) a rate determined by reference to SOFR, plus an applicable margin and a credit adjustment spread equal to 0.10% or (2) a base rate determined by reference to the highest of (a) the "prime rate" of Regions Bank, (b) the federal funds rate plus 0.50%, and (c) the adjusted term SOFR in effect on such day for an interest period of one month plus 1.00%, plus an applicable margin.

The Credit Agreement contains, among other things, covenants, representations and warranties and events of default customary for facilities of this type. The Company is required to maintain, as of each fiscal quarter (1) a maximum consolidated leverage ratio of 2.50 to 1.00, stepping down to 2.25 to 1.00 as of the second quarter of 2024 and 2.00 to 1.00 as of the second quarter of 2025, (2) a minimum consolidated fixed charge coverage ratio of 1.20 to 1.00 and (3) a minimum consolidated net worth for the Company and its subsidiaries, which is required to be not less than $100 million plus 50% of positive quarterly net income (including its subsidiaries and regulated subsidiaries) plus the net cash proceeds of any equity transactions. Events of default include, among other events, (i) nonpayment of principal, interest, fees or other amounts; (ii) failure to perform or observe certain covenants set forth in the Credit Agreement; (iii) breach of any representation or warranty; (iv) cross-default to other indebtedness; (v) bankruptcy and insolvency defaults; (vi) monetary judgment defaults and material nonmonetary judgment defaults; (vii) customary ERISA defaults; (viii) a

change of control of the Company; and (ix) failure to maintain specified catastrophe retentions in each of the Company's regulated insurance subsidiaries.

In addition to paying interest on outstanding borrowings under the Revolving Credit Facility, we are required to pay a quarterly commitment fee based on the unused portion of the Revolving Credit Facility, which is determined by our consolidated leverage ratio

At September 30, 2022, the effective interest rate on for the Term Loan Facility and Revolving Credit Facility was 5.88% and 5.69%, respectively. The Company monitors the rates prior to the reset date which allows it to establish if the payment is monthly or quarterly payment based on the most beneficial rate used to calculate the interest payment.

Mortgage Loan

In October 2017, the Company and its subsidiary, Skye Lane Properties LLC, jointly obtained a commercial real estate mortgage loan in the amount of $12.7 million, bearing interest of 4.95% per annum and maturing on October 30, 2027. On October 30, 2022, the interest rate shall adjust to an interest rate equal to the annualized interest rate of the United States 5-year Treasury Notes as reported by Federal Reserve on a weekly average basis plus 3.10%. The Company makes monthly principal and interest payments toward the loan. For each of the respective nine-month periods ended September 30, 2022 and 2021, the Company made principal and interest payments of approximately $670,000 on the mortgage loan.

FHLB Loan Agreements

In December 2018, a subsidiary of the Company received a 3.094% fixed interest rate cash loan of $19.2 million from the Federal Home Loan Bank ("FHLB") Atlanta. In connection with the loan agreement, the subsidiary became a member of FHLB. Membership in the FHLB required an investment in FHLB's common stock which was purchased in December 2018 and valued at $1.4 million. Additionally, the transaction required the acquired FHLB common stock and certain other investments to be pledged as collateral. As of September 30, 2022, the fair value of the collateralized securities was $26.4 million and the equity investment in FHLB common stock was $1.2 million. For each of the nine-month periods ended September 30, 2022, and 2021, the Company made quarterly interest payments as per the terms of the loan agreement of approximately $450,500. As of September 30, 2022, and December 31, 2021, the Company also holds other common stock from FHLB Des Moines, and FHLB Boston valued at $319,100 and $215,900, respectively.

The following table summarizes the Company's long-term debt and credit facilities as of September 30, 2022 and December 31, 2021:

	September 30, 2022	*December 31, 2021*
	(in thousands)	
Convertible debt	$ 885	$ 23,413
Mortgage loan	$ 11,281	$ 11,521
Credit loan facility	$ 66,500	$ 69,125
Revolving credit facility	$ 25,000	$ —
FHLB loan agreement	$ 19,200	$ 19,200
Total principal amount	$ 122,866	$ 123,259
Deferred finance costs	$ 1,583	$ 2,502
Total long-term debt	$ 121,283	$ 120,757

After giving effect to Seventh Amendment, as of the date of this report, the Company was in compliance with the applicable terms of all its covenants and other requirements under the Credit Agreement, Convertible Notes indenture, cash borrowings and other loans. The Company's ability to secure future debt financing depends, in part, on its ability to remain in such compliance.

The covenants and other requirements under the revolving agreement represent the most restrictive provisions that the Company is subject to with respect to its long-term debt.

The schedule of principal payments on long-term debt as of September 30, 2022 is as follows:

Year	*Amount*
	(In thousands)
2022 remaining	$ 957
2023	23,039
2024	4,292
2025	5,624
2026	78,331
Thereafter	10,623
Total	$ 122,866

NOTE 15. ACCOUNTS PAYABLE AND OTHER LIABILITIES

Accounts payable and other liabilities consist of the following as of September 30, 2022 and December 31, 2021:

Description	*September 30, 2022*	*December 31, 2021*
	(In thousands)	
Deferred reinsurance ceding commission	$ 40,089	$ 40,406
Accounts payable and other payables	11,057	10,086
Accrued interest and issuance costs	575	735
Accrued dividends	72	1,634
Premium tax	1,523	871
Other liabilities	30	195
Commission payables	15,871	17,598
Total other liabilities	$ 69,217	$ 71,525

NOTE 16. STATUTORY ACCOUNTING AND REGULATIONS

State laws and regulations, as well as national regulatory agency requirements, govern the operations of all insurers such as the Company's insurance subsidiaries. The various laws and regulations require that insurers maintain minimum amounts of statutory surplus and risk-based capital, restrict insurers' ability to pay dividends, restrict the allowable investment types and investment mixes, and subject the Company's insurers to assessments.

The Company's insurance subsidiaries Heritage P&C, NBIC, Zephyr, and Pawtucket Insurance Company ("PIC") must maintain capital and surplus ratios or balances as determined by the regulatory authority of the states in which they are domiciled. Heritage P&C is required to maintain capital and surplus equal to the greater of $15 million or 10% of their respective liabilities. Zephyr is required to maintain a deposit of $750,000 in a federally insured financial institution. NBIC is required to maintain capital and surplus of $3.0 million. The combined statutory surplus for Heritage P&C, Zephyr, NBIC and PIC was $261.4 million at September 30, 2022 and $302.1 million at December 31, 2021. State law also requires the Company's insurance subsidiaries to adhere to prescribed premium-to-capital surplus ratios, and risk-based capital requirements with which the Company is in compliance. At September 30, 2022, the Company's insurance subsidiaries met the financial and regulatory requirements of each of the states in which they conduct business.

NOTE 17. COMMITMENTS AND CONTINGENCIES

The Company is involved in claims-related legal actions arising in the ordinary course of business. The Company accrues amounts resulting from claims-related legal actions in unpaid losses and loss adjustment expenses during the period that it determines an unfavorable outcome becomes probable and it can estimate the amounts. Management makes revisions to its estimates based on its analysis of subsequent information that the Company receives regarding various factors, including: (i) per claim information; (ii) company and industry historical loss experience; (iii) judicial decisions and legal developments in the awarding of damages; and (iv) trends in general economic conditions, including the effects of inflation.

NOTE 18. RELATED PARTY TRANSACTIONS

From time to time the Company has been party to various related party transactions involving certain of its officers, directors and significant stockholders, including as set forth below. The Company has entered into each of these arrangements without obligation to continue its effect in the future and the associated expense was immaterial to its results of operations or financial position as of September 30, 2022 and 2021.

- In July 2019, the Board of Directors appointed Mark Berset to the Board of Directors of the Company. Mr. Berset is also the Chief Executive Officer of Comegys Insurance Agency, Inc. ("Comegys"), an independent insurance agency that writes policies for Company. The Company pays commission to Comegys based upon standard industry rates consistent with those provided to the Company's other insurance agencies. There are no arrangements or understandings between Mr. Berset and any other persons with respect to his appointment as a director. For the three months ended September 30, 2022 and 2021, the Company paid agency commission to Comegys of approximately $53,735 and $53,900, respectively. For the nine months ended September 30, 2022 and 2021, the Company paid agency commission to Comegys of approximately $549,988 and $595,700, respectively.

NOTE 19. EMPLOYEE BENEFIT PLANS

The Company provides a 401(k) plan for substantially all employees. The Company provides a matching contribution of 100% on the first 3% of employees' contribution and 50% on the next 2% of the employees' contribution to the plan. The maximum match

is 4%. For the three and nine months ended September 30, 2022, the contributions made to the plan on behalf of the participating employees were approximately $276,090 and $1.0 million, respectively. For the three and nine months ended September 30, 2021, the contributions made to the plan on behalf of the participating employees were approximately $293,000 and $985,000, respectively.

Effective September 1, 2021, the Company terminated its self-insured healthcare plan and enrolled in a flex healthcare plan which allows employees the choice of three medical plans with a range of coverage levels and costs. For the nine months ended September 30, 2022 and 2021, the Company incurred medical premium costs including the new 2021-2022 healthcare premiums, of $3.4 million and $2.6 million, respectively. As of September 30, 2022 and December 31, 2021, the Company had $0 million and $1.4 million of unapplied insurance premiums and additional liability recorded for unpaid claims, respectively.

NOTE 20. EQUITY

The total amount of authorized capital stock consists of 50,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of September 30, 2022, the Company had 25,898,930 shares of common stock outstanding, 11,890,599 treasury shares of common stock and 715,454 unvested restricted common stock with accrued dividends reflecting total paid-in capital of $334.2 million as of such date.

As more fully disclosed in the Company's audited consolidated financial statements for the year ended December 31, 2021, there were, 26,753,511 shares of common stock outstanding, 10,536,737 treasury shares of common stock and 283,092 unvested shares of restricted common stock, representing $332.8 million of additional paid-in capital.

Common Stock

Holders of common stock are entitled to one vote for each share held on all matters subject to a vote of stockholders, subject to the rights of holders of any outstanding preferred stock. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election, subject to the rights of holders of any outstanding preferred stock. Holders of common stock will be entitled to receive ratably any dividends that the board of directors may declare out of funds legally available therefor, subject to any preferential dividend rights of outstanding preferred stock. Upon the Company's liquidation, dissolution or winding up, the holders of common stock will be entitled to receive ratably its net assets available after the payment of all debts and other liabilities and subject to the prior rights of holders of any outstanding preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. There is no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of the Company's capital stock are fully paid and non-assessable.

Stock Repurchase Program

On December 19, 2021, the Board of Directors established a new share repurchase program plan to commence upon December 31, 2021, for the purpose or repurchasing up to an aggregate of $25.0 million of Common Stock, through the open market or in such other manner as will comply with the terms of applicable federal and state securities laws and regulations, including without limitation, Rule 10b-18 under the Securities Act at any time or from time to time on or prior to December 31, 2022 (the "New Share Repurchase Plan"). For the nine months ended September 30, 2022, the Company repurchased in aggregate 1,353,862 shares of its common stock under its repurchase programs for $6.7 million.

At September 30, 2022, the Company has the capacity under the New Share Repurchase Plan to repurchase $18.3 million of its common shares until December 31, 2022.

Dividends

On March 4, 2022, the Company announced that its Board of Directors declared a $0.06 per share quarterly dividend payable on April 6, 2022 to stockholders of record as of March 17, 2022.

On May 5, 2022, the Company announced that its Board of Directors declared a $0.06 per share quarterly dividend payable on July 5, 2022 to stockholders of record as of June 14, 2022.

On August 3, 2022, the Board of Directors elected to allocate the $0.06 per share typically used to pay a quarterly dividend to shareholders to repurchase common stock totaling $1.7 million. The Board of Directors re-evaluates dividend distribution on a quarterly basis and will make a determination, in part, based on the current stock trading price as compared to book value.

The declaration and payment of any future dividends will be subject to the discretion of the Board of Directors and will depend on a variety of factors including the Company's financial condition and results of operations and the limitations under the Company's debt facilities.

NOTE 21. STOCK-BASED COMPENSATION

Common, Restricted and Performance-based Stock

The Company has adopted the Heritage Insurance Holdings, Inc., Omnibus Incentive Plan (the "Plan") effective on May 22, 2014. The Plan authorized 2,981,737 shares of common stock for issuance under the Plan for future grants. The Plan allows for a variety of equity awards including stock options, restricted stock awards and performance-based awards.

At September 30, 2022 there were 386,603 shares available for grant under the Plan. The Company recognizes compensation expense under ASC 718 for its stock-based payments based on the fair value of the awards.

Effective January 1, 2022, the Board of Directors approved the recommendations made by the Compensation Committee to revise the non-employee director compensation policy to provide that: (i) each non- employee director of the Company is entitled to an annual cash fee of $125,000, payable quarterly; (ii) each member of a committee of the Board is entitled to an additional annual cash fee of $2,500; (iii) each chair of a committee of the Board is entitled to an additional $5,000 annual cash fee; (iv) the chair of the Board, to the extent the chair is a non-employee director, is entitled to an additional annual cash fee of $20,000; and (v) each non-employee director of the Company is granted annually a number of shares of restricted stock with a value equal to $40,000 at the date of issuance, a grant date of the date of the annual meeting of stockholders of the Company and which restricted stock will vest on the earlier of the one-year anniversary of the date of issuance and the day immediately prior to the date of the following year's annual meeting of stockholders of the Company.

During the first quarter of 2022, the Company awarded 3,636 shares and 115,327 shares of time-based restricted stock with at the time of grant a fair value of $5.50 and $6.72 per share, respectively to certain employees. The time-based restricted stock will vest in two and three year equal installments on December 27, 2022, 2023 and 2024, respectively. In addition, during the first quarter of 2022, the Company awarded 10,909 shares and 245,536 shares of performance-based restricted stock with at the time grant a fair value of $5.50 and $6.72 per share, respectively. The performance-based restricted stock has a three-year performance period beginning on January 1, 2022 and ending on December 31, 2024 and will vest following the end of the performance period but no later than March 5, 2025.

In January 2022, the Company awarded to non-employee directors in aggregate 21,768 shares of restricted stock with a fair value at the time of grant of $5.88 per share. The awards will vest on the date of the next annual meeting of the Company's stockholders that occurs after the award date, provided the member remains on the Board until such date. The Company's annual shareholders meeting was held on June 23, 2022, at which time the restricted stock was effectively vested.

In June 2022, the Company awarded to non-employee directors in aggregate 99,376 shares of restricted stock with a fair value at the time of grant of $3.22 per share. The awards will vest on the earlier of the one year anniversary of the grant date and the date immediately prior to the date of the next annual meeting of the Company's stockholders that occurs after the award date, provided the member remains on the Board until such date.

For the performance-based restricted stock the numbers of shares that will be earned at the end of the performance period is subject to decrease based on the results of the performance condition.

The Plan authorizes the Company to grant stock options at exercise prices equal to the fair market value of the Company's stock on the dates the options are granted. The Company has not granted any stock options since 2015 and all unexercised stock options have since been forfeited.

Restricted Stock

The Company has also granted shares of its common stock subject to certain restrictions under the Plan. Restricted stock awards granted to employee's vest in equal installments generally over a two to five year period from the grant date subject to the recipient's continued employment. The fair value of restricted stock awards is estimated by the market price at the date of grant and amortized on a straight-line basis to expense over the period of vesting. Recipients of restricted stock awards granted prior to 2021 have the right to receive dividends; dividends accrue but are not paid until vesting for recipients of restricted stock awards granted 2021 and thereafter.

Restricted stock activity for the nine months ended September 30, 2022 is as follows:

	Number of shares	*Weighted-Average Grant-Date Fair Value per Share*
Non-vested, at December 31, 2021	283,092	$ 9.32
Granted - Performance-based restricted stock	256,445	6.67
Granted - Time-based restricted stock	240,107	5.18
Vested	(41,919)	4.81
Canceled and surrendered	(22,271)	4.40
Non-vested, at September 30, 2022	715,454	$ 7.40

Awards are being amortized to expense over the two to five-year vesting period. For the three months ended September 30, 2022 and 2021, the Company recognized $499,000 and $320,000 of compensation expense, respectively. The Company recognized $1.5 million and $867,000 of compensation expense for the nine months ended September 30, 2022 and 2021, respectively. For the nine months ended September 30, 2022, 51,768 shares of restricted stock were vested and released, all of which had been granted to employees. Of the shares released to employees, 9,849 shares were withheld by the Company to cover withholding taxes of $58,000. For the comparable period of 2021, 40,267 shares were vested and released of which 18,973 shares were withheld by the Company to cover withholding taxes of $171,000.

At September 30, 2022, there was approximately $1.2 million unrecognized expense related to time-based non-vested restricted stock and an additional $1.4 million for performance-based restricted stock, which is expected to be recognized over the remaining restriction periods as described in the table below. For the comparable period in 2021, there was $2.1 million of unrecognized expense.

Additional information regarding the Company's outstanding non-vested time-based restricted stock and performance-based restricted stock at September 30, 2022 is as follows:

Grant date	Restricted shares unvested	Share Value at Grant Date Per Share	Remaining Restriction Period (Years)
February 12, 2018	25,000	16.35	0.75
April 24, 2020	127,837	10.43	2.00
September 21, 2020	37,349	10.71	2.00
January 4, 2021	62,906	6.89	2.00
March 3, 2022	14,545	5.50	2.88
March 16, 2022	360,863	6.72	2.88
June 23, 2022	86,954	3.22	1.00
	715,454		

NOTE 22. SUBSEQUENT EVENTS

The Company performed an evaluation of subsequent events through the date the condensed consolidated financial statements were issued and determined there were no recognized or unrecognized subsequent events that would require an adjustment or additional disclosure in the condensed consolidated financial statements as of September 30, 2022.

On November 7, 2022, Heritage Insurance Holdings, Inc. and its subsidiary guarantors (together, the "Company") amended that certain Credit Agreement dated as of December 14, 2018 (as amended to date, the "Credit Agreement") by entering into the Seventh Amendment to the Credit Agreement (the "Seventh Amendment") with the lenders party to the Credit Agreement, and Regions Bank, as administrative agent, collateral agent, swingline lender and issuing bank.

The Seventh Amendment amended the Credit Agreement to, among other things, (i) decrease the revolving credit facility from $75 million to $50 million, (ii) establish a new $25 million term loan facility to refinance loans outstanding under the existing revolving credit facility and to pay fees, costs and expenses related thereto, (iii) reduce, from $50 million to $25 million, the aggregate amount of potential future increases to the revolving credit facility commitments and/or term loan commitments, (iii) modify the amortization of the existing term loan facility and new term loan facility to 10% per annum, paid quarterly, and (iii) increase the applicable margin for loans under the Credit Agreement to a range from 2.75% to 3.25% per annum for SOFR loans (plus a 0.10% credit adjustment spread) and based on a leverage ratio (an increase from the prior range of 2.50% to 3.00%).

The Seventh Amendment also modifies certain financial covenants in the Credit Agreement which may limit the Company's flexibility in connection with future financing transactions and in the allocation of capital in the future. Specifically, starting in the first quarter of 2023, the Seventh Amendment amends certain financial covenants as follows: (1) require additional leverage ratios under the Consolidated Leverage Ratio covenant (as defined in the Credit Agreement) after the initial step down to 2.50x in the second quarter of 2023 not to exceed 2.25x as of the second quarter of 2024 and 2.00x as of the second quarter of 2025, (2) apply all (A) Restricted Payments (as defined in the Credit Agreement) and (B) fee forgiveness & other capital contributions to the Company's regulated insurance companies that are not a party to the Credit Agreement ("Non-credit Parties") that exceed $38 million, when calculating (i) Consolidated Tangible Net Worth (as defined in the Credit Agreement) which is required to be not less than $100 million plus 50% of positive quarterly net income (including its subsidiaries and regulated subsidiaries) plus the net cash proceeds of any equity transactions and (ii) Consolidated Fixed Charge Ratio (as defined in the Credit Agreement) which is required to be 1.20x. The Seventh Amendment also (A) eliminates the current $10 million basket available to the Company to pay dividends to its shareholders or to repurchase its securities, (B) provides for a dividend of up to $2.0 million in the fourth quarter of 2024 under certain conditions and (C) restricts future dividends based on maintenance of certain financial ratios, including Consolidated Tangible

Net Worth. As a result, going forward, dividends and stock repurchases may be limited or restricted entirely and the Company's ability to contribute capital to its insurance subsidiaries that are not parties to the Credit Agreement may be limited.

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

You should read the following discussion in conjunction with our condensed consolidated financial statements and related notes and other information included elsewhere in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2021 ("2021 Form 10-K"). Unless the context requires otherwise, as used in this Form 10-Q, the terms "we", "us", "our", "the Company", "our Company", and similar references refer to Heritage Insurance Holdings, Inc., a Delaware corporation, and its subsidiaries.

Overview

We are a super-regional property and casualty insurance holding company that primarily provides personal and commercial residential insurance products across our multi-state footprint. We provide personal residential insurance in Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maryland, Massachusetts, Mississippi, New Jersey, New York, North Carolina, Rhode Island, South Carolina, and Virginia and commercial residential insurance in Florida, New Jersey, and New York. We provide personal residential insurance in Florida on both an admitted and non-admitted basis and in California on a non-admitted basis. As a vertically integrated insurer, we control or manage substantially all aspects of risk management, underwriting, claims processing and adjusting, actuarial rate making and reserving, customer service, and distribution. Our financial strength ratings are important to us in establishing our competitive position and can impact our ability to write policies.

Trends

Inflation, Underwriting and Pricing

We continue to address rising reinsurance and loss costs in the property insurance sector through continued implementation of increased rates, resulting in an increase in the average premium per policy of 13.6% for the quarter ended September 30, 2022 as compared to the prior year quarter. New rates, which are subject to approval by our regulators, become effective when a policy is written or renewed, and the premium is earned pro rata over the policy period of one year. As a result of this timing, it can take up to twenty-four months for the complete impact of a rate change to be fully earned in our financial statements. For that reason, we account for inflation in our rate indications and filings with our regulators.

We invest in data analytics, using software and experienced personnel, to continuously evaluate our underwriting criteria and manage exposure to catastrophe and other losses. our retention has remained steadily in the range of 90% despite the rate increases we have implemented, in large part due to a challenging property insurance market in many of the regions in which we operate. Weather losses and a higher cost of reinsurance have impacted these markets. While we believe our rates are generally competitive with private market insurers operating in our space, we are focused on managing exposure and achieving rate adequacy throughout the book of business.

We continue to experience rising inflation in the form of increased labor and material costs, which drive up claim costs throughout all states in which we conduct business. Our Florida personal lines market is also seeing claim costs impacted by litigated claims, which substantially increases loss costs thereby driving up rates for the insurance buying public. Our response to this phenomenon is a combination of raising rates and reducing exposure. Since that time the claims abuse has extended throughout much of Florida, generated from assignment of benefits, excessive roof claims, and unwarranted litigated claims which far exceeds levels experienced in other states. Correspondingly, our exposure reduction plan expanded to personal lines business throughout the state of Florida.

Our industry experienced higher reinsurance costs and more constrained availability for catastrophe excess of loss reinsurance in the Spring 2022 renewals. We anticipate continued cost increases and availability constraints for the 2023 renewal season. As described herein, we are carefully managing exposure by reducing new business written in certain geographies, non-renewing unprofitable business in compliance with regulatory requirements, increasing rates, and narrowing our underwriting requirements.

While we see improvement in the geographic distribution of our business, which is becoming more rate adequate, our Florida loss costs have continued to increase from a combination of adverse weather and exacerbation of losses on weather and other claims resultant from the litigated claims environment. Recent legislative changes have been made in Florida in each of the last three years, which we believe is making some progress toward reducing losses from abusive claim reporting practices.

The table below shows reductions in Florida policy count and total insured value ("TIV") of 17.6% and 10.3%, respectively, from the prior year quarter. During this period, Florida premium in force declined by only 2.6% as rate increases dampened the impact of the reduction in policy count. For markets outside of Florida, the premiums-in-force increased at a much larger rate than the increases in policies in force and TIV, primarily due to rate increases.

	At September 30,		
	2022	2021	% Change
Policies in force:			
Florida	188,383	228,572	-17.6%
Other States	352,989	352,714	0.1%
Total	**541,372**	**581,286**	-6.9%
Premiums in force:			
Florida	$ 569,589,537	$ 584,994,491	-2.6%
Other States	672,812,875	589,527,230	14.1%
Total	$ **1,242,402,412**	$ **1,174,521,721**	5.8%
Total Insured Value:			
Florida	$ 102,784,056,201	$ 114,537,338,974	-10.3%
Other States	304,657,398,158	284,498,624,168	7.1%
Total	$ **407,441,454,359**	$ **399,035,963,142**	2.1%

Strategic Profitability Initiatives

The following provides an update to the Company's strategic initiatives that we expect will enable Heritage to achieve consistent long-term quarterly earnings and drive shareholder value. The Supplemental Information table included in this earnings release demonstrates progress made since third quarter 2021.

- **Generate underwriting profit though rate adequacy and more selective underwriting.**
  - Premiums-in-force of $1.24 billion are up 5.8% from the prior year quarter, while policy count is down 6.9%, driven by higher rates.
  - Average premium per policy throughout the book increased 13.6% over the prior year quarter.
  - Continued focus on tightening underwriting criteria while also restricting new business written in over-concentrated markets or products.
- **Optimize capital allocation toward products and geographies that maximize long-term returns.**
  - Reduction of policy count for Florida personal lines product is a key focus and will continue if meaningful legislation to reduce abusive claims practices does not occur. Florida PRES policies in force intentionally declined by 18.8% as compared to the prior year period.
  - Continued offering of Florida commercial lines product with 18.2% growth in annual premium while value TIV increased only 4.2%.
- **Improve portfolio diversity.**
  - Diversification efforts led to a premium in-force growth of 14.1% in other States other than Florida.
  - Overall premium-in-force increase of 5.8%, despite an 8.5% reduction in Florida admitted personal lines business.
  - TIV in other states improved to 74.8%, compared to 71.3% as of the third quarter of 2021.

Recent Developments

Economic and Market Factors

We continue to monitor the effects of general changes in economic and market conditions on our business. As a result of general supply chain disruptions and inflationary pressures, we have experienced, and may continue to experience, increased cost of materials and labor needed for repairs and to otherwise remediate claims.

Goodwill Impairment Charge

We evaluate goodwill and other intangible assets for impairment annually, or whenever events or changes in circumstances indicate that it is likely that the carrying amount of goodwill and other intangible assets may exceed the implied fair value. Any impairment is charged to operations in the period that the impairment is identified. The evaluation of goodwill impairment requires considerable management judgment and includes a review of a variety of factors as described below. Any adverse change in these factors could have a significant impact on the recoverability of goodwill and could have a material impact on our financial results. During the second quarter of 2022, we concluded it was appropriate to perform an interim evaluation of goodwill for potential impairment given a variety of market factors as described below. As a result of the analysis, we impaired the entire amount of remaining goodwill, which reduced our carrying value of goodwill from $92.0 million to $0 based on the following factors: (i) disruptions in the equity markets, specifically for property and casualty insurance companies, largely due to recent weather-related catastrophe events; (ii) elevated loss ratios for property insurers in our markets; and (iii) trading of our stock below book value. These

factors reduced our previously modeled fair value of the Company and resulted in a $92.0 million non-cash goodwill impairment charge, most of which is not tax deductible.

Third Quarter 2022 Financial Results

The discussion of our financial condition and results of operations that follows provides information that will assist the reader in understanding our consolidated financial statements, the changes in certain key items in those financial statements from year to year, including certain key performance indicators such as net combined ratio, net expense ratio and net loss ratio, and the primary factors that accounted for those changes, as well as how certain accounting principles, policies and estimates affect our consolidated financial statements. This discussion should be read in conjunction with our consolidated financial statements and the related notes that appear elsewhere in this document.

- Third quarter net loss of $48.2 million or $1.83 per diluted share, compared to a net loss of $16.4 million or $0.59 per diluted share in the prior year quarter, driven primarily by current accident year weather losses including a $40 million net retention for Hurricane Ian. In addition the Company recorded a $10.7 million valuation allowance against our net deferred tax asset related to certain tax elections made by Osprey Re, our captive reinsurer domiciled in Bermuda.
- Gross premiums written of $304.5 million, up 11.1% from $274.2 million in the prior year quarter, reflecting a 4.8% rate related increase in Florida, despite a policy count reduction of approximately 40,000, and 15.4% growth in other states primarily due to rate increases. Rate increases continued to meaningfully benefit written premiums throughout the book of business.
- Gross premiums written of $304.5 million, up 11.1% from $274.2 million in the prior year quarter, reflecting a 4.8% rate related increase in Florida, despite a policy count reduction of approximately 40,000, and 15.4% growth in other states primarily due to rate increases. Rate increases continued to meaningfully benefit written premiums throughout the book of business.
- Gross premiums earned of $308.0 million, up 4.6% from $294.4 million in the prior year quarter, reflecting higher gross premiums written over the last twelve months driven by higher average premium per policy.
- Net earned premiums of $159.7 million, down 1.7% from $162.4 million in the prior year quarter, reflecting a 12.4% increase in contract year reinsurance cost with higher ceded premium outpacing the increase in gross earned premiums for the quarter.
- Net current accident year weather losses of $63.8 million, up 24.2% from $51.4 million in the prior year quarter. Current accident year catastrophe weather losses are $40.0 million up 150.5% from $16.0 million in the prior year quarter. The catastrophe loss for the current quarter represents our $40.0 million retention for Hurricane Ian. Current accident year other weather losses are $23.8 million, down 32.8% from $35.4 million in the prior year quarter.
- Ceded premium ratio of 48.1%, up 3.3 points from 44.8% in the prior year quarter driven by a higher cost of the 2022-2023 catastrophe excess of loss program, stemming from both higher costs and higher TIV.
- Net loss ratio of 97.6%, 17.8 points higher than the prior year quarter of 79.8%, driven by higher losses incurred and slightly lower net earned premium than the prior year quarter.
- Net expense ratio of 35.7%, up 3.0 points from the prior year quarter amount of 32.7%, mostly driven by the reduction of net earned premium from the prior year quarter, with a small portion of the increase related to higher underwriting costs associated with an increase in gross premiums written.
- Net combined ratio of 133.3%, up 20.8 points from 112.5% in the prior year quarter, driven by a higher net loss ratio and net expense ratio as described above.
- Effective tax rate was 2.2% compared to 6.4% in the prior year quarter, driven by the impact of permanent differences in relation to the pre-tax loss each quarter, as well as a $10.7 million valuation allowance as described above in the current period quarter.

Results of Operations

Comparison of the three months ended September 30, 2022 and 2021

Revenue

(Unaudited)	*For the Three Months Ended September 30,*			
	2022	*2021*	*$ Change*	*% Change*
		(in thousands)		
REVENUE:				
Gross premiums written	$ 304,501	$ 274,178	$ 30,323	11.1 %
Change in gross unearned premiums	3,458	20,231	(16,773)	(82.9)%
Gross premiums earned	307,959	294,409	13,550	4.6 %
Ceded premiums earned	(148,266)	(131,964)	(16,302)	12.4 %
Net premiums earned	159,693	162,445	(2,752)	(1.7)%
Net investment income	2,887	1,548	1,339	86.5 %
Net realized losses	(3)	(6)	3	(50.0)%
Other revenue	2,916	3,421	(505)	(14.8)%
Total revenue	$ 165,493	$ 167,408	$ (1,916)	(1.1)%

Total revenue

Total revenue was $165.5 million in the third quarter of 2022, down 1.1% from $167.4 million in the prior year quarter. The decrease primarily stems from lower net premiums earned, driven by higher reinsurance costs, partly offset by an increase in investment income, as described in detail below.

Gross premiums written

Gross premiums written were $304.5 million, up 11.1% from $274.2 million the prior year quarter, reflecting a 4.8% growth in Florida and 15.4% growth in other states, primarily from increased rates as well as a small increase in policy count in states outside of Florida. Rate increases continued to meaningfully benefit written premiums throughout the book of business.

Premiums-in-force were $1.24 billion in the third quarter of 2022, up 5.8% from third quarter 2021, while policies-in-force were down 6.9%. The increase in premiums-in-force reflects the impact of rate increases more than offsetting the premiums associated with the reduction in policies-in-force. The reduction in policies-in-force from the third quarter of 2021 reflects our exposure management initiatives.

Gross premiums earned

Gross premiums earned were $308.0 million in the third quarter of 2022, up 4.6% from $294.4 million in the prior year quarter. The increase reflects higher gross premiums written over the last twelve months, which is primarily related to higher rates on a smaller book of business based on policy count.

Ceded premiums earned

Ceded premiums earned were $148.3 million in the third quarter of 2022, up 12.4% from $132.0 million in the prior year quarter. The growth results primarily from higher reinsurance costs due to market conditions and higher TIV, as well as higher ceded premium for our net quota share reinsurance program, driven by growth in our northeast business.

Net premiums earned

Net premiums earned were $159.7 million in the third quarter of 2022, down 1.7% from $162.4 million in the prior year quarter, reflecting a 12.4% increase in contract year reinsurance cost with higher ceded premium outpacing the increase in gross earned premiums for the quarter.

Net investment income

Net investment income, inclusive of realized investment gains and unrealized gains on equity securities, was $2.9 million in the third quarter 2022, compared to a net investment gain of $1.5 million in the prior year quarter. The increase is driven by a higher interest rate environment compared to the prior year quarter.

Other revenue

Other revenue was $2.9 million in the third quarter of 2022, down by 14.8% from $3.4 million in the prior year quarter, driven primarily by a decline in policy fee income associated with the reduction of policies in force.

(Unaudited)	For the Three Months Ended September 30, 2022	2021	$ Change	% Change
OPERATING EXPENSES:		(in thousands)		
Losses and loss adjustment expenses	$ 155,849	$ 129,632	$ 26,217	20.2 %
Policy acquisition costs	39,194	35,984	3,210	8.9 %
General and administrative expenses	17,758	17,169	589	3.4 %
Total operating expenses	212,801	182,785	30,017	16.4 %

Total operating expenses

Total operating expenses were up $30.0 million, or 16.4% in the third quarter of 2022. As described below, the driver was primarily from the increase in losses and loss adjustment expenses as well as an increase in acquisition costs.

Losses and loss adjustment expenses

Losses and loss adjustment expenses ("LAE") were $155.8 million in the third quarter of 2022, up from $129.6 million in the prior year quarter driven by higher weather and attritional losses. Net current accident year weather losses were $63.8 million, up 24.2% from $51.4 million in the prior year quarter. Current accident year weather losses include $40.0 million of net current accident quarter catastrophe losses from Hurricane Ian, up from $16.0 million in the prior year quarter, and $23.8 million of other weather losses, down from $35.4 million in the prior year quarter.

Policy acquisition costs

Policy acquisition costs were $39.2 million in the third quarter of 2022, up 8.9% from $36.0 million in the prior year quarter. The increase is primarily attributable to growth of 11.1% in gross premiums written.

General and administrative expenses

General and administrative expenses were $17.8 million in the third quarter of 2022, up 3.4% from $17.2 million in the prior year quarter, driven primarily by compensation related items.

(Unaudited)	For the Three Months Ended September 30, 2022	2021	$ Change	% Change
	(in thousands, except per share and share amounts)			
Operating loss	$ (47,308)	$ (15,377)	$ (31,931)	207.7 %
Interest expense, net	2,027	2,150	(123)	(5.7)%
Loss before income taxes	(49,335)	(17,527)	(31,809)	181.5 %
Benefit for income taxes	(1,095)	(1,117)	23	(2.0)%
Net loss	$ (48,240)	$ (16,410)	$ (31,831)	194.0 %
Basic net loss per share	$ (1.83)	$ (0.59)	$ (1.24)	210.2 %
Diluted net loss per share	$ (1.83)	$ (0.59)	$ (1.24)	210.2 %

Net loss

Third quarter 2022 net loss was $48.2 million ($1.83 loss per share), down from net loss of $16.4 million ($0.59 loss per share) in the prior year quarter, driven primarily from the increase in net losses and loss adjustment expenses incurred as described above and the relatively small benefit for income taxes as described below.

Interest expense, net

Net interest expense was $2.0 million in the third quarter of 2022, slightly down from $2.2 million in the prior year quarter mostly due to a reduction in debt discount associated with the repurchase of convertible notes in the second quarter of 2022.

Benefit for income taxes

Benefit for income taxes was $1.1 million in third quarter 2022 compared to $1.1 million in the prior year quarter. The effective tax rate in third quarter 2022 was impacted by the impact of permanent tax differences on projected results of operations for the calendar year as well as impacts to the effective tax rate, which can also fluctuate throughout the year as estimates used in the quarterly tax provision are updated with additional information. The effective tax rate was 2.2% compared to 6.4% in the prior year quarter, driven by the impact of permanent differences in relation to the pre-tax loss each quarter, as well as a $10.7 million valuation allowance in the current period quarter. The valuation allowance was recorded against our deferred tax asset related to our captive

reinsurer, Osprey Re, for which net operating losses can only be used to offset income at Osprey Re due to the 953(d) election made when Osprey Re was formed. This was accounted for as an increase of income tax expense for the quarter.

Ratios

	For the Three Months Ended September 30,	
(Unaudited)	***2022***	***2021***
Ceded premium ratio	48.1 %	44.8 %
Net loss and LAE ratio	97.6 %	79.8 %
Net expense ratio	35.7 %	32.7 %
Net combined ratio	133.3 %	112.5 %

Net combined ratio

The net combined ratio was 133.3% in the third quarter of 2022, up 20.8 points from 112.5% in the prior year quarter. The increase stems primarily from the increase in the net loss and LAE ratio, as described below.

Ceded premium ratio

The ceded premium ratio was 48.1% in the third quarter of 2022, up 3.3 points from 44.8% in the prior year quarter, reflecting a higher cost of the 2022-2023 catastrophe excess of loss program, stemming from both higher costs and higher TIV, driving the growth in ceded premiums earned to outpace the growth in gross premiums earned described above.

Net loss and LAE ratio

The net loss and LAE ratio was 97.6% in the third quarter of 2022, up 17.8 points from 79.8% in the prior year quarter, driven by higher weather and attritional losses. Net current accident year weather losses of $63.8 million, up 24.2% from $51.4 million in the prior year quarter. Current accident year weather losses include $40.0 million of net current accident quarter catastrophe losses from Hurricane Ian, up from $16.0 million in the prior year quarter, and $23.8 million of other weather losses, down from $35.4 million in the prior year quarter.

Net expense ratio

The net expense ratio was 35.7% in the third quarter of 2022, up 3.0 points from 32.7% in the prior year quarter. This was driven by higher underwriting costs associated with the growth in gross premiums written.

Results of Operations

Comparison of the Nine Months Ended September 30, 2022 and 2021

	For the Nine Months Ended September 30,			
	2022	***2021***	***$ Change***	***% Change***
(Unaudited)		***(in thousands)***		
REVENUE:				
Gross premiums written	$ 952,981	$ 886,059	$ 66,922	7.6 %
Change in gross unearned premiums	(61,442)	(35,593)	(25,849)	72.6 %
Gross premiums earned	891,539	850,466	41,073	4.8 %
Ceded premiums earned	(420,645)	(399,323)	(21,322)	5.3 %
Net premiums earned	470,894	451,143	19,751	4.4 %
Net investment income	7,050	3,797	3,253	85.7 %
Net realized losses	(121)	(926)	805	(86.9)%
Other revenue	10,049	10,835	(786)	(7.3)%
Total revenue	$ 487,872	$ 464,849	$ 23,022	5.0 %

Total revenue

Total revenue was $487.9 million for the nine months ended September 30, 2022, up 5.0% from $464.8 million in the prior year period. The increase primarily stems from higher net premiums earned and investment income, as described below.

Gross premiums written

Gross premiums written were $953.0 million for the nine months ended September 30. 2022, up 7.6% from $886.1 million in the prior year period. We experienced growth of 13.1% outside of Florida and 1.8% growth in Florida. Growth throughout our book of business was largely driven by rate increases resulting in a higher average premium per policy.

Premiums-in-force were $1.24 billion in the third quarter of 2022, up 5.8% from third quarter 2021, while policies-in-force were down 6.9%, with the difference largely stemming from rate increases. The reduction in policies-in-force from the third quarter of 2021 reflects our exposure management initiatives.

Gross premiums earned

Gross premiums earned were $891.5 million for the nine months ended September 30. 2022, up 7.0% from $850.5 million in the prior year period. The increase reflects higher gross premiums written over the preceding twelve months, driven primarily by higher rates.

Ceded premiums earned

Ceded premiums earned were $420.6 million for the nine months ended September 30, 2022, up 5.3% from $399.3 million in the prior year period. The increase is attributable to the higher cost of the current year catastrophe excess of loss contract for which the impact was partly offset by a $18 million ceded premium on the severe convective storm contract included in the prior year amount.

Net premiums earned

Net premiums earned were $470.9 million for the nine months ended September 30, 2022, up 4.4% from $451.1 million in the prior year period. On a year-to-date basis, growth in gross premiums earned exceeded the growth in ceded premiums earned. However, on a quarter-to-date basis, the growth in ceded premiums earned exceeded the growth in gross premiums earned. This relates primarily to the cost of our severe convective storm reinsurance contract in 2021, which was fully earned by the second quarter of 2021.

Net investment income

Net investment income, inclusive of realized investment gains and unrealized gains on equity securities, was $6.9 million for the nine months ended September 30, 2022, compared to $2.9 million in the prior year period. The increase is primarily due to higher balances in our fixed income portfolio than the prior nine-month period, coupled with a higher interest rate environment.

Other revenue

Other revenue was $10.0 million for the nine months ended September 30, 2022, down 7.3% from $10.8 million in the prior year period, driven primarily by a decline in policy fee income associated with the reduction of policies in force.

	For the Nine Months Ended September 30,			
(Unaudited)	***2022***	***2021***	***$ Change***	***% Change***
OPERATING EXPENSES:		***(in thousands)***		
Losses and loss adjustment expenses	$ 397,409	$ 328,376	$ 69,033	21.0%
Policy acquisition costs	115,826	109,183	6,643	6.1%
General and administrative expenses	54,947	52,490	2,457	4.7%
Goodwill impairment	91,959	—	91,959	NM
Total operating expenses	660,141	490,049	170,092	34.7%

NM -Not meaningful

Total operating expenses

Total operating expenses were $660.1 million for the nine months ended September 30, 2022, up 34.7% from $490.0 million in the prior year period, primarily due to the $92.0 million pre-tax goodwill impairment charge taken in the second quarter of 2022, and a $69.0 million increase in losses and loss adjustment expenses detailed below.

Losses and loss adjustment expenses

Losses and LAE were $397.4 million for the nine months ended September 30, 2022, up 21.0% from $328.4 million in the prior year period driven by higher weather and attritional losses. Net current accident year weather losses were $165.7 million, up 40.1% from $118.3 million in the prior year period. Current accident year catastrophe weather losses were $117.1 million, up from $55.8 million in the prior year period, with current accident year other weather losses of $48.6 million, down from $62.5 million in the prior year period. Net current accident year catastrophe weather losses include a $40.0 million retention for Hurricane Ian.

Policy acquisition costs

Policy acquisition costs were $115.8 million for the nine months ended September 30, 2022, up 6.1% from $109.2 million in the prior year period. The increase is primarily attributable to growth in gross premiums written.

General and administrative expenses

General and administrative expenses were $54.7 million for the nine months ended September 30, 2022, up 4.7% from $52.5 million in the prior year period. The increase is primarily attributable to a $1.5 million state tax credit recorded in the prior year period.

Goodwill impairment

As a result of our analysis for goodwill impairment performed during the second quarter of 2022, we impaired the entire amount of remaining goodwill, reducing our carrying value of goodwill from $92.0 million to $0. See the section titled "Goodwill Impairment Charge" above for more detail on our goodwill impairment charge.

(Unaudited)	***For the Nine Months Ended September 30,***			
	2022	***2021***	***$ Change***	***% Change***
	(in thousands, except per share and share amounts)			
Operating loss	$ (172,269)	$ (25,200)	$ (147,069)	NM
Interest expense, net	5,750	5,953	(203)	(3.4)%
Loss before income taxes	(178,019)	(31,153)	(146,866)	471.4%
Benefit for income taxes	(11,155)	(5,644)	(5,511)	97.6%
Net loss	$ (166,864)	$ (25,509)	$ (141,355)	NM
Basic net loss per share	$ (6.29)	$ (0.91)	$ (5.37)	NM
Diluted net loss per share	$ (6.29)	$ (0.91)	$ (5.37)	NM

NM -Not meaningful

Net loss

Net loss for the nine months ended September 30, 2022 was $166.9 million ($6.29 loss per share), compared to a net loss of $25.5 million ($0.91 loss per share) in the prior year period. The year-over-year change primarily stems from a $90.8 million (net of a $1.2 million tax deductible portion) non-cash goodwill impairment charge, as described above, coupled with an underwriting loss generated for the nine-month period driven by higher weather and attritional losses over the prior period, which includes a net retention of $40.0 million related to Hurricane Ian, as described above. Additionally, the benefit for income taxes was lower than our statutory rate, as described below.

Interest expense, net

Net interest expense was $5.8 million for the nine months ended September 30, 2022, slightly down from the prior year period.

Benefit for income taxes

Benefit for income taxes was $11.2 million for the nine months ended September 30, 2022 compared to $5.6 million in the prior year period. The effective tax rate was 6.3% for the nine months ended September 30, 2022 compared to 18.1% for the prior year period. The effective tax rate for the nine months ended September 30, 2022 was impacted by the mostly non-deductible goodwill impairment charge as described above as well as a valuation allowance of $10.7 million recorded against our deferred tax asset, related to our captive reinsurer, Osprey Re, related to the IRC Section 953(d) election made when Osprey Re was formed. As a result of this election, net operating losses for Osprey Re may only be used to offset taxable income at Osprey Re.

The impact of permanent tax differences on projected results of operations for the calendar year also impacts the effective tax rate, which can also fluctuate throughout the year as estimates used in the quarterly tax provision are updated with additional information.

Ratios

(Unaudited)	***For the Nine Months Ended September 30,***	
	2022	***2021***
Ceded premium ratio	47.2%	47.0%
Net loss and LAE ratio	84.4%	72.8%
Net expense ratio	36.3%	35.8%
Net combined ratio	120.7%	108.6%

Net combined ratio

The net combined ratio was 120.7% for the nine-month period ended September 30, 2022, up 12.1 points from 108.6% in the prior year period. The increase primarily stems from a higher net loss and LAE ratio as well as a small increase in the net expense ratio, as described below.

Ceded premium ratio

The ceded premium ratio was 47.2% for the nine-month period ended September 30, 2022, relatively flat from 47.0% in the prior year period. The cost of the current year catastrophe excess of loss contract was higher than the prior year but the impact was partly offset by a $18 million ceded premium on the severe convective storm contract included in the prior year amount.

Net loss and LAE ratio

The net loss and LAE ratio was 84.4% for the nine-month period ended September 30, 2022, up 11.6 points from 72.8% in the prior year period, driven by higher weather and attritional losses, including the $40 million retention for Hurricane Ian, compared to the prior year period, which was partly offset by the 4.4% increase in net premiums earned.

Net expense ratio

The net expense ratio was 36.3% for the nine-month period ended September 30, 2022, slightly up from 35.8% in the prior year period, driven by a lower PAC ratio.

Liquidity and Capital Resources

Our principal sources of liquidity include cash flows generated from operations, existing cash and cash equivalents, our marketable securities balances and borrowings available under our credit facilities. As of September 30, 2022, we had $297.5 million of cash and cash equivalents and $651.8 million in investments, compared to $359.3 million and $694.7 million, respectively, as of December 31, 2021. The decrease in cash and cash equivalents was primarily due to the timing of reinsurance payments for our catastrophe excess of loss program as well as timing of reinsurance recoveries. The decrease in investments is due to the unrealized losses on the Company's available-for-sale fixed income securities portfolio. The unrealized losses resulted from the continued decline in bond prices throughout 2022 as a result of the higher interest rate environment. The Company's fixed income portfolio average credit rating is A+ with a duration of 3.4 years at September 30, 2022.

We generally hold substantial cash balances to meet seasonal liquidity needs including amounts to pay quarterly reinsurance installments as well as meet the collateral requirements of Osprey, our captive reinsurance company, which is required to maintain a collateral trust account equal to the risk that it assumes from our insurance company affiliates.

We believe that our sources of liquidity are adequate to meet our cash requirements for at least the next twelve months.

We may continue to pursue the acquisition of complementary businesses and make strategic investments. We may increase capital expenditures consistent with our investment plans and anticipated growth strategy. Cash and cash equivalents may not be sufficient to fund such expenditures. As such, in addition to the use of our existing Credit Facilities, we may need to utilize additional debt to secure funds for such purposes.

As part of the Seventh Amendment to the Credit Agreement, discussed below, going forward, dividends and stock repurchases may be limited or restricted entirely and our ability to contribute capital to our insurance subsidiaries that are not parties to the Credit Agreement may be limited.

Cash Flows

	For the Nine Months Ended September 30,		
	2022	***2021***	***Change***
		(in thousands)	
Net cash (used in) provided by:			
Operating activities	$ (15,480)	$ 72,772	$ (88,252)
Investing activities	(33,507)	(112,927)	79,420
Financing activities	(11,952)	(7,402)	(4,550)
Net (decrease) increase in cash and cash equivalents	$ (60,939)	$ (47,557)	$ (13,382)

Operating Activities

Net cash used in operating activities was $15.5 million for the nine months ended September 30, 2022 compared to net cash provided by operating activities of $72.8 million for the comparable period in 2021. The decrease in cash from operating activities

relates primarily to timing of cash flows associated with claim and reinsurance payments as well as reinsurance reimbursements during the first nine months of 2022 compared to the first nine months of 2021.

Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2022 was $33.5 million as compared to net cash used in investing activities of $112.9 million for the comparable period in 2021. The change in cash used in investing activities relates primarily to allocations of funds for investment in each period. Strategic sales of investments to yield realized gains in 2020 produced proceeds which were re-invested in 2021, driving up the cash used for investing activities for that period.

Financing Activities

Net cash used in financing activities for the nine months ended September 30, 2022 was $12.0 million, as compared to cash used in financing activities of $7.4 million for the comparable period in 2021. The increase in cash used for financing activities was driven by draws from our Revolving Credit Facility (defined below) totaling $25 million to purchase and retire $22.5 million of Convertible Notes and a larger amount of treasury stock purchases during the nine months ended September 30, 2022.

Credit Facilities

The Company is party to a Credit Agreement by and among the Company, as borrower, certain subsidiaries of the Company from time to time party thereto as guarantors, the lenders from time to time party thereto (the "Lenders"), Regions Bank, as Administrative Agent and Collateral Agent, BMO Harris Bank N.A., as Syndication Agent, Hancock Whitney Bank and Canadian Imperial Bank of Commerce, as Co-Documentation Agents, and Regions Capital Markets and BMO Capital Markets Corp., as Joint Lead Arrangers and Joint Bookrunners (as amended from time to time, the "Credit Agreement").

Based on the Company's results for the third quarter of 2022, management considered it likely at that time that the Company would be out of compliance with certain financial covenants in the Credit Agreement. In order to avoid a covenant violation, on November 7, 2022, the Company and its subsidiary guarantors entered into an amendment to the Credit Agreement to, among other things, (i) decrease the revolving credit facility from $75 million to $50 million, (ii) establish a new $25 million term loan facility to refinance loans outstanding under the existing revolving credit facility and to pay fees, costs and expenses related thereto, (iii) reduce, from $50 million to $25 million, the aggregate amount of potential future increases to the revolving credit facility commitments and/or term loan commitments, (iii) modify the amortization of the existing term loan facility and new term loan facility to 10% per annum, paid quarterly, and (iii) increase the applicable margin for loans under the Credit Agreement to a range from 2.75% to 3.25% per annum for SOFR loans (plus a 0.10% credit adjustment spread) and based on a leverage ratio (an increase from the prior range of 2.50% to 3.00%). The Seventh Amendment also modified certain financial covenants in the Credit Agreement which may limit the Company's flexibility in connection with future financing transactions and in the allocation of capital in the future, including the Company's ability to pay dividends and make stock repurchases, and contribute capital to its insurance subsidiaries that are not parties to the Credit Agreement. For additional information regarding the changes to the financial covenants in the Credit Agreement, refer to Part II, Item 5, "Other Information" in this Quarterly Report on Form 10-Q.

The Credit Agreement, as amended, provides for (1) a five-year senior secured term loan facility in an aggregate principal amount of $100 million (the "Term Loan Facility") and (2) a five-year senior secured revolving credit facility in an aggregate principal amount of $50 million (inclusive of a sublimit for the issuance of letters of credit equal to the unused amount of the revolving credit facility and a sublimit for swingline loans equal to the lesser of $25 million and the unused amount of the revolving credit facility) (the "Revolving Credit Facility" and together with the Term Loan Facility, the "Credit Facilities").

Term Loan Facility. As amended by the Seventh Amendment, the principal amount of the Term Loan Facility amortizes in quarterly installments, which began with the close of the fiscal quarter ending March 31, 2019, in an amount equal to $1.9 million per quarter, payable quarterly, decreasing to $875,000 per quarter commencing with the quarter ending December 31, 2021, and increasing to $2.4 million per quarter commencing with the quarter ending December 31, 2022, with the remaining balance payable at maturity. The Term Loan Facility matures on July 28, 2026. As of September 30, 2022, there was $66.5 million in aggregate principal outstanding on the Term Loan Facility and as of November 7, 2022, after giving effect to the additional term loan advance that was used to refinance amounts outstanding under the Revolving Credit Facility and to pay fees, costs and expenses related thereto, there was $73.9 million in aggregate principal outstanding on the Term Loan Facility.

Revolving Credit Facility. The Revolving Credit Facility allows for borrowings of up to $50 million inclusive of a sublimit for the issuance of letters of credit equal to the unused amount of the Revolving Credit Facility and a sublimit for swingline loans equal to the lesser of $25 million and the unused amount of the Revolving Credit Facility. As of September 30, 2022, we had $25.0 million in borrowings and a $22.6 million letters of credit outstanding under the Revolving Credit Facility. In connection with the incurrence of additional amounts under the Term Loan Facility pursuant to the Seventh Amendment, the borrowings under the Revolving Credit Facility were repaid in full.

At our option, borrowings under the Credit Facilities bear interest at rates equal to either (1) a rate determined by reference to SOFR, plus an applicable margin (described below) and a credit adjustment spread equal to 0.10% or (2) a base rate determined by reference to the highest of (a) the "prime rate" of Regions Bank, (b) the federal funds rate plus 0.50%, and (c) the adjusted term SOFR in effect on such day for an interest period of one month plus 1.00%, plus an applicable margin (described below).

The applicable margin for loans under the Credit Facilities varies from 2.75% per annum to 3.25% per annum (for SOFR loans) and 1.75% to 2.25% per annum (for base rate loans) based on our consolidated leverage ratio ranging from 1.25-to-1 to greater than 2.25-to-1. Interest payments with respect to the Credit Facilities are required either on a quarterly basis (for base rate loans) or at the end of each interest period (for SOFR loans) or, if the duration of the applicable interest period exceeds three months, then every three months. As of September 30, 2022, the borrowing under our Credit Facilities were accruing interest at a rate of 5.88% per annum.

In addition to paying interest on outstanding borrowings under the Revolving Credit Facility, we are required to pay a quarterly commitment fee based on the unused portion of the Revolving Credit Facility, which is determined by our consolidated leverage ratio.

We may prepay the loans under the Credit Facilities, in whole or in part, at any time without premium or penalty, subject to certain conditions including minimum amounts and reimbursement of certain costs in the case of prepayments of SOFR loans. In addition, we are required to prepay the loan under the Term Loan Facility with the proceeds from certain financing transactions, involuntary dispositions or asset sales (subject, in the case of asset sales, to reinvestment rights).

All obligations under the Credit Facilities are or will be guaranteed by each existing and future direct and indirect wholly owned domestic subsidiary of the Company, other than all of the Company's current and future regulated insurance subsidiaries (collectively, the "Guarantors").

The Company and the Guarantors are party to a Pledge and Security Agreement, (as amended from time to time the "Security Agreement"), in favor of Regions Bank, as collateral agent. Pursuant to the Security Agreement, amounts borrowed under the Credit Facilities are secured on a first priority basis by a perfected security interest in substantially all of the present and future assets of the Company and each Guarantor (subject to certain exceptions), including all of the capital stock of the Company's domestic subsidiaries, other than its regulated insurance subsidiaries.

The Credit Agreement contains, among other things, covenants, representations and warranties and events of default customary for facilities of this type. The Company is required to maintain, as of each fiscal quarter (1) a maximum consolidated leverage ratio of 2.50 to 1.00, stepping down to 2.25 to 1.00 as of the second quarter of 2024 and 2.00 to 1.00 as of the second quarter of 2025, (2) a minimum consolidated fixed charge coverage ratio of 1.20 to 1.00 and (3) a minimum consolidated net worth for the Company and its subsidiaries, which is required to be not less than $100 million plus 50% of positive quarterly net income (including its subsidiaries and regulated subsidiaries) plus the net cash proceeds of any equity transactions. Events of default include, among other events, (i) nonpayment of principal, interest, fees or other amounts; (ii) failure to perform or observe certain covenants set forth in the Credit Agreement; (iii) breach of any representation or warranty; (iv) cross-default to other indebtedness; (v) bankruptcy and insolvency defaults; (vi) monetary judgment defaults and material nonmonetary judgment defaults; (vii) customary ERISA defaults; (viii) a change of control of the Company; and (ix) failure to maintain specified catastrophe retentions in each of the Company's regulated insurance subsidiaries.

Convertible Notes

On August 10, 2017, the Company and Heritage MGA, LLC (the "Notes Guarantor") entered into a purchase agreement (the "Purchase Agreement") with Citigroup Global Markets Inc., as the initial purchaser (the "Initial Purchaser"), pursuant to which the Company agreed to issue and sell, and the Initial Purchaser agreed to purchase, $125.0 million aggregate principal amount of the Company's 5.875% Convertible Senior Notes due 2037 (the "Convertible Notes") in a private placement transaction pursuant to Rule 144A under the Securities Act, as amended (the "Securities Act"). The Purchase Agreement contained customary representations, warranties and agreements of the Company and the Notes Guarantor and customary conditions to closing, indemnification rights and obligations of the parties and termination provisions. The net proceeds from the offering of the Convertible Notes, after deducting discounts and commissions and estimated offering expenses payable by the Company, were approximately $120.5 million. The offering of the Convertible Notes was completed on August 16, 2017.

The Company issued the Convertible Notes under an Indenture (the "Convertible Note Indenture"), dated August 16, 2017, by and among the Company, as issuer, the Notes Guarantor, as guarantor, and Wilmington Trust, National Association, as trustee (the "Trustee").

The Convertible Notes bear interest at a rate of 5.875% per year. Interest is payable semi-annually in arrears, on February 1 and August 1 of each year. The Convertible Notes are senior unsecured obligations of the Company that rank senior in right of payment to the Company's future indebtedness that is expressly subordinated in right of payment to the Convertible Notes; equal in right of payment to the Company's unsecured indebtedness that is not so subordinated; effectively junior to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness or other

liabilities incurred by the Company's subsidiaries other than the Notes Guarantor, which fully and unconditionally guarantee the Convertible Notes on a senior unsecured basis.

The Convertible Notes mature on August 1, 2037, unless earlier repurchased, redeemed or converted.

Holders may convert their Convertible Notes at any time prior to the close of business on the business day immediately preceding February 1, 2037, other than during the period from, and including, February 1, 2022 to the close of business on the second business day immediately preceding August 5, 2022, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on September 30, 2017, if the closing sale price of the Company's common stock, for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the calendar quarter immediately preceding the calendar quarter in which the conversion occurs, is more than 130% of the conversion price of the Convertible Notes in effect on each applicable trading day; (2) during the ten consecutive business-day period following any five consecutive trading-day period in which the trading price for the Convertible Notes for each such trading day was less than 98% of the closing sale price of the Company's common stock on such date multiplied by the then-current conversion rate; (3) if the Company calls any or all of the Convertible Notes for redemption, at any time prior to the close of business on the second business day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events.

During the period from and including February 1, 2022 to the close of business on the second business day immediately preceding August 5, 2022, and on or after February 1, 2037 until the close of business on the second business day immediately preceding August 1, 2037, holders may surrender their Convertible Notes for conversion at any time, regardless of the foregoing circumstances.

The conversion rate for the Convertible Notes was initially 67.0264 shares of common stock per $1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately $14.92 per share of common stock). The conversion rate is subject to adjustment in certain circumstances and is subject to increase for holders that elect to convert their Convertible Notes in connection with certain corporate transactions (but not, at the Company's election, a public acquirer change of control (as defined in the Convertible Note Indenture)) that occur prior to August 5, 2022.

Upon the occurrence of a fundamental change (as defined in the Convertible Note Indenture) (but not, at the Company's election, a public acquirer change of control (as defined in the Convertible Note Indenture), holders of the Convertible Notes may require the Company to repurchase for cash all or a portion of their Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

Except as described below, the Company may not redeem the Convertible Notes prior to August 5, 2022. On or after August 5, 2022 but prior to February 1, 2037, the Company may redeem for cash all or any portion of the Convertible Notes, at the Company's option, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. No sinking fund is provided for the Convertible Notes, which means that the Company is not required to redeem or retire the Convertible Notes periodically. Holders of the Convertible Notes are able to cause the Company to repurchase their Convertible Notes for cash on any of August 1, 2022, August 1, 2027 and August 1, 2032, in each case at 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the relevant repurchase date.

The Convertible Note Indenture contains customary terms and covenants and events of default. If an Event of Default (as defined in the Convertible Note Indenture) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in aggregate principal amount of the Convertible Notes then outstanding by notice to the Company and the Trustee, may declare 100% of the principal of, and accrued and unpaid interest, if any, on, all the Convertible Notes to be immediately due and payable. In the case of certain events of bankruptcy, insolvency or reorganization (as set forth in the Convertible Note Indenture) with respect to the Company, 100% of the principal of, and accrued and unpaid interest, if any, on, the Notes automatically become immediately due and payable.

In January 2022, the Company repurchased $11.7 million principal amount of outstanding Convertible Notes. As of September 30, 2022, there was $885,000 principal amount of outstanding Convertible Notes, net of $21.1 million of Convertible Notes held by an insurance company subsidiary.

As discussed above, holders of the Convertible Notes issued by the Company had an optional put right, pursuant to the indenture governing the Convertible Notes, to require the Company to repurchase the aggregate principal amount of Convertible Notes that are validly tendered. The Company has received notice from the Depositary for the Convertible Notes that, on July 29, 2022, $10,895,000 aggregate principal amount of the Convertible Notes has been validly tendered in accordance with the terms of the indenture and the Company's notice with respect to the optional put right of the Convertible Notes, and the Company has requested that the trustee cancel the Convertible Notes tendered. The outstanding balance as of September 30, 2022 of non-affiliated Notes was $11.8 million. On August 1, 2022, the Company made payments for the principal amount of the Convertible Notes tendered and unpaid interest in the aggregate amounts of $10.9 million and $320,041, respectively. The Company has drawn $10.0 million from its revolver to replenish the cash used to pay the $10.9 million for the purchase of the tendered Convertible Notes.

FHLB Loan Agreements

In December 2018, a subsidiary of the Company pledged U.S. government and agency fixed maturity securities with an estimated fair value of $26.4 million as collateral and received $19.2 million in a cash loan under an advance agreement with the FHLB Atlanta. The loan originated on December 12, 2018 and bears a fixed interest rate of 3.094% with interest payments due quarterly commencing in March 2019. The principal balance on the loan has a maturity date of December 13, 2023. In connection with the agreement, the subsidiary became a member of FHLB. Membership in the FHLB required an investment in FHLB's common stock which was purchased on December 31, 2018 and valued at $1.4 million. As of September 30, 2022, the common stock is value at $1.2 million. The subsidiary is permitted to withdraw any portion of the pledged collateral over the minimum collateral requirement at any time, other than in the event of a default by the subsidiary. The proceeds from the loan was used to prepay the Company's Senior Secured Notes due 2023 in 2018.

Critical Accounting Policies and Estimates

When we prepare our condensed consolidated financial statements and accompanying notes in conformity with U.S. generally accepted accounting principles (GAAP), we must make estimates and assumptions about future events that affect the amounts we report. Certain of these estimates result from judgments that can be subjective and complex. As a result of that subjectivity and complexity, and because we continuously evaluate these estimates and assumptions based on a variety of factors, actual results could materially differ from our estimates and assumptions if changes in one or more factors require us to make accounting adjustments. In September 2022, we assessed our deferred tax position and recorded a $10.7 million valuation against our net deferred tax asset at September 30, 2022. We intend to continue maintaining the valuation allowance on our net deferred tax asset until there is sufficient evidence to support the reversal of all or some portion of the allowance. We have made no other material changes or additions with regard to those policies and estimates as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2021.

Seasonality of our Business

Our insurance business is seasonal; hurricanes typically occur during the period from June 1 through November 30 and winter storms generally impact the first and fourth quarters each year. With our catastrophe reinsurance program effective on June 1 each year, any variation in the cost of our reinsurance, whether due to changes to reinsurance rates or changes in the total insured value of our policy base will occur and be reflected in our financial results beginning June 1 of each year, subject to certain adjustments.

Recent Accounting Pronouncements

The information set forth under Note 1 to the condensed consolidated financial statements under the caption "Basis of Presentation and Significant Accounting Policies" is incorporated herein by reference. We do not expect any recently issued accounting pronouncements to have a material effect on our condensed consolidated financial statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

The duration of the financial instruments held in our portfolio that are subject to interest rate risk was 3.358 years and 3.891 years at September 30, 2022 and 2021, and 3.903 years at December 31, 2021. As interest rates continue to rise, the fair value of our fixed rate debt securities are subject to decline. Credit risk results from uncertainty in a counterparty's ability to meet its obligations. Credit risk is managed by maintaining a high credit quality fixed maturity securities portfolio. As of September 30, 2022, the estimated weighted-average credit quality rating of the fixed maturity securities portfolio was A+, at fair value, consistent with the average rating at December 31, 2021.

Under the amended term loan agreement dated November 7, 2022, borrowings under the Credit Facilities bear interest at rates equal to either (1) a rate determined by reference to SOFR, plus an applicable margin and a credit adjustment spread equal to 0.10% or (2) a base rate determined by reference to the highest of (a) the "prime rate" of Regions Bank, (b) the federal funds rate plus 0.50%, and (c) the adjusted term SOFR in effect on such day for an interest period of one month plus 1.00%, plus an applicable margin, eliminating any reference to LIBOR.

The Federal Reserve has tightened monetary policy, including multiple interest rate increases in the first half of 2022; however, the outlook is less certain for longer-term rates during the second half of 2022 and beyond. At September 30, 2022, we have not experienced a material impact when compared to the tabular presentations of our interest rate and market risk sensitive instruments in our 2021 Annual Report on Form 10-K for the year ended December 31, 2021.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) that are designed to assure that information required to be disclosed in our Exchange Act reports 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 management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

As required by Exchange Act Rule 13a-15(b), as of the end of the period covered by this Quarterly Report, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2022.

Changes in Internal Control over Financial Reporting

There has been no change in our internal controls over financial reporting during our most recent quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. There were no significant changes to our internal control over financial reporting for the period ending September 30, 2022.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The Company is a party to claims and legal actions arising routinely in the ordinary course of our business. Although we cannot predict with certainty the ultimate resolution of the claims and lawsuits asserted against us, we do not believe that any currently pending legal proceedings to which we are a party will have a material adverse effect on our condensed consolidated financial position results of operations or cash flow.

Item 1A. Risk Factors

The Company documented its risk factors in Item 1A of Part I of its annual report on Form 10-K for the year ended December 31, 2021, filed on March 14, 2022. There have been no material changes to the Company's risk factors since the filing of that report.

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

The Company's Board of Directors authorized during the second quarter of 2022 the $0.06 per share typically used to pay a quarterly dividend to shareholders to be allocated to repurchase common stock. The authorization was for $2.0 million to repurchase common stock commencing in August 2022.

During the third quarter ended September 30, 2022, the Company purchased 632,744 shares of common stock in aggregate of $1.7 million with an average share price of $2.73 per share.

A summary of our common stock repurchases during the quarter ended September 30, 2022, is set forth in the table below (in thousands, except shares and price per share):

	Total Number of Shares Purchased	*Average Price Paid Per Share* [1]	*Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs*	*Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs* [2]
July 1 - July 31, 2022	—	$ —	—	$ 20,000
August 1 - August 31, 2022	237,911	$ 2.78	237,911	$ 19,328
September 1 - September 30, 2022	394,833	$ 2.70	394,833	$ 18,252
Total	632,744		632,744	

(1) Represents the balance before commission and fees at the end of each period.

(2) Effective December 31, 2021, the Board of Directors established a new share repurchase program with an initial value of $25.0 million and with an expiration date of December 31, 2022.

Item 5. Other Information

Item 1.01 Entry into a Material Definitive Agreement

Seventh Amendment to Credit Agreement

On November 7, 2022, Heritage Insurance Holdings, Inc. and its subsidiary guarantors (together, the "Company") amended that certain Credit Agreement dated as of December 14, 2018 (as amended to date, the "Credit Agreement") by entering into the Seventh Amendment to the Credit Agreement (the "Seventh Amendment") with the lenders party to the Credit Agreement, and Regions Bank, as administrative agent, collateral agent, swingline lender and issuing bank.

The Seventh Amendment amended the Credit Agreement to, among other things, (i) decrease the revolving credit facility from $75 million to $50 million, (ii) establish a new $25 million term loan facility to refinance loans outstanding under the existing revolving credit facility and to pay fees, costs and expenses related thereto, (iii) reduce, from $50 million to $25 million, the aggregate amount of potential future increases to the revolving credit facility commitments and/or term loan commitments, (iii) modify the amortization of the existing term loan facility and new term loan facility to 10% per annum, paid quarterly, and (iii) increase the applicable margin for loans under the Credit Agreement to a range from 2.75% to 3.25% per annum for SOFR loans (plus a 0.10% credit adjustment spread) and based on a leverage ratio (an increase from the prior range of 2.50% to 3.00%).

The Seventh Amendment also modifies certain financial covenants in the Credit Agreement which may limit the Company's flexibility in connection with future financing transactions and in the allocation of capital in the future. Specifically, starting in the first quarter of 2023, the Seventh Amendment amends certain financial covenants as follows: (1) require additional leverage ratios under the Consolidated Leverage Ratio covenant (as defined in the Credit Agreement) after the initial step down to 2.50x in the second quarter of 2023 not to exceed 2.25x as of the second quarter of 2024 and 2.00x as of the second quarter of 2025, (2) apply all (A)

Restricted Payments (as defined in the Credit Agreement) and (B) fee forgiveness & other capital contributions to the Company's regulated insurance companies that are not a party to the Credit Agreement ("Non-credit Parties") that exceed $38 million, when calculating (i) Consolidated Tangible Net Worth (as defined in the Credit Agreement) which is required to be not less than $100 million plus 50% of positive quarterly net income (including its subsidiaries and regulated subsidiaries) plus the net cash proceeds of any equity transactions and (ii) Consolidated Fixed Charge Ratio (as defined in the Credit Agreement) which is required to be 1.20x . The Seventh Amendment also (A) eliminates the current $10 million basket available to the Company to pay dividends to its shareholders or to repurchase its securities, (B) provides for a dividend of up to $2 million in the fourth quarter of 2024 under certain conditions and (C) restricts future dividends based on maintenance of certain financial ratios, including Consolidated Tangible Net Worth. As a result, going forward, dividends and stock repurchases may be limited or restricted entirely and the Company's ability to contribute capital to its insurance subsidiaries that are not parties to the Credit Agreement may be limited.

All other material terms of the Credit Agreement remain unchanged.

Based on the Company's results for the third quarter of 2022, management considered it likely at that time that the Company would be out of compliance with certain financial covenants in the Credit Agreement. In order to avoid a covenant violation, the parties agreed to the terms of the Seventh Amendment as described above.

Certain Relationships

The lenders under the Credit Agreement and their affiliates may in the future engage in transactions with and perform services, including commercial banking, financial advisory and investment banking services, for the Company and its affiliates in the ordinary course of business for which they may receive customary fees and expenses.

The above summary description of the Seventh Amendment does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Seventh Amendment, a copy of which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information contained in Item 1.01 is hereby incorporated into this Item 2.03 by reference thereto.

Item 6. Exhibits

The information required by this Item 6 is set forth in the Index to Exhibits accompanying this Quarterly Report on Form 10-Q.

Index to Exhibits

3.1	Certificate of Incorporation of Heritage Insurance Holdings, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 6, 2014
3.2	By-laws of Heritage Insurance Holdings, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed on August 6, 2014
4	Form of Stock Certificate (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A (File No. 333-195409) filed on May 13, 2014)
4.1	Form of 5.875% Convertible Senior Notes due 2037 (included in Exhibit 4.1), (incorporated by reference to 1.1 to our Form 8-K filed on August 16, 2017)
4.2	Indenture, dated as of August 16, 2017, by and among the Company. Heritage MGA, LLC as guarantor, and Wilmington Trust, National Association, as trustee, (incorporated by reference to Exhibit 4.1 to the Company's Form 8-K filed on August 16, 2017)
10.1*	Seventh Amendment to Credit Agreement, dated November 7, 2022, among Heritage Insurance Holdings, Inc., certain subsidiaries of Heritage Insurance Holdings, Inc. from time to time party as guarantors, the lenders from time to time party and Regions Bank, as Administrative Agent and Collateral Agent
31.1*	Rule 13a-14(a)/15d-14(a) Certification of Principal Executive Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Rule 13a-14(a)/15d-14(a) Certification of Principal Financial Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Chief Executive Officer pursuant to 18 U.SC. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certification of Chief Financial Officer pursuant to 18 U.SC. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

101.INS*	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Data Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith
** Furnished herewith

SIGNATURES

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

HERITAGE INSURANCE HOLDINGS, INC.

Date: November 9, 2022

By: /s/ ERNESTO GARATEIX
Ernesto Garateix
Chief Executive Officer
(Principal Executive Officer and Duly Authorized Officer)

Date: November 9, 2022

By: /s/ KIRK LUSK
Kirk Lusk
Chief Financial Officer
(Principal Financial Officer)

SEVENTH AMENDMENT

dated as of November 7, 2022,

to

that certain Credit Agreement, dated as of December 14, 2018,

by and among

HERITAGE INSURANCE HOLDINGS, INC.
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER PARTY HERETO,
as the Guarantors,

THE LENDERS PARTY HERETO,

and

REGIONS BANK,
as the Administrative Agent, the Collateral Agent, the Swingline Lender and the Issuing Bank

REGIONS CAPITAL MARKETS,
and
BMO CAPITAL MARKETS CORP.,
as Joint Lead Arrangers and Joint Bookrunners for the aforementioned Seventh Amendment

SEVENTH AMENDMENT TO CREDIT AGREEMENT

This SEVENTH AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of November 7, 2022 (the "Seventh Amendment Effective Date"), is entered into by and among HERITAGE INSURANCE HOLDINGS, INC., a Delaware corporation (the "Borrower"), the Guarantors (here and hereafter as defined in the Credit Agreement (here and hereafter as defined below)), the Lenders (here and hereafter as defined in the Credit Agreement), and Regions Bank ("Regions"), in its capacities as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank.

R E C I T A L S

WHEREAS, the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Regions, as Administrative Agent and Collateral Agent, are parties to that certain Credit Agreement, dated as of December 14, 2018 (as amended by that certain First Amendment to Credit Agreement, dated as of May 17, 2019, as further amended by that certain Second Amendment to Credit Agreement, dated as of April 27, 2020, as further amended by that certain Third Amendment to Credit Agreement, dated as of June 1, 2020, as further amended by that certain Fourth Amendment to Credit Agreement, dated as of March 24, 2021, as further amended and extended by that certain Fifth Amendment to Credit Agreement, dated as of July 28, 2021, as further modified by that certain Consent and Release Agreement, dated as of December 1, 2021, as further amended by that certain Sixth Amendment to Credit Agreement, dated as of May 4, 2022, and as further amended, restated, amended and restated, supplemented, increased, extended, refinanced, renewed, replaced, and/or otherwise modified in writing from time to time, the "Credit Agreement");

WHEREAS, the Borrower has notified the Administrative Agent that, in accordance with Section 2.1(d) (*Increase in Revolving Commitments and Establishment of Additional Term Loans*) of the Credit Agreement, the Borrower desires for the Lenders to make an additional advance under the Term Loan A on the Seventh Amendment Effective Date in an aggregate original principal amount of Twenty-Five Million Dollars ($25,000,000) (the "Seventh Amendment Term Loan A Advance"), the proceeds of which will be used (in full) by the Borrower on the Seventh Amendment Effective Date to refinance Revolving Loans outstanding on the Seventh Amendment Effective Date and to pay fees, costs and expenses related thereto;

WHEREAS, each of the Lenders identified, on the Appendix entitled "*Appendix A – Lenders*, *Commitments and Commitment Percentages*" attached hereto as Annex II, as having a commitment in respect of the Seventh Amendment Term Loan A Advance (such Lenders, collectively, the "Seventh Amendment Term Loan A Advance Lenders") has agreed to provide a portion of the Seventh Amendment Term Loan A Advance to the Borrower on the Seventh Amendment Effective Date in the respective amount set forth in the applicable column opposite such Seventh Amendment Term Loan A Advance Lender's name on such Appendix, upon the terms, and subject to the conditions, set forth in this Amendment and in the Credit Agreement (as amended by this Amendment);

WHEREAS, the Credit Parties have requested that the Lenders make (i) certain other modifications to the terms of the Credit Agreement as described in Section 4(a) below, and (ii) certain modifications to Appendix A (*Lenders*, *Commitments and Commitment Percentages*) to the Credit Agreement as described in Section 4(b) below; and

WHEREAS, (i) the Seventh Amendment Term Loan A Advance Lenders have agreed to make the Seventh Amendment Term Loan A Advance to the Borrower on the Seventh Amendment Effective Date, and (ii) the Lenders have agreed to consent to the modifications to the terms and provisions of the Credit Agreement (including to Appendix A (*Lenders*, *Commitments and Commitment Percentages*) thereto) as set forth herein, in each case of the foregoing clauses (i) and (ii), on the terms, and subject to the conditions, of this Amendment;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto hereby agrees as follows:

A G R E E M E N T

1. Introductory Paragraph and Recitals; Definitions. The above introductory paragraph and recitals (including any terms defined therein) of this Amendment are incorporated herein by reference as if fully set forth in the body of this Amendment. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided for such terms in the Credit Agreement (as amended by this Amendment or as in effect immediately prior to the effectiveness of this Amendment, as the context may require).

2. Voluntary Reduction in Aggregate Revolving Commitments. The Borrower hereby makes a voluntary reduction in the Aggregate Revolving Commitments in accordance with Section 2.11(b) (*Voluntary Commitment Reductions*) of the Credit Agreement in the amount of Twenty-Five Million Dollars ($25,000,000), such that, as of the Seventh Amendment Effective Date (immediately *after* giving effect to this Amendment), the amount of the Aggregate Revolving Commitments shall be Fifty Million Dollars ($50,000,000). Such reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Revolving Commitment Percentage. The Lenders hereby waive compliance by the Borrower with the notice and minimum amount requirements set forth in Section 2.11(b) (*Voluntary Commitment Reductions*) of the Credit Agreement with respect to such reduction in the Aggregate Revolving Commitments.

3. Establishment of Additional Advance Under the Term Loan A.

(a) Establishment and Incurrence. Subject to the terms and conditions set forth in this Amendment and in the Credit Agreement (as amended by this Amendment), each of the Seventh Amendment Term Loan A Advance Lenders hereby agrees to make its respective portion of the Seventh Amendment Term Loan A Advance to the Borrower, in full in a single advance on the Seventh Amendment Effective Date in Dollars, with the amount of each Seventh Amendment Term Loan A Advance Lender's respective commitment to the Seventh Amendment Term Loan A Advance being the respective amount set forth in the applicable column opposite such Seventh Amendment Term Loan A Advance Lender's name (designated as such Lender's "*Term Loan A Commitment*" on the Seventh Amendment Effective Date) in the table set forth on Appendix A (*Lenders*, *Commitments and Commitment Percentages*) to the Credit Agreement, as such Appendix is in effect immediately *after* giving effect to this Amendment (collectively, the "Seventh Amendment Term Loan A Advance Commitments"; and for each Seventh Amendment Term Loan A Advance Lender, such Seventh Amendment Term Loan A Advance Lender's "Seventh Amendment Term Loan A Advance Commitment"). As of the Seventh Amendment Effective Date (immediately *after* giving effect to this Amendment), the aggregate amount of all of the Seventh Amendment Term Loan A Advance Lenders' Seventh Amendment Term Loan A Advance Commitments is Twenty-Five Million Dollars ($25,000,000), and, after giving effect to the making of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date, the aggregate outstanding principal amount of the Term Loan A is Ninety-One Million Five-Hundred Thousand Dollars ($91,500,000).

(b) Use of Proceeds. Notwithstanding anything to the contrary in the Credit Agreement or any other Credit Document, the proceeds of the Seventh Amendment Term Loan A Advance shall be used (in full) by the Borrower on the Seventh Amendment Effective Date to refinance Revolving Loans outstanding on the Seventh Amendment Effective Date and to pay fees, costs and expenses related thereto.

(c) Part of Term Loan A. For the avoidance of doubt, the scheduled maturity date for the portion of the Term Loan A advanced as the Seventh Amendment Term Loan A Advance will be the Term Loan A Maturity Date, and the Applicable Margin and the amount(s) and timing of the scheduled amortization payments due in respect of the portion of the Term Loan A advanced as the Seventh Amendment Term Loan A Advance will be determined the same as for the Term Loan A, in each case of the foregoing, in accordance with the terms of the

Credit Agreement (as amended by this Amendment). The Seventh Amendment Term Loan A Advance, once made on the Seventh Amendment Effective Date in accordance with the terms of this Amendment and the Credit Agreement (as amended by this Amendment), will constitute and be part of the Term Loan A for all purposes of the Credit Agreement and the other Credit Documents.

(d) Waiver of Specified Conditions. The Lenders (by act of the Required Lenders) hereby waive, in accordance with Section 11.4 (*Amendments and Waivers*) of the Credit Agreement, the conditions set forth in Section 2.1(d)(iii)(B) and Section 2.1(d)(iii)(F) of the Credit Agreement (as in effect immediately *prior* to giving effect to this Amendment) with respect to the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date pursuant to this Amendment, in each case of the foregoing, *solely* to the extent relating to compliance by the Borrower with the financial covenant set forth in Section 8.8(c) (*Consolidated Net Worth*) of the Credit Agreement (as in effect immediately *prior* to giving effect to this Amendment) with respect to the Fiscal Quarter ended September 30, 2022. This waiver is limited to the matters, purpose, and for the period expressly set forth herein, and the Lenders shall not be obligated in the future to waive any provision of the Credit Agreement or the other Credit Documents as a result of having provided the waiver contained herein.

(e) Request for Borrowing of Additional Advance. The execution and delivery of this Amendment by the Borrower, and the satisfaction of all conditions precedent to effectiveness of this Amendment set forth in Section 5, shall be deemed to constitute the Borrower's request to borrow, in full in a single advance on the Seventh Amendment Effective Date, the Seventh Amendment Term Loan A Advance as Term SOFR Loans with an Interest Period of one (1) month.

4. Amendments to the Credit Agreement. In accordance with Section 11.4 (*Amendments and Waivers*) of the Credit Agreement, the Credit Agreement is hereby amended in the following respects.

(a) Terms of Credit Agreement. The terms of the Credit Agreement (but *not* the Appendices, Exhibits and/or Schedules thereto) are hereby amended and replaced in their entirety to read as set forth in the copy of the entire body of the Credit Agreement attached hereto as Annex I.

(b) Appendix to Credit Agreement. Appendix A (*Lenders*, *Commitments and Commitment Percentages*) to the Credit Agreement is hereby amended and replaced in its entirety with the Appendix attached hereto as Annex II.

5. Effectiveness; Conditions Precedent. This Amendment shall become effective on, and as of, the Seventh Amendment Effective Date upon the satisfaction of each of the following conditions precedent:

(a) Amendment. Receipt by the Administrative Agent of counterparts of this Amendment duly executed by each of the Credit Parties, each of the Lenders (including each of the Seventh Amendment Term Loan A Advance Lenders), the Administrative Agent, the Collateral Agent, the Swingline Lender and the Issuing Bank.

(b) Organizational Documents; Resolutions and Certificates. Receipt by the Administrative Agent of a duly executed certificate of the chief financial officer, chief executive officer, manager, secretary or assistant secretary of each Credit Party: (i) certifying that there has been no change to the Organizational Documents of such Credit Party since the Fifth Amendment Effective Date (except as may be detailed in such certificate, and, in the event of any such change(s), such certificate shall attach a copy of such changed Organizational Document(s) that is certified, as of a recent date, by the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation or formation (as the case may be)); (ii) attaching and certifying a copy of resolutions (or unanimous written consents) of the board of directors or managers (or equivalent governing body) of such Credit Party, authorizing (A) the timely execution and delivery of this Amendment and the performance by such Credit Party of its obligations hereunder and under the Credit Agreement (as amended by this Amendment), (B) the decrease of the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein, (C) the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh

Amendment Effective Date as described herein, and (D) any other Credit Extension(s) to occur on the Seventh Amendment Effective Date; (iii) if the Administrative Agent has *not* already received an executed, original incumbency certificate (in form and substance reasonably satisfactory to the Administrative Agent) with respect to each Authorized Officer of a Credit Party signing this Amendment and/or any other document, agreement, letter, certificate and/or instrument executed, or required to be executed, in connection herewith (including, without limitation the certificate(s) described in this clause (b)), an executed incumbency certificate with respect to each such Authorized Officer; and (iv) copies of certificates of good standing, existence, or the like for each Credit Party, certified, as of a recent date, by the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation or formation (as the case may be).

(c) Refinancing of Certain Indebtedness. Receipt by the Administrative Agent of evidence of the payment in full, contemporaneously with the effectiveness of this Amendment on the Seventh Amendment Effective Date with the proceeds of the Seventh Amendment Term Loan A Advance, of all Revolving Loans outstanding on such date.

(d) Fees and Expenses. Receipt by the Administrative Agent of all fees, costs, expenses, charges, disbursements and other amounts due and payable by any of the Credit Parties to any of the Administrative Agent, the Collateral Agent, the Swingline Lender, the Issuing Bank and/or the Lenders (including, without limitation, the Seventh Amendment Term Loan A Advance Lenders) on or prior to the Seventh Amendment Effective Date, including, without limitation, (i) an amendment fee (each individually, an "Amendment Fee", and collectively, the "Amendment Fees") payable to the Administrative Agent, for the account of each Lender (including, for the avoidance of doubt, Regions) that is party to this Amendment, in an amount equal to the *product of* (A) ten basis points (0.10%), *multiplied by* (B) the *sum of* (I) such Lender's respective portion of the aggregate outstanding principal balance of all Term Loans as of the Seventh Amendment Effective Date (immediately *after* giving effect to this Amendment and the incurrence of the Seventh Amendment Term Loan A Advance on the Incremental Effective Date as described herein), *plus* (II) such Lender's Revolving Commitment as of the Seventh Amendment Effective Date (immediately *after* giving effect to this Amendment and the reduction in the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein), and (ii) reimbursement or payment of all out-of-pocket expenses of the Administrative Agent and its Affiliates (including, without limitation, all reasonable fees, charges and disbursements of counsel to the Administrative Agent) required to be reimbursed or paid by any of the Credit Parties hereunder, under any other Credit Document, and/or under any other agreement with the Administrative Agent or any of its Affiliates.

6. Representations and Warranties. Each of the Credit Parties hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders (including, without limitation, the Seventh Amendment Term Loan A Advance Lenders) as follows:

(a) such Credit Party and each other Credit Party has taken all necessary action(s) to authorize the execution and delivery of this Amendment and the performance of its respective obligations hereunder and under the Credit Agreement (as amended by this Amendment);

(b) this Amendment has been duly executed and delivered by such Credit Party and by each other Credit Party, and constitutes such Credit Party's and each other Credit Party's legal, valid and binding obligations, enforceable in accordance with its terms, except as such enforceability may be subject to (i) bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar Laws affecting creditors' rights generally, and/or (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity);

(c) all consents, approvals, authorizations, registrations and/or filings required to be made or obtained by the Borrower and the other Credit Parties, if any, in connection with this Amendment and/or the Credit Agreement (as amended by this Amendment), the reduction in the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein, the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date as described herein, any other Credit

Extension(s) to occur on the Seventh Amendment Effective Date, and/or any other transaction(s) contemplated by this Amendment or the Credit Agreement (as amended by this Amendment), in any such case of the foregoing, have been obtained and are in full force and effect, and all applicable waiting periods with respect thereto have expired;

(d) no investigation or inquiry by any Governmental Authority regarding this Amendment and/or the Credit Agreement (as amended by this Amendment), the reduction in the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein, the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date as described herein, any other Credit Extension(s) to occur on the Seventh Amendment Effective Date, and/or any other transaction(s) contemplated by this Amendment or the Credit Agreement (as amended by this Amendment), in any such case of the foregoing, is ongoing;

(e) since December 31, 2017, there has been no event or circumstance that could reasonably be expected, individually or in the aggregate when taken together, to have a Material Adverse Effect;

(f) the most recent annual audited financial statements delivered to the Administrative Agent in accordance with Section 7.1(b) (*Annual Financial Statements for the Borrower and its Subsidiaries*) of the Credit Agreement were prepared in accordance with GAAP consistently applied, except as noted therein, and fairly present, in all material respects, the financial condition of the Credit Parties and their Subsidiaries as of the date(s) indicated and the results of their operations and their cash flows for the period(s) covered thereby;

(g) the Borrower, individually, and the Credit Parties and their Subsidiaries, taken as a whole on a consolidated basis, in each case, are Solvent as of the Seventh Amendment Effective Date, both immediately *before* and immediately *after* giving effect to this Amendment, the reduction in the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein, the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date as described herein, and any other Credit Extension(s) to occur on the Seventh Amendment Effective Date; and

(h) immediately *after* giving effect to this Amendment, the reduction in the Aggregate Revolving Commitments on the Seventh Amendment Effective Date as described herein, the establishment and incurrence of the Seventh Amendment Term Loan A Advance on the Seventh Amendment Effective Date as described herein, and any other Credit Extension(s) to occur on the Seventh Amendment Effective Date: (i) the representations and warranties contained in this Amendment, in the Credit Agreement (as amended by this Amendment) and in the other Credit Documents shall be true and correct, in all material respects (except to the extent that any such representations and warranties are qualified by a Material Adverse Effect or other materiality, in which case, such representations and warranties are true and correct in all respects), on, and as of, the Seventh Amendment Effective Date, except to the extent that such representations and warranties specifically relate to an earlier date, in which case, such representations and warranties shall be true and correct, in all material respects (except to the extent that any such representations and warranties are qualified by a Material Adverse Effect or other materiality, in which case, such representations and warranties are true and correct in all respects), on, and as of, such earlier date; (ii) no Default or Event of Default shall have occurred and be continuing; and (iii) the Credit Parties shall be in compliance, on a Pro Forma Basis, with each of the financial covenants set forth in Section 8.8 (*Financial Covenants*) of the Credit Agreement (as amended by this Amendment), as supported by reasonably detailed calculations provided to the Administrative Agent prior to the Seventh Amendment Effective Date.

7. Reaffirmation. Each of the Credit Parties: (a) (i) acknowledges and consents to all of the terms and conditions of this Amendment, (ii) affirms all of its respective obligations under the Credit Agreement and each of the other Credit Documents, each of which remains in full force and effect (as amended by this Amendment, to the extent amended), and (iii) agrees that this Amendment, and all documents, agreements, certificates and instruments executed in connection with this Amendment, do *not* operate to reduce or discharge such Credit Party's obligations under the Credit Documents (except to the extent such obligations are expressly modified pursuant to this Amendment); and (b) (i) affirms that each of the Liens granted in, or pursuant to, the Credit

Documents is valid and subsisting, and (ii) agrees that this Amendment, and all documents, agreements, certificates and instruments executed in connection with this Amendment, do *not*, in any manner, impair, or otherwise adversely affect, any of the Liens granted in, or pursuant to, any of the Credit Documents.

8. Miscellaneous.

(a) Credit Document. This Amendment shall be deemed to be, and is, a Credit Document, and all references to a "*Credit Document*" in the Credit Agreement and the other Credit Documents (including, without limitation, all such references in the representations and warranties in the Credit Agreement and the other Credit Documents) shall be deemed to include this Amendment. All references to "*this Agreement*" in the Credit Agreement (including, without limitation, all such references in the representations and warranties in the Credit Agreement), and all references to the "*Credit Agreement*" in the other Credit Documents (including, without limitation, all such references in the representations and warranties in such other Credit Documents), in each case of the foregoing, shall be deemed to refer to the Credit Agreement as amended by this Amendment.

(b) No Other Changes. Except as expressly modified hereby, all of the terms and provisions of the Credit Documents shall remain unchanged and in full force and effect.

(c) Amendment Fees. The Amendment Fees shall: (i) be in consideration for each Lender's consent to this Amendment; (ii) be fully earned, and due and payable by the Borrower in full, on the Seventh Amendment Effective Date; (iii) *not* be refundable once paid for any reason whatsoever; (iv) accrue and be payable in Dollars in immediately available funds; (v) *not* be subject to counterclaim or set-off for, or otherwise be affected by, any claim or dispute relating to any other matter; (vi) be free and clear of, and without deduction for, any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (with appropriate gross-up for withholding taxes); and (vii) be in addition to (A) any other fee(s) that may be agreed to by the Borrower, any other Credit Party, or any of their respective Subsidiaries or controlled Affiliates (whether on, after, or prior to the Seventh Amendment Effective Date) in the Credit Agreement, any other Credit Document(s), any other fee letter agreement(s) (including, without limitation, the Fee Letter) and/or any engagement or commitment letter agreement(s), and (B) any fee(s) payable to any of the Lenders in their respective capacities as such under the Credit Agreement and the other Credit Documents.

(d) Counterparts; Delivery. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means (including in ".pdf" form) shall be effective as delivery of a manually executed counterpart of this Amendment.

(e) Fees and Expenses. The Borrower agrees to pay all reasonable out-of-pocket fees and expenses of the Administrative Agent and the Collateral Agent in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the reasonable fees and expenses of Moore & Van Allen PLLC, as counsel to the Administrative Agent and the Collateral Agent.

(f) Governing Law. THIS AMENDMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR RELATING TO THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK.

[*Remainder of Page Intentionally Left Blank*; *Signature Pages Follow*]

IN WITNESS WHEREOF, each of the parties hereto have caused this Amendment to be duly executed and delivered by its below respective duly authorized officer as of the Seventh Amendment Effective Date, intending to create an instrument under seal.

BORROWER:

HERITAGE INSURANCE HOLDINGS, **INC**.,
a Delaware corporation

By: /s/ KIRK LUSK (Seal)
Name: Kirk Lusk
Title: Chief Financial Officer

GUARANTORS:

CONTRACTORS ALLIANCE NETWORK, **LLC**,
a Florida limited liability company
HERITAGE INSURANCE CLAIMS, **LLC**,
a Florida limited liability company
HERITAGE MGA, **LLC**,
a Florida limited liability company
NBIC FINANCIAL HOLDINGS, **INC**.,
a Delaware corporation
NBIC HOLDINGS, **INC**.,
a Delaware corporation
NBIC SERVICE COMPANY, **INC**.,
a Rhode Island corporation
SKYE LANE PROPERTIES, **LLC**,
a Florida limited liability company
ZEPHYR ACQUISITION COMPANY,
a Delaware corporation

By: \s\ KIRK LUSK (Seal)
Name: Kirk Lusk
Title: Chief Financial Officer

HI HOLDINGS, **INC**.,
a Hawaii corporation

By: \s\ERNESTO GARATEIX (Seal)
Name: Ernesto Garateix
Title: Chief Operating Officer

[*Signature Pages Continue*]

ADMINISTRATIVE AGENT
AND COLLATERAL AGENT:

REGIONS BANK,
as Administrative Agent and Collateral Agent
By: /s/CRAIG CUTRO (Seal)
Name: Craig Cutro
Title: Director

[*Signature Pages Continue*]

LENDERS:

REGIONS BANK,
as the Issuing Bank, the Swingline Lender and a Lender

By: /s/ CRAIG CUTRO (Seal)
Name: Craig Cutro
Title: Director

[*Signature Pages Continue*]

BMO HARRIS BANK N.A.,
as a Lender

By: /s/ COLLIN WAGNER (Seal)
Name: Collin Wagner
Title: Vice President

[*Signature Pages Continue*]

CIBC BANK USA,
as a Lender

By: /s/MATTHEW LEWAN (Seal)
Name: Matthew R. Lewan
Title: Associate Managing Director

[*Signature Pages Continue*]

WOODFOREST NATIONAL BANK,
as a Lender

By: /s/ THOMAS ANGLEY (Seal)
Name: Thomas Angley
Title: Senior Vice President

[*Signature Pages End*]

CREDIT AGREEMENT

dated as of December 14, 2018

as amended by that certain First Amendment to Credit Agreement, dated as of May 17, 2019,
as further amended by that certain Second Amendment to Credit Agreement, dated as of April 27, 2020,
as further amended by that certain Third Amendment to Credit Agreement, dated as of June 1, 2020,
as further amended by that certain Fourth Amendment to Credit Agreement, dated as of March 24, 2021,
as further amended by that certain Fifth Amendment to Credit Agreement, dated as of July 28, 2021,
as further amended and extended by that certain Fifth Amendment to Credit Agreement, dated as of July 28, 2021,
as further modified by that certain Consent and Release Agreement, dated as of December 1, 2021,
as further amended by that certain Sixth Amendment to Credit Agreement, dated as of May 4, 2022, and
as further amended by that certain Seventh Amendment to Credit Agreement, dated as of November 7, 2022.

by and among

HERITAGE INSURANCE HOLDINGS, INC.
as Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER PARTY HERETO FROM TIME TO TIME,
as Guarantors,

THE LENDERS PARTY HERETO,

REGIONS BANK,
as the Administrative Agent and the Collateral Agent,

BMO HARRIS BANK N.A.,
as Syndication Agent,

HANCOCK WHITNEY BANK,
and
CIBC BANK USA,
as Co-Documentation Agents

REGIONS CAPITAL MARKETS,
and
BMO CAPITAL MARKETS CORP.,
as Joint Lead Arrangers and Joint Bookrunners

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CREDIT AGREEMENT

This CREDIT AGREEMENT, dated as of December 14, 2018 (as amended, restated, increased, extended, supplemented and/or otherwise modified from time to time, this "Agreement"), is entered into by and among HERITAGE INSURANCE HOLDINGS, INC., a Delaware corporation (the "Borrower"), certain Subsidiaries of the Borrower from time to time party hereto, as Guarantors, the Lenders from time to time party hereto, and REGIONS BANK, as administrative agent (in such capacity, "Administrative Agent") and collateral agent (in such capacity, "Collateral Agent").

RECITALS:

WHEREAS, the Borrower has requested that the Lenders provide, in its favor, (i) a Fifty Million Dollar ($50,000,000) revolving credit facility, as decreased on the Seventh Amendment Effective Date from a Seventy-Five Million Dollar ($75,000,000) revolving credit facility (as of the date that was immediately prior to the Seventh Amendment Effective Date) pursuant to the Seventh Amendment, and (ii) a term loan (advanced in three (3) separate installments on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, respectively) in an original principal amount of Seventy-Five Million Dollars ($75,000,000) advanced on the Closing Date, an original principal amount of Thirteen Million Seven-Hundred Fifty Thousand Dollars ($13,750,000) advanced on the Fifth Amendment Effective Date and an original principal amount of Twenty-Five Million Dollars ($25,000,000) advanced on the Seventh Amendment Effective Date, respectively, with an aggregate outstanding principal amount, as of the Seventh Amendment Effective Date, equal to Ninety-One Million Five-Hundred Thousand Dollars ($91,500,000); and

WHEREAS, the Lenders have agreed to make the requested facilities available on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

AGREEMENT:

Article 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used herein, including in the introductory paragraph, recitals, exhibits and schedules hereto, shall have the following meanings:

"Acquisition" means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of: (a) all, or any substantial portion, of the property of another Person, or any division, line of business or other business unit of another Person; or (b) *at least* a majority of the Voting Stock of another Person, in each case, whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"Adjusted Term SOFR" means, as of any date of determination, with respect to any calculations relating to a SOFR Loan for any applicable Interest Period, a SOFR Borrowing for any selected Interest Period and/or the determination of the Base Rate in accordance with clause (c) of such definition below, the *sum of*: (a) the rate per annum equal to Term SOFR for such Interest Period determined as of such date; *plus* (b) the SOFR Adjustment.

"Administrative Agent" has the meaning specified in the introductory paragraph hereto, together with its successors and assigns.

"Administrative Questionnaire" means an administrative questionnaire provided by the Lenders in a form supplied by the Administrative Agent.

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, whether pending, threatened in writing against any Credit Party, any of its Subsidiaries or any material property of any Credit Party or any of its Subsidiaries.

"Affected Financial Institution" means: (a) any EEA Financial Institution; or (b) any UK Financial Institution.

"Affected Lender" has the meaning specified in Section 3.1(b).

"Affected Loans" has the meaning specified in Section 3.1(b).

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

"Agent" means, collectively, the Administrative Agent and the Collateral Agent.

"Aggregate Revolving Commitments" means the Revolving Commitments of all the Lenders. The amount of the Aggregate Revolving Commitments in effect on the Closing Date was Fifty Million Dollars ($50,000,000), the amount of the Aggregate Revolving Commitments in effect on the Fifth Amendment Effective Date was Seventy-Five Million Dollars ($75,000,000), and the amount of the Aggregate Revolving Commitments in effect on the Seventh Amendment Effective Date is Fifty Million Dollars ($50,000,000).

"Agreement" has the meaning specified in the introductory paragraph hereto.

"ALTA" means the American Land Title Association.

"Anti-Corruption Laws" means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd–1, *et seq.,* the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to any Credit Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"Applicable Laws" means all applicable laws, including all applicable provisions of constitutions, statutes, rules, ordinances, regulations and orders of all Governmental Authorities and all orders, rulings, writs and decrees of all courts, tribunals and arbitrators.

"Applicable Margin" means, as of any date of determination, (a) during the period from the Seventh Amendment Effective Date through the date that is two (2) Business Days immediately following the date on which a Compliance Certificate is delivered pursuant to Section 7.1(c) for the first (1st) Fiscal Quarter ending after the Seventh Amendment Effective Date, the applicable percentage per annum based upon Pricing Level 2 in the table set forth immediately below, and (b) thereafter, the applicable percentage per annum determined by reference to the table set forth immediately below, using the Consolidated Leverage Ratio as set forth in the Compliance Certificate most recently delivered to the Administrative Agent pursuant to Section 7.1(c), with any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio becoming effective on the date that is two (2) Business Days immediately following the date on which such Compliance Certificate is delivered.

Pricing Level	Consolidated Leverage Ratio	SOFR Loans and Letter of Credit Fee	Base Rate Loans	Commitment Fee
1	≤ 1.25:1.0	2.75%	1.75%	0.325%
2	> 1.25:1.0, *but* ≤ 2.25:1.0	3.00%	2.00%	0.350%
3	> 2.25:1.0	3.25%	2.25%	0.375%

Notwithstanding anything to the contrary in the foregoing, (x) if, at any time, a Compliance Certificate is *not* delivered when due in accordance herewith, then Pricing Level 3 as set forth in the applicable table in effect at such time set forth above shall apply as of the first (1st) Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered, and (y) the determination of the Applicable Margin for any period shall be subject to the provisions of Section 2.7(e). The Applicable Margin with respect to any additional Term Loan established pursuant to Section 2.1(d)(iii) shall be as provided in the joinder document(s) and/or commitment agreement(s) executed by the Borrower and the applicable Lenders in connection therewith.

"Approved Fund" means any Fund that is administered or managed by: (a) a Lender; (b) an Affiliate of a Lender; or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" means Regions Capital Markets, a division of Regions Bank, and BMO Capital Markets Corp., in their respective capacities as joint lead arranger and joint bookrunner under this Agreement.

"Asset Sale" means a sale, lease, Sale and Leaseback Transaction, assignment, conveyance, exclusive license (as licensor), Securitization Transaction, transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Credit Party or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, created, leased or licensed, including the Equity Interests of any Subsidiary of a Credit Party, other than:

(a) dispositions of surplus, obsolete or worn out property or property no longer used or useful in the business of the Credit Parties and their Subsidiaries, whether now owned or hereafter acquired, in the ordinary course of business;

(b) dispositions of inventory sold, and Intellectual Property licensed, in the ordinary course of business;

(c) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof;

(d) dispositions of cash and Cash Equivalents in the ordinary course of business;

(e) licenses, sublicenses, leases or subleases granted to any third parties in arm's-length commercial transactions in the ordinary course of business that do not interfere in any material respect with the business of the Borrower or any of its Subsidiaries;

(f) dispositions of assets held by Regulated Subsidiaries;

(g) the termination or surrender of any real property lease of the Borrower or any of its Subsidiaries in the ordinary course of business so long as the loss of such leased location could not be reasonably expected to have an adverse and material effect on any business of the Borrower or any of its Subsidiaries;

(h) the abandonment or other disposition of Intellectual Property, whether now or hereafter owned or leased or acquired in connection with an Acquisition or other permitted Investment, that is, in the reasonable

business judgment of the Borrower, no longer economically practicable or commercially desirable to maintain or used or useful in the business of the Borrower and the Subsidiaries;

(i) sales, transfers and other dispositions permitted by Section 8.9 (other than as permitted by clause (b) of Section 8.9);

(j) any issuance of Equity Interests of the Borrower;

(k) disposition of the Existing Mortgaged Property and the Rhode Island Real Estate;

(l) to the extent constituting a sale, transfer, lease or other disposition of an asset, any Restricted Payment made pursuant to Section 8.4; and

(m) sales, transfers or other dispositions of Investments to the extent permitted under Section 8.6 in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the parties set forth in joint venture arrangements and similar binding agreements.

"Assignment Agreement" means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.5(b)(iii)) and accepted by the Administrative Agent, in substantially the form of Exhibit 11.5 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

"Attributable Principal Amount" means (a) in the case of Capital Leases, the amount of Capital Lease obligations determined in accordance with GAAP, (b) in the case of Synthetic Leases, an amount determined by capitalization of the remaining lease payments thereunder as if it were a Capital Lease determined in accordance with GAAP, (c) in the case of Securitization Transactions, the outstanding principal amount of such financing, after taking into account reserve amounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment, and (d) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one (1) of its vice presidents (or the equivalent thereof), chief financial officer or treasurer and, *solely* for purposes of making the certifications required under clauses (b)(ii) and (c) of Section 5.1, any secretary or assistant secretary.

"Auto Borrow Agreement" has the meaning specified in Section 2.2(b)(vi).

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

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

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

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

"Base Rate" means, for any date of determination, a rate per annum equal to the *highest* of (a) the rate of interest that Regions announces from time to time as its prime lending rate, as in effect from time to time (the "*Prime Rate*"), (b) the Federal Funds Rate, as in effect from time to time, *plus* one-half of one percent (0.50%) per annum, (c) Adjusted Term SOFR in effect on such day for a forward-looking Interest Period of one (1) month commencing on such day, *plus* one percent (1.00%) per annum (with any change(s) in any of the rates described in the foregoing clauses (a) through (c) to be effective as of the date of any such change(s) in such rates), and (d) the Floor. The Prime Rate is a reference rate and does *not* necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent and the Lenders may make commercial loans, or other loans, at rates of interest at, above, or below the Prime Rate. Any change(s) to the Base Rate due to a change in the Prime Rate, the Federal Funds Rate and/or Adjusted Term SOFR, as the case may be, will be deemed to be effective from, and including, the date of effectiveness of such change(s) to the Prime Rate, the Federal Funds Rate and/or Adjusted Term SOFR. For the avoidance of doubt and notwithstanding anything to the contrary in the foregoing, if, at any time, the Base Rate is *less than* the Floor, then the Base Rate shall be deemed to equal the Floor for all purposes of this Agreement and the other Credit Documents.

"*Base Rate Borrowing*" means a Borrowing, the Loans in respect of which bear interest at a rate determined by reference to the Base Rate (including, for the avoidance of doubt, pursuant to clause (c) of the definition of "*Base Rate*" above).

"*Base Rate Loan*" means a Loan bearing interest at a rate determined by reference to the Base Rate (including, for the avoidance of doubt, pursuant to clause (c) of the definition of "*Base Rate*" above).

"Benchmark" means, as of the Seventh Amendment Effective Date, the SOFR Reference Rate (for any applicable tenor); provided, that, if any Benchmark Replacement has been incorporated into this Agreement after the Seventh Amendment Effective Date pursuant to Section 3.1, then "*Benchmark*" shall mean the applicable Benchmark Replacement.

"Benchmark Illegality / Impracticability Event" means the occurrence of one (1) or more of the following events:

(a) the making, maintaining and/or continuation of the then-current Benchmark by any Lender shall have become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order *not* having the force of law, even though the failure to comply therewith would *not* be unlawful);

(b) with respect to any Benchmark, any successor administrator of the published screen rate for such Benchmark, or any Governmental Authority having jurisdiction over the Administrative Agent or the administrator of such Benchmark, shall have made a public statement establishing a specific date (whether expressly or by virtue of such public statement) after which an Available Tenor of such Benchmark, or the published screen rate for such Benchmark, shall or will no longer be representative or made available, or otherwise used for determining the interest rate of loans, or shall or will otherwise cease; provided, that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative interest periods of such Benchmark after such specific date;

(c) the making, maintaining and/or continuation of the then-current Benchmark by any Lender has become impracticable, as a result of contingencies occurring after the Seventh Amendment Effective Date that materially and adversely affect the ability of a Lender to make, maintain and/or continue its Loans at the then-current Benchmark (including, without limitation, because the published screen rate for

such Benchmark in a relevant tenor is *not* available or published on a current basis and such circumstances are unlikely to be temporary); or

(d) with respect to any Lender, the then-current Benchmark (including any related mathematical or other adjustments thereto) does or will *not* adequately and fairly reflect the cost to such Lender of making, funding and/or maintaining its Loans at the then-current Benchmark.

For the avoidance of doubt, a "*Benchmark Illegality / Impracticability Event*" shall be deemed to have occurred, with respect to any Benchmark, if a public statement or publication of information as described above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Replacement" means Daily Simple SOFR for any payment period for interest calculated that can be determined by the Administrative Agent, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or equal to zero), that has been selected by the Administrative Agent and the Borrower, giving due consideration to: (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body; or (b) any evolving, or then-prevailing, market convention for determining a spread adjustment, or a method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" shall have the meaning set forth in Section 3.1(g)(i).

"Beneficial Ownership Certification" has the meaning specified in Section 5.1(k).

"Benefit Plan" means any of: (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA; (b) a "plan" as defined in, and subject to, Section 4975 of the Internal Revenue Code; or (c) any Person whose assets include (for purposes of ERISA Section 3(42), or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. § 1841(k)) of such party.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means, as the context may require, a borrowing consisting of: (a) Loans of the same Class and Type, made, converted or continued on the same date, and, in the case of SOFR Loans, as to which a single Interest Period is in effect; or (b) a Swingline Loan.

"Business Day" means any day, other than a Saturday, a Sunday, or any other day that is a legal holiday under the laws of the state of New York or is a day on which banking institutions located in such state are authorized, or are required by Applicable Law or any Governmental Act, to close; provided, that, with respect to notices and determinations in connection with, and payments of principal and/or interest on, SOFR Loans, such day is also a U.S. Government Securities Business Day.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Cash Collateralize" means to pledge and deposit with, or deliver to, the Administrative Agent, the Issuing Bank or the Swingline Lender, as applicable, as collateral for the Letter of Credit Obligations or Swingline Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent, the Issuing Bank or Swingline Lender, as applicable, may agree in their sole discretion, other credit support, in each case, pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, the Issuing Bank and/or the Swingline Lender, as applicable. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means, as of any date of determination, any of the following:

(a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case, maturing within one (1) year after such date;

(b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case, maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of *at least* A–1 from S&P or *at least* P–1 from Moody's;

(c) commercial paper maturing *no more than* one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of *at least* A–1 from S&P or *at least* P–1 from Moody's;

(d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States, or of any state thereof or the District of Columbia, that:

(i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator); and

(ii) has Tier 1 capital (as defined in such regulations) of *not less than* One-Hundred Million Dollars ($100,000,000); and

(e) shares of any money market mutual fund that:

(i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above;

(ii) has net assets of *not less than* Five-Hundred Million Dollars ($500,000,000); and

(iii) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty, or in the administration, interpretation, implementation or application thereof, by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or

the United States or foreign regulatory authorities, in each case pursuant to Basel III, and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender's submission or re-submission of a capital plan under 12 C.F.R. § 225.8 or a Governmental Authority's assessment thereof shall, in each case, be deemed to be a "*Change in Law*", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act of 1934, but *excluding* any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d–3 and 13d–5 under the Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of twenty-five percent (25.0%) or more of the Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals:

(i) who were members of that board or equivalent governing body on the first (1st) day of such period;

(ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (b)(i) above constituting, at the time of such election or nomination, *at least* a majority of that board or equivalent governing body; or

(iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (b)(i) and (b)(ii) above constituting, at the time of such election or nomination, *at least* a majority of that board or equivalent governing body.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, the Term Loan A or an additional Term Loan established pursuant to Section 2.1(d)(iii), and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, a Swingline Commitment, a Term Loan A Commitment or a Commitment in respect of an additional Term Loan established pursuant to Section 2.1(d)(iii).

"Closing Date" means December 14, 2018.

"Collateral" means the collateral identified in, and at any time covered by, the Collateral Documents.

"Collateral Agent" has the meaning specified in the introductory paragraph hereto, together with its successors and assigns.

"Collateral Documents" means the Pledge and Security Agreement, the Mortgages, and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a Lien on any real, personal or mixed property of any Credit Party as security for the Obligations.

"Commitment Fee" has the meaning specified in Section 2.10(a).

"Commitments" means the Revolving Commitments and the Term Loan Commitments.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.).

"Competitor" means any competitor of any Credit Party or any Subsidiary that is in the same or a similar line of business as any Credit Party or any Subsidiary.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit 7.1(c).

"Conforming Changes" means, with respect to (a) the use and/or administration of, and/or any conventions associated with, SOFR, the SOFR Reference Rate (for any applicable tenor) and/or any SOFR-Based Rate (for any Interest Period), or (b) the use, administration, adoption and/or implementation of, and/or any conventions associated with, any Benchmark Replacement, in each case of the foregoing clauses (a) and (b), any technical, administrative and/or operational change(s) (including, without limitation, any such change(s) to the definition of "*Base Rate*" above, the definition of "*Business Day*" above, the definition of "*Daily Simple SOFR*" below, the definition of "*Interest Period*" below (or any similar or analogous definition, or the addition of an applicable concept of "interest period"), the definition of "*SOFR*" below, the definition of "*SOFR Reference Rate*" below, the definition of "*Term SOFR*" below, the definition of "*U.S. Government Securities Business Day*" below, the timing and frequency of determining rates and making payments of interest, the timing of delivery of any Funding Notices (or other requests for borrowing of Loans), the timing of delivery of any notices of optional reduction or termination of any Commitment(s), the timing of delivery of any notices of optional or voluntary prepayment of any Loans (or any other notices of prepayment of any Loans), the timing of delivery of any Conversion / Continuation Notices (or other notices of the continuation or conversion of Loans), the applicability and length of lookback periods, the applicability of Section 3.1(c), and any other technical, administrative and/or operational matters) that the Administrative Agent determines, in its reasonable discretion, may be appropriate to reflect the adoption and/or implementation of any such rate and/or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines, in its reasonable discretion, that (i) the adoption and/or implementation of, or of any portion of, such market practice is *not* administratively feasible for the Administrative Agent, or (ii) no market practice for the administration of any such rate exists, then, in each case of the foregoing clauses (i) and (ii), permit the use and administration thereof by the Administrative Agent in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

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

"Consolidated Capital Expenditures" means, for any period, for the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, that, Consolidated Capital Expenditures shall *not* include (a) expenditures made with proceeds of any Involuntary Disposition to the extent such expenditures are used to purchase property that is the same as or similar to the property subject to such Involuntary Disposition, or (b) Permitted Acquisitions.

"Consolidated EBITDA" means, for any period, for the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis, an amount equal to Consolidated Net Income (*excluding* Regulated Subsidiaries) for such period (a) *plus* the following, to the extent deducted in calculating such Consolidated Net Income (without duplication), (i) Consolidated Interest Charges for such period, (ii) the provision for federal, state, local and foreign income taxes payable by the Credit Parties and their Subsidiaries (other than Regulated Subsidiaries) for such period, (iii) depreciation and amortization expense for such period, (iv) non-cash stock compensation issued for such period, (v) non-cash losses (or *minus* non-cash gains) resulting from purchases (and resulting cancellations) of the Convertible Notes during such period, (vi) all out-of-pocket fees, costs and expenses payable or otherwise incurred in connection with this Agreement and any other Credit Document or with the redemption of the Senior Secured Notes, including that portion of the redemption price in *excess* of the par value of the Senior Secured Notes, prior to the date that is three (3) months after the Closing Date, (vii) managing general agency fees, expenses and other amounts that are due and owing, or that have already

been paid, by any Regulated Subsidiary to any Credit Party or any Subsidiary thereof pursuant to any managing general agent or service company agreement entered into by any Credit Party or any Subsidiary thereof, but which have been waived in accordance with this Agreement by the Credit Party or Subsidiary to whom such fees, expenses and other amounts would have been, or, in the case of any such fees, expenses and other amounts that have already been paid and are subsequently so waived, have been, paid, and (viii) other non-cash charges and expenses reducing Consolidated Net Income, including any write-offs or write-downs (excluding any such non-cash charge to the extent such non-cash charge (A) represents an accrual of, or reserve for, cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period *not* included in the calculation, or (B) is an expense or charge related to accounts receivable or other current asset); and (b) *minus* all non-cash items increasing Consolidated Net Income (*excluding* any items which represent the reversal of any accrual of, or reserve for, anticipated cash charges that reduced Consolidated EBITDA in any prior period).

"Consolidated Fixed Charge Coverage Ratio" means, as of any date of determination, the ratio of (a) (i) Consolidated EBITDA, *minus* (ii) Consolidated Capital Expenditures, *minus* (iii) Consolidated Taxes, *minus* (iv) the aggregate amount of Restricted Payments paid in cash to Persons other than Credit Parties, *minus* (v) the aggregate amount of Investments (other than Qualifying FQ4 2022 Investments in an aggregate amount of up to Thirty-Eight Million Dollars ($38,000,000)) (A) consisting of the forgiveness (in whole or in part) by the Credit Parties (or any of them) of any fees otherwise owed by, or on behalf of, any Regulated Subsidiary, on the one hand, to, or for the benefit of, the Credit Parties (or any of them), on the other hand, pursuant to any managing general agent or service company agreement between any such Regulated Subsidiary and the Credit Parties (or any of them), and/or (without duplication) (B) made by any Credit Party or Subsidiary in any Subsidiary or Affiliate of any Credit Party that is *not* itself a Credit Party (including, for purposes of clarity, any Regulated Subsidiary), in each case of the foregoing clauses (a)(i) through (a)(v), for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended (except, if such period concludes with (I) the Fiscal Quarter ending March 31, 2023, then instead for the period consisting of the full Fiscal Quarter then ended, (II) the Fiscal Quarter ending June 30, 2023, then instead for the period consisting of the two (2) consecutive full Fiscal Quarters then ended, and (III) the Fiscal Quarter ending September 30, 2023, then instead for the period consisting of the three (3) consecutive full Fiscal Quarters then ended), to (b) Consolidated Fixed Charges for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended (except, if such period concludes with (I) the Fiscal Quarter ending March 31, 2023, then instead for the period consisting of the full Fiscal Quarter then ended, (II) the Fiscal Quarter ending June 30, 2023, then instead for the period consisting of the two (2) consecutive full Fiscal Quarters then ended, and (III) the Fiscal Quarter ending September 30, 2023, then instead for the period consisting of the three (3) consecutive full Fiscal Quarters then ended); provided, that, notwithstanding anything to the contrary in the foregoing, (1) for purposes of determining the Consolidated Fixed Charge Coverage Ratio with respect to the period consisting of the four (4) consecutive full Fiscal Quarters ending December 31, 2022, the only Investments that shall reduce Consolidated EBITDA pursuant to the foregoing clause (a)(v) of this definition shall be Qualifying FQ4 2022 Investments in *excess* (when taken in the aggregate) of Thirty-Eight Million Dollars ($38,000,000), and (2) for any determination of the Consolidated Fixed Charge Coverage Ratio with respect to the period consisting of (w) the Fiscal Quarter ending March 31, 2023, (x) the two (2) consecutive full Fiscal Quarters ending June 30, 2023, (y) the three (3) consecutive full Fiscal Quarters ending September 30, 2023, and (z) the four (4) consecutive full Fiscal Quarters ending December 31, 2023, any Qualifying FQ4 2022 Investments in *excess* (when taken in the aggregate) of Thirty-Eight Million Dollars ($38,000,000) shall be deemed (for purposes of the foregoing clause (a)(v) of this definition) to have been made during such period, notwithstanding that such Qualifying FQ4 2022 Investments were actually made during the Fiscal Quarter ending December 31, 2022.

"Consolidated Fixed Charges" means, for any period, for the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis, an amount equal to the *sum of* (a) Consolidated Interest Charges for such period, *plus* (b) Consolidated Scheduled Funded Debt Payments for such period, *plus* (c) the Convertible Note Fixed Charges for such period, all as determined in accordance with GAAP.

"Consolidated Funded Debt" means Funded Debt of the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis determined in accordance with GAAP; provided, that,

notwithstanding anything to the contrary in the foregoing, "*Consolidated Funded Debt*" shall (x) include any intercompany Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary, and (y) *exclude* any Indebtedness owing by any Regulated Subsidiary to the Federal Home Loan Bank.

"Consolidated Interest Charges" means, for any period, for the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis, an amount equal to the *sum of* (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case, to the extent treated as interest in accordance with GAAP, *plus* (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP, *plus* (c) the implied interest component of Synthetic Leases with respect to such period; provided, that, notwithstanding anything to the contrary in the foregoing, "*Consolidated Interest Charges*" shall (x) include all interest, premium, payments, debt discount, fees, charges and related expenses in connection with any intercompany Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary, and (y) *exclude* all interest, premium, payments, debt discount, fees, charges and related expenses in connection with any Indebtedness owing by any Regulated Subsidiary to the Federal Home Loan Bank.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of: (a) Consolidated Funded Debt as of such date; to (b) Consolidated EBITDA for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended.

"Consolidated Net Income" means, for any period, for the Borrower and its Subsidiaries (including or excluding Regulated Subsidiaries of the Borrower, as so specified in the relevant instance of calculation) on a consolidated basis, the net income of the Borrower and such Subsidiaries (excluding unusual and infrequent gains) for that period, as determined in accordance with GAAP.

"Consolidated Net Worth" means, as of any date of determination, for the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries), (a) Shareholders' Equity of the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries) on that date, *less* (b) accumulated other comprehensive income.

"Consolidated Scheduled Funded Debt Payments" means, for any period, for the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis, the *sum of* all scheduled payments of principal on Consolidated Funded Debt, as determined in accordance with GAAP. For purposes of this definition, "scheduled payments of principal" (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (b) shall be deemed to include payments with respect to the Attributable Principal Amount in respect of Capital Leases, Securitization Transactions, Sale and Leaseback Transactions and Synthetic Leases, and (c) shall *not* include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.11.

"Consolidated Tangible Net Worth" means, as of any date of determination, for the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries), (a) Consolidated Net Worth on such date, *less* (b) the net book amount of all assets of the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries) that would be classified as intangible assets on a consolidated balance sheet of the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries) as of such date prepared in accordance with GAAP.

"Consolidated Taxes" means, for any period, the aggregate amount of all taxes paid in cash, as determined in accordance with GAAP, by the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on a consolidated basis; provided, that, "*Consolidated Taxes*" shall include all taxes paid in cash by the Borrower and its Subsidiaries (other than Regulated Subsidiaries) on account of, on behalf of, or attributable to, any Regulated Subsidiary to the extent that such Regulated Subsidiary has *not* made Restricted Payments to the party paying

such taxes pursuant to clause (a) of Section 8.4 within two (2) months of such tax liabilities becoming due and payable, or actually being paid in cash, by the paying party.

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of the management or policies of, a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit 2.8.

"Convertible Notes" means those certain 5.875% Convertible Senior Notes Due 2037 issued by Heritage Insurance Holdings, Inc. pursuant to the terms of that certain Purchase Agreement dated as of August 10, 2017, in the aggregate original principal amount of One-Hundred Thirty-Six Million and Seven Hundred and Fifty Thousand Dollars ($136,750,000).

"Convertible Note Fixed Charges" means, for any period, the aggregate amount of all cash repurchases or cash redemptions (including, for the avoidance of doubt, the cash component of any such repurchases or redemptions made partially in cash) of Convertible Notes made by any Credit Party after the date that is thirty (30) days after the Closing Date that are, together with all such cash repurchases or cash redemptions of Convertible Notes made by any Credit Party after such date but *not* during such period, in *excess* of $20,000,000. For purposes of clarity, repurchases or redemptions of Convertible Notes made with common Equity Interests of the Borrower shall *not* be included in any calculation of Convertible Note Fixed Charges.

"Covered Entity" means any of the following: (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §–252.82(b); (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §–47.3(b); and (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §–382.2(b).

"Covered Party" shall have the meaning provided in Section 11.23.

"Credit Date" means the date of a Credit Extension.

"Credit Document" means any of this Agreement, each Note, each Issuer Document, the Collateral Documents, any Guarantor Joinder Agreement, the Fee Letter, any Auto Borrow Agreement, any document executed and delivered by the Borrower and/or any other Credit Party pursuant to which any Aggregate Revolving Commitments are increased pursuant to Section 2.1(d)(ii) or an additional Term Loan is established pursuant to Section 2.1(d)(iii), any documents or certificates executed by any Credit Party in favor of the Issuing Bank relating to Letters of Credit, and, to the extent evidencing or securing the Obligations, all other documents, instruments or agreements executed and delivered by any Credit Party for the benefit of the Administrative Agent, the Issuing Bank or any Lender in connection herewith or therewith, and including, for the avoidance of doubt, any Guarantor Joinder Agreement (but specifically *excluding* any Secured Swap Agreements and Secured Treasury Management Agreements).

"Credit Extension" means the making of a Loan or the issuing or extending of a Letter of Credit.

"Credit Parties" means, collectively, the Borrower and each Guarantor.

"Daily Simple SOFR" means, for any date of determination, SOFR, with the conventions for such rate (which shall include a lookback) being established by the Administrative Agent in accordance with the conventions for such rate selected or recommended by the Relevant Governmental Body for determining "*Daily Simple SOFR*" for business loans; provided, that, (a) if the Administrative Agent decides that any such convention is *not* administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion, and (b) if, at any time, Daily Simple SOFR (determined in accordance with such convention(s)) is *less than* the Floor, then Daily Simple SOFR shall be deemed to equal the Floor for all purposes of this Agreement and the other Credit Documents.

"Debt Transaction" means, with respect to the Borrower or any of its Subsidiaries, any sale, issuance, placement, assumption or guaranty of Funded Debt, whether or not evidenced by a promissory note or other written evidence of Indebtedness, except for Funded Debt permitted to be incurred pursuant to Section 8.1.

"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.

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Default Rate" means an interest rate equal to:

(a) with respect to Obligations (including, for purposes of clarity, Loans bearing interest at the Base Rate determined pursuant to clause (c) of the definition of "*Base Rate*" above) other than SOFR Loans and the Letter of Credit Fee, the Base Rate *plus* the Applicable Margin, if any, applicable to such Obligations *plus* two percent (2.0%) per annum;

(b) with respect to SOFR Loans, Adjusted Term SOFR *plus* the Applicable Margin, if any, applicable to SOFR Loans *plus* two percent (2.0%) per annum; and

(c) with respect to the Letter of Credit Fee, the Applicable Margin for the Letter of Credit Fee *plus* two percent (2.0%) per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§–252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that:

(a) has failed to:

(i) fund all, or any portion, of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has *not* been satisfied; or

(ii) pay to the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in any Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due;

(b) has notified the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender in writing that it does *not* intend to comply with its funding obligations hereunder, or has made a public statement to that effect;

(c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided, that, such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower); or

(d) has, or has a direct or indirect parent company that has:

(i) become the subject of a proceeding under any Debtor Relief Law;

(ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; or

(iii) become the subject of a Bail-In Action;

provided, that, a Lender shall *not* be a Defaulting Lender *solely* by virtue of the ownership or acquisition of any equity interest in that Lender, or any direct or indirect parent company thereof, by a Governmental Authority, so long as such ownership interest does *not* result in or provide such Lender with immunity from the jurisdiction of courts within the United States, or from the enforcement of judgments or writs of attachment on its assets, or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Bank, the Swingline Lender and each Lender.

"Disqualified Institution" means (a) those Competitors and other Persons identified on a list provided by the Borrower to the Administrative Agent and made available to the Lenders on the Effective Date (the "Disqualified Institution List") (as such Disqualified Institution List may be supplemented from time to time by the Borrower pursuant to clause (c) below), (b) any Person that is obviously (based solely to the extent such legal entity has the name of a Person set forth on the Disqualified Institution List in its legal name) an Affiliate of any Person set forth on the Disqualified Institution List, and (c) any other Competitor identified by legal name in writing to the Administrative Agent after the Effective Date (other than during the continuance of an Event of Default) (it being understood that the Borrower shall be required to provide a fully updated Disqualified Institution List to the Administrative Agent in order to supplement such list after the Effective Date), which designation shall become effective one (1) day after the date that such written designation to the Administrative Agent is made available to the Lenders on IntraLinks, Syndtrak, Debtdomain or a similar electronic transmission system, but which shall *not* apply retroactively to disqualify any persons that have previously acquired an assignment or participation interest in the Loans and/or Commitments. Notwithstanding anything to the contrary in the foregoing, a Person that would be a Disqualified Institution as a result of being an Affiliate of a Competitor pursuant to clause (b) above shall *not* constitute a Disqualified Institution if such Person is a financial institution, bona fide debt fund or investment vehicle that is engaged in the business of making, purchasing, holding or otherwise investing in commercial loans, notes, bonds and similar extensions of credit or securities in the ordinary course of business to unaffiliated third parties and no Disqualified Institution makes investment decisions for such Person.

"Disqualified Institution List" shall have the meaning set forth in the definition of "*Disqualified Institution*".

"Dollars" and the sign "$" mean the lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States, any state thereof or the District of Columbia.

"Earn Out Obligations" means, with respect to an Acquisition, all obligations of the Borrower or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, or other indemnity obligations) pursuant to the documentation relating to such Acquisition. The amount of any Earn Out Obligations at the time of determination shall be the aggregate amount, if any, of such Earn Out Obligations that are required at such time under GAAP to be recognized as liabilities on the consolidated balance sheet of the Borrower.

"EEA Financial Institution" means:

(a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority;

(b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or

(c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.5(b), subject to any consents and representations, if any as may be required therein.

"Environmental Claim" means any known investigation, written notice, notice of violation, written claim, action, suit, proceeding, written demand, abatement order or other written order or directive (conditional or otherwise), by any Person arising:

(a) pursuant to, or in connection with, any actual or alleged violation of any Environmental Law;

(b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or

(c) in connection with any actual or alleged damage, injury, threat or harm to human health, safety, natural resources or the environment.

"Environmental Laws" means any and all current or future federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other written requirements of Governmental Authorities relating to: (a) any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) protection of human health and the environment from pollution, in any manner applicable to any Credit Party or any of its Subsidiaries or their respective Facilities.

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equity Transaction" means, with respect to the Borrower or any of its Subsidiaries, any issuance or sale by the Borrower or such Subsidiary of shares of its Equity Interests, other than an issuance:

(a) to the Borrower or any of its wholly-owned Subsidiaries;

(b) in connection with a conversion of debt securities to equity;

(c) in connection with the exercise by a present or former employee, officer or director under a stock incentive plan, stock option plan or other equity-based compensation plan or arrangement;

(d) which occurred prior to the Closing Date; or

(e) in connection with any Permitted Acquisition or any capital expenditures permitted under this Agreement.

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

"ERISA Affiliate" means, as applied to any Person: (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

"ERISA Event" means:

(a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which notice to the PBGC has been waived by regulation);

(b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code), the failure to make by its due date any minimum required contribution or any required installment under

Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan;

(c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA;

(d) the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA;

(e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan;

(f) the imposition of liability pursuant to Section 4062(a) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, each case reasonably likely to result in material liability;

(g) the withdrawal of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if such withdrawal is reasonably likely to result in material liability, or the receipt by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4241 or 4245 of ERISA, or that it is in "critical" or "endangered" status within the meaning of Section 305 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such insolvency or termination is reasonably likely to result in material liability;

(h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan if such fines, penalties, taxes or related charges are reasonably likely to result in material liability to any Credit Party or any of its Subsidiaries;

(i) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Internal Revenue Code to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or

(j) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) or 4068 of ERISA.

"Erroneous Payment" shall have the meaning provided for such term in Section 10.11(a).

"Erroneous Payment Deficiency Assignment" shall have the meaning provided for such term in Section 10.11(d).

"Erroneous Payment Impacted Class" shall have the meaning provided for such term in Section 10.11(d).

"Erroneous Payment Return Deficiency" shall have the meaning provided for such term in Section 10.11(d).

"Erroneous Payment Subrogation Rights" shall have the meaning provided for such term in Section 10.11(d).

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

"Event of Default" means each of the conditions or events set forth in Section 9.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Property" means, with respect to the Borrower and each other Credit Party, including any Person that becomes a Credit Party after the Closing Date as contemplated by Section 7.14:

(a) any disbursement deposit account the funds in which are used *solely* for the payment of salaries and wages, employee benefits, workers' compensation and similar expenses;

(b) any owned or leased real property which is located outside of the United States or any leased real property which is located in the United States;

(c) any owned real property (other than the Existing Mortgaged Property) which is located in the United States having a fair market value *not* in *excess* of $1,500,000 (as reasonably determined by the Credit Parties on the Closing Date or on the date of purchase of such real property, as applicable);

(d) the Existing Mortgaged Property and the Rhode Island Real Estate;

(e) any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not:

(i) governed by the UCC; or

(ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office;

(f) the Equity Interests of any direct Foreign Subsidiary or a Regulated Subsidiary of the Borrower or any other Credit Party, to the extent *not* required to be pledged to secure the Obligations pursuant to Section 7.12(a);

(g) any property which, subject to the terms of Section 8.3, is subject to a Lien of the type described in Section 8.2(m) pursuant to documents which prohibit the Borrower from granting any other Liens in such property;

(h) any property to the extent that the grant of a security interest therein would violate Applicable Laws, require a consent *not* obtained of any Governmental Authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination (other than to the extent that any such term would be rendered ineffective pursuant to Section 9–406, 9–407, 9–408 or 9–409 of the applicable UCC or any other Applicable Law or principles of equity);

(i) any certificates, licenses and other authorizations issued by any Governmental Authority, to the extent that Applicable Laws prohibit the granting of a security interest therein; and

(j) proceeds and products of any and all of the foregoing excluded property described in clauses (a) through (h) above only to the extent such proceeds and products would constitute property or assets of the type described in clauses (a) through (h) above;

provided, that, the security interest granted to the Collateral Agent under the Pledge and Security Agreement or any other Credit Document shall attach immediately to any asset of any Obligor (as defined in the Pledge and Security Agreement) at such time as such asset ceases to meet any of the criteria for "*Excluded Property*" described in any of the foregoing clauses (a) through (g) above.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all, or a portion, of the Guaranty of such Guarantor of, or the grant under a Credit Document by such

Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 4.8 hereof and any and all guarantees of such Guarantor's Swap Obligations by other Credit Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guaranty or security interest becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient:

(a) Taxes imposed on or measured by net income (however denominated), profits, or overall gross income or receipts, franchise or similar Taxes, and branch profits Taxes, in each case:

(i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or

(ii) that are Other Connection Taxes;

(b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to, or for the account of, such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which:

(i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.17), or

(ii) such Lender changes its lending office,

except, in each case, to the extent that, pursuant to Section 3.3, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office;

(c) Taxes attributable to such Recipient's failure to comply with Section 3.3(f); and

(d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Mortgaged Property" means that certain real property located at 2600 McCormick Drive, Suite 300, Clearwater, Florida 33759.

"Facility" means any real property including all buildings, fixtures or other improvements located on such real property now, hereafter or heretofore owned, leased, operated or used by the Borrower or any of its Subsidiaries or any of their respective predecessors.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and *not* materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"Federal Funds Rate" means, for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1.00%)) equal to the weighted average

of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the FRBNY on the Business Day next succeeding such day; provided, that, (a) if such day is *not* a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Regions Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System (or any successor).

"Fee Letter" means that certain letter agreement dated December 12, 2018 among the Borrower, Regions Bank and Regions Capital Markets, a division of Regions Bank.

"Fifth Amendment" means that certain Fifth Amendment to Credit Agreement, dated as of the Fifth Amendment Effective Date, by and among the Borrower, the Guarantors, the Lenders and the Administrative Agent.

"Fifth Amendment Effective Date" means July 28, 2021.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Credit Parties and their Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

"Flood Hazard Property" means any Real Estate Asset subject to a mortgage or deed of trust in favor of the Collateral Agent, for the benefit of the holders of the Obligations, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Foreign Lender" means a Lender that is *not* a U.S. Person.

"Foreign Subsidiary" means any Subsidiary that is *not* a Domestic Subsidiary.

"Fourth Amendment Effective Date" means March 24, 2021.

"FRBNY" means the Federal Reserve Bank of New York (or any successor).

"Fronting Exposure" means, at any time there is a Defaulting Lender:

(a) with respect to the Issuing Bank, such Defaulting Lender's Revolving Commitment Percentage of the outstanding Letter of Credit Obligations with respect to Letters of Credit issued by the Issuing Bank, other than Letter of Credit Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof; and

(b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Commitment Percentage of outstanding Swingline Loans made by the Swingline Lender, other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"Funded Debt" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for *more than* sixty (60) days), including, without limitation, any Earn Out Obligations recognized as a liability on the balance sheet of the Credit Parties and their Subsidiaries in accordance with GAAP;

(c) all obligations under letters of credit, bankers' acceptances and similar instruments (including bank guaranties);

(d) the Attributable Principal Amount of Capital Leases, Synthetic Leases, Securitization Transactions and Sale and Leaseback Transactions;

(e) all preferred stock and comparable equity interests providing for mandatory redemption, sinking fund or other like payments;

(f) all Funded Debt of others secured by (or for which the holder of such Funded Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all Guarantees in respect of Funded Debt of another Person; and

(h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined: (x) based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a) and purchase money indebtedness and the deferred purchase obligations under clause (b); (y) based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under clause (c); and (z) based on the amount of Funded Debt that is the subject of the Guarantees in the case of Guarantees under clause (g).

"Funding Notice" means a notice substantially in the form of Exhibit 2.1.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2, accounting principles generally accepted in the United States in effect as of the date of determination thereof.

"Governmental Acts" means any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* government or Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European

Union or the European Central Bank and any group or body charged with setting financial accounting or regulatory capital rules or standards).

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Guarantee" means, as to any Person:

(a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect:

(i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation,

(ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation,

(iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or

(iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part); or

(b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien).

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 by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 4.1.

"Guarantor Joinder Agreement" means a guarantor joinder agreement substantially in the form of Exhibit 7.14 delivered by a Domestic Subsidiary of the Borrower pursuant to Section 7.14.

"Guarantors" means (a) each existing and future direct and indirect Domestic Subsidiary of the Borrower that is *not* a Regulated Subsidiary, (b) each Person identified as a "*Guarantor*" on the signature pages to the Seventh Amendment, (c) each other Person that joins as a Guarantor pursuant to Section 7.14, (d) with respect to (i) Secured Swap Obligations, (ii) Secured Treasury Management Obligations, and (iii) Swap Obligations of a Specified Credit Party (determined before giving effect to Section 4.1 and Section 4.8) under the Guaranty hereunder, the Borrower, and (e) their successors and permitted assigns.

"Guaranty" means the Guarantee made by the Guarantors in favor of the Administrative Agent, the Lenders and the other holders of the Obligations pursuant to Article 4.

"Hazardous Materials" means any hazardous substances defined by the Comprehensive Environmental Response Compensation and Liability Act, 42 USCA 9601, *et seq*., as amended ("CERCLA"), including any hazardous waste as defined under 40 C.F.R. Parts 260–270, gasoline or petroleum (including crude oil or any fraction thereof), asbestos or polychlorinated biphenyls.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under Applicable Laws relating to any Lender which are currently in effect or, to the extent allowed under such Applicable Laws, which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than Applicable Laws now allow.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all Funded Debt;

(b) net obligations under any Swap Agreement;

(c) all Guarantees in respect of Indebtedness of another Person; and

(d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of Indebtedness shall be determined based on Swap Termination Value in the case of net obligations under any Swap Agreement under clause (b).

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

"Indemnitee" has the meaning specified in Section 11.2(b).

"Insurance Regulatory Authority" means, with respect to any Regulated Subsidiary, the insurance department or similar Governmental Authority charged with regulating insurance companies or insurance holding companies, in its jurisdiction of domicile and, to the extent that it has regulatory authority over such Regulated Subsidiary, in each other jurisdiction in which such Regulated Subsidiary conducts business or is licensed to conduct business.

"Intellectual Property" means all trademarks, service marks, trade names, copyrights, patents, patent rights, franchises related to intellectual property, licenses related to intellectual property and other intellectual property rights.

"Interest Payment Date" means, with respect to: (a) any Base Rate Loan and any Swingline Loan, (i) the last Business Day of each calendar quarter, commencing on the first (1st) such date to occur after the Closing Date, and (ii) the Revolving Commitment Termination Date, the Term Loan A Maturity Date and the final maturity date of any additional Term Loan; and (b) any SOFR Loan, (i) the last day of each Interest Period applicable to such Loan, provided, that, in the case of each Interest Period of longer than three (3) months "Interest Payment Date"

shall also include each date that is three (3) months, or an integral multiple thereof, after the commencement of such Interest Period, and (ii) the Revolving Commitment Termination Date, the Term Loan A Maturity Date and the final maturity date of any additional Term Loan.

"Interest Period" means, in connection with a SOFR Loan, an interest period of one (1), three (3) or six (6) months (in each case, subject to availability), as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be, and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires, provided, that:

(i) if an Interest Period would otherwise expire on a day that is *not* a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case, such Interest Period shall expire on the immediately preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month;

(iii) no Interest Period with respect to any Term Loan shall extend beyond any principal amortization payment date, except to the extent that the portion of such Loan comprised of SOFR Loans that is expiring prior to the applicable principal amortization payment date *plus* the portion comprised of SOFR Loans equals or exceeds the principal amortization payment then due; and

(iv) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first (1st) day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986.

"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 of another Person;

(b) a loan, advance or capital contribution to, Guarantee or assumption of debt 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 and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person; or

(c) an Acquisition.

For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. For the avoidance of doubt, any forgiveness (in whole or in part) by the Credit Parties (or any of them) of any fees otherwise owed by, or on behalf of, any Regulated Subsidiary, on the one hand, to, or for the benefit of, the Credit Parties (or any of them), on the other hand, pursuant to any managing general agent or service company agreement between any such Regulated Subsidiary and the Credit Parties (or any of them) shall, in any such case of the foregoing, constitute an "*Investment*" by such Credit Party or Credit Parties (as applicable) in such Regulated Subsidiary, in the aggregate amount of such fees that are so forgiven.

"Involuntary Disposition" means the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of its Property.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"Issuance Notice" means an Issuance Notice substantially in the form of Exhibit 2.3.

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Issuing Bank and the Borrower (or any Subsidiary) or in favor of the Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" means Regions Bank in its capacity as issuer of Letters of Credit hereunder, together with its permitted successors and assigns in such capacity.

"Leasehold Property" means any leasehold interest of the Borrower or any other Credit Party as lessee under any lease of real property, or any property right pursuant to a lease, easement, servitude or similar agreement, however termed, in each case now held or hereafter acquired.

"Lender" means each financial institution with a Term Loan Commitment or a Revolving Commitment, together with its successors and permitted assigns. The initial Lenders as of the Closing Date are identified on the signature pages to this Agreement, and the Lenders as of the Seventh Amendment Effective Date are (i) identified on the signature pages to the Seventh Amendment, and (ii) set forth on Appendix A.

"Letter of Credit" means any standby letter of credit issued hereunder.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Issuing Bank.

"Letter of Credit Borrowing" means any Credit Extension resulting from a drawing under any Letter of Credit that has not been reimbursed or refinanced as a Borrowing of Revolving Loans.

"Letter of Credit Fees" has the meaning specified in Section 2.10(b)(i).

"Letter of Credit Obligations" means, at any time, the *sum of*: (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein; *plus* (b) the aggregate amount of all drawings under Letters of Credit that have *not* been reimbursed by the Borrower, including Letter of Credit Borrowings. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in Section 1.3(i), and (ii) if a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Letter of Credit Sublimit" means, as of any date of determination, the aggregate unused amount of the Revolving Commitments then in effect.

"Lien" means: (a) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement

having the practical effect of any of the foregoing; and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"Liquidity" means the available and unencumbered (other than by Liens in favor of the Collateral Agent under the Credit Documents and Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits) cash of the Credit Parties, *plus* the aggregate amount actually available to be drawn by the Borrower under the Aggregate Revolving Commitments.

"Loan" means any Revolving Loan, Swingline Loan or Term Loan, and the Base Rate Loans and SOFR Loans comprising such Loans.

"Margin Stock" has the meaning specified in Regulation U of the Federal Reserve Board, as in effect from time to time.

"Master Agreement" has the meaning specified in the definition of "*Swap Agreement*".

"Material Adverse Effect" means any effect, event, condition, action, omission, change or state of facts that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a material adverse effect with respect to:

(a) the business operations, properties, assets, or financial condition of the Credit Parties and their Subsidiaries, taken as a whole;

(b) the ability of the Credit Parties, taken as a whole, to fully and timely perform the Obligations;

(c) the legality, validity, binding effect, or enforceability against a Credit Party of any Credit Document to which it is a party;

(d) the value of the whole or any material part of the Collateral, or the priority of Liens in the whole or any material part of the Collateral in favor of the Collateral Agent for the holders of the Obligations; or

(e) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent and any Lender or any holder of Obligations under any Credit Document.

"Material Contract" means (a) any managing general agent or service company agreement entered into by any Credit Party or any Subsidiary of any Credit Party, and (b) any Contractual Obligation to which any Credit Party or any of their Subsidiaries, or any of their respective assets, are bound (other than those evidenced by the Credit Documents) pursuant to which (i) any Credit Party or any of its Subsidiaries are obligated to make payments in any twelve (12) month period of $6,000,000 or more, (ii) any Credit Party or any of its Subsidiaries expects to receive revenue in any twelve (12) month period of $6,000,000 or more or (iii) a default, breach or termination thereof could reasonably be expected to result in a Material Adverse Effect.

"Moody's" means Moody's Investor Services, Inc., together with its successors.

"Mortgages" means the mortgages, deeds of trust or deeds to secure debt that purport to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a security interest in the real property interest (including with respect to any improvements and fixtures) of the Borrower or any other Credit Party in real property.

"Multiemployer Plan" means any "multiemployer plan" as defined in Section 3(37) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or any of its ERISA Affiliates, or with respect to which any Credit Party or any of its ERISA Affiliates previously sponsored, maintained or contributed to or was required to contributed to, and still has liability.

"NAIC" has the meaning set forth in the definition of "*Qualifying Reinsurer*".

"Net Cash Proceeds" means the aggregate proceeds paid in cash or Cash Equivalents received by the Borrower or any of its Subsidiaries in connection with any Asset Sale, Debt Transaction, Equity Transaction or Securitization Transaction, net of: (a) direct costs incurred or estimated costs for which reserves are maintained, in connection therewith (including legal, accounting and investment banking fees and expenses, sales commissions and underwriting discounts); (b) estimated taxes paid or payable (including sales, use or other transactional taxes and any net marginal increase in income taxes) as a result thereof; (c) the amount required to retire any Indebtedness secured by a Lien on the related property; and (d) reasonable reserves in accordance with GAAP for any liabilities or indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchasers and other retained liabilities in respect of such Asset Sale undertaken by the Borrower or any Subsidiary in connection with such Asset Sale; provided, that, to the extent that any such amount ceases to be so reserved (other than any reduction in such reserve to make a payment in respect of such liability or indemnification obligations), the amount thereof shall be deemed to be Net Cash Proceeds of such Asset Sale at such time. For purposes hereof, "Net Cash Proceeds" includes any cash or Cash Equivalents received upon the disposition of any non-cash consideration received by the Borrower or any of its Subsidiaries in any Asset Sale, Debt Transaction, Equity Transaction or Securitization Transaction.

"Non-Consenting Lender" has the meaning specified in Section 2.17.

"Non-Defaulting Lender" means, at any time, each Lender that is *not* a Defaulting Lender at such time.

"Non-Qualifying Reinsurer" means any reinsurer that is *not* a Qualifying Reinsurer.

"Note" means a Revolving Loan Note, a Swingline Note or a Term Loan Note.

"Notice" means a Funding Notice, an Issuance Notice or a Conversion/Continuation Notice.

"Obligations" means all obligations, indebtedness and other liabilities of every nature of (a) each Credit Party from time to time owed to the Agents (including any former Agents), the Issuing Bank, the Lenders (including former Lenders in their capacity as such) or any of them, the Qualifying Swap Providers and the Qualifying Treasury Management Banks, under any Credit Document, Secured Swap Agreement or Secured Treasury Management Agreement, (b) each Subsidiary of any Credit Party from time to time owed to the Qualifying Swap Providers and the Qualifying Treasury Management Banks under any Secured Swap Agreement or Secured Treasury Management Agreement, in each case, together with all renewals, extensions, modifications or refinancings of any of the foregoing, whether for principal, interest (including fees and interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party or such Subsidiary of a Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party or such Subsidiary of a Credit Party for such interest or fees in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Swap Agreements, fees, expenses, indemnification or otherwise, and (c) Erroneous Payment Subrogation Rights; provided, that, the "Obligations" of a Credit Party shall *exclude* any Excluded Swap Obligations with respect to such Credit Party. Notwithstanding anything to the contrary contained herein or under any of the other Credit Documents, the obligations of any Credit Party or any Subsidiary of a Credit Party under any Secured Swap Agreement or any Secured Treasury Management Agreement shall be secured and guaranteed pursuant to the Credit Documents only to the extent that, and for so long as, the Obligations (other than any Obligations with respect to Secured Swap Agreements and Secured Treasury Management Agreements) are so secured and guaranteed.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Organizational Documents" means: (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended; (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended; (c) with

respect to any general partnership, its partnership agreement, as amended; and (d) with respect to any limited liability company, its articles of organization, certificate of formation or comparable documents, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "*Organizational Document*" shall only be to a document of a type customarily certified by such governmental official.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17).

"Outstanding Amount" means:

(a) with respect to Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date;

(b) with respect to any Letter of Credit Obligations on any date, the aggregate outstanding amount of such Letter of Credit Obligations on such date after giving effect to any Credit Extension of a Letter of Credit occurring on such date and any other changes in the amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by the Borrower of any drawing under any Letter of Credit; and

(c) with respect to any Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of such Term Loan on such date.

"Participant" has the meaning specified in Section 11.5(d).

"Participant Register" has the meaning specified in Section 11.5(d).

"Patriot Act" has the meaning specified in Section 6.15(f).

"Payment Recipient" shall have the meaning provided for such term in Section 10.11(a).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means any "employee pension benefit plan" as defined in Section 3(2) of ERISA other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA and which is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or with respect to which any Credit Party previously sponsored, maintained or contributed to, or was required to contribute to, and still has liability.

"Periodic Term SOFR Determination Date" shall have the meaning set forth in the definition of "Term SOFR" below.

"Permitted Acquisition" means any portfolio investment made by any Regulated Subsidiary in the ordinary course of business, as well as any Acquisition that satisfies the following conditions:

(a) the Property acquired (or the Property of the Person acquired) in such Acquisition is a business, or is used or useful in a business, permitted under Section 8.14;

(b) in the case of an Acquisition of the Equity Interests of a Person:

(i) the board of directors (or other comparable governing body) of such other Person shall have approved the Acquisition; and

(ii) such Person shall be organized and existing under the laws of any state of the United States or the District of Columbia;

(c) immediately after giving effect to such Acquisition, either (i) there shall be *at least* $25,000,000 of Liquidity, or (ii) on a Pro Forma Basis, the Consolidated Leverage Ratio shall be *at least* 0.25:1.00 (a "quarter turn") *less than* the Consolidated Leverage Ratio required for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended;

(d) the aggregate cash and non-cash consideration (including any assumption of Indebtedness, deferred purchase price and any Earn Out Obligations and any equity consideration) paid by the Credit Parties and their Subsidiaries for all such Acquisitions occurring during the term of this Agreement shall *not exceed* $150,000,000; and

(e)

(i) no Default or Event of Default shall exist and be continuing immediately before or immediately after giving effect thereto;

(ii) the representations and warranties made each of the Credit Parties in each Credit Document shall be true and correct in all material respects as if made on the date of such Acquisition (after giving effect thereto) except to the extent such representations and warranties expressly relate to an earlier date;

(iii) after giving effect thereto on a Pro Forma Basis, the Borrower shall be in compliance with the financial covenants set forth in clauses (a), (b) and (c) of Section 8.8; and

(iv) *at least* five (5) Business Days prior to the consummation of such Acquisition, an Authorized Officer of the Borrower shall provide a compliance certificate, in form and detail reasonably satisfactory to the Administrative Agent, affirming compliance with each of the items set forth in clauses (a) through (c) hereof.

"Permitted Debt Forgiveness" means the forgiveness or cancellation by a Credit Party of any loan made by such Credit Party to a Regulated Subsidiary.

"Permitted Liens" means each of the Liens permitted pursuant to Section 8.2.

"Permitted Refinancing" means any extension, renewal or replacement of any existing Indebtedness so long as any such renewal, refinancing and extension of such Indebtedness:

(a) has market terms and conditions;

(b) has an average life to maturity that is *greater than* that of the Indebtedness being extended, renewed or refinanced;

(c) does *not* include an obligor that was *not* an obligor with respect to the Indebtedness being extended, renewed or refinanced (unless such obligor is also a Guarantor with respect to Obligations);

(d) remains subordinated, if the Indebtedness being refinanced or extended was subordinated to the prior payment of the Obligations;

(e) does *not exceed* in a principal amount the Indebtedness being renewed, extended or refinanced *plus* reasonable fees and expenses, premiums and penalties incurred in connection therewith; and

(f) is *not* incurred, created or assumed, if any Default or Event of Default then exists or would arise therefrom.

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

"Platform" has the meaning specified in Section 11.1(d).

"Pledge and Security Agreement" means the security and pledge agreement dated as of the Closing Date given by the Credit Parties, as pledgors, to the Collateral Agent for the benefit of the holders of the Obligations (as defined therein), and any other pledge agreements or security agreements that may be given by any Person pursuant to the terms hereof, in each case, as the same may be amended and modified from time to time.

"Prime Rate" means the per annum rate which the Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time. The Administrative Agent's prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers.

"Principal Office" means, for the Administrative Agent, the Swingline Lender and the Issuing Bank, such Person's "*Principal Office*" as set forth on Appendix B, or such other office as it may from time to time designate in writing to the Borrower and each Lender.

"Pro Forma Basis" means, for purposes of calculating the financial covenants set forth in Section 8.8 (including for purposes of determining the Applicable Margin), that any Asset Sale, Involuntary Disposition, Acquisition, increase in the Aggregate Revolving Commitments or establishment of an additional Term Loan pursuant to Section 2.1(d)(iii), or Restricted Payment shall be deemed to have occurred as of the first (1st) day of the most recent four (4) consecutive full Fiscal Quarter period (except, *solely* in the case of the calculation of the financial covenant set forth in Section 8.8(b), if such period concludes with (I) the Fiscal Quarter ending March 31, 2023, then instead for the period consisting of the full Fiscal Quarter then ended, (II) the Fiscal Quarter ending June 30, 2023, then instead for the period consisting of the two (2) consecutive full Fiscal Quarters then ended, and (III) the Fiscal Quarter ending September 30, 2023, then instead for the period consisting of the three (3) consecutive full Fiscal Quarters then ended) preceding the date of such transaction for which the Borrower was required to deliver financial statements pursuant to clauses (a) or (b) of Section 7.1. In connection with the foregoing:

(a)

(i) with respect to any Asset Sale or Involuntary Disposition, income statement and cash flow statement items (whether positive or negative) attributable to the property disposed of shall be *excluded* to the extent relating to any period occurring *prior* to the date of such transaction; and

(ii) with respect to any Acquisition, income statement items attributable to the Person or property acquired shall be *included* to the extent relating to any period applicable in such calculations to the extent:

(A) such items are *not* otherwise included in such income statement items for the Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.1; and

(B) such items are supported by financial statements or other information satisfactory to the Administrative Agent; and

(b) any Indebtedness incurred or assumed by the Borrower or any Subsidiary (including the Person or property acquired) in connection with such transaction:

(i) shall be deemed to have been incurred as of the first (1st) day of the applicable period; and

(ii) 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 of the relevant date of determination.

"Probable Maximum Loss" has the meaning specified and as used by each applicable Insurance Regulatory Authority.

"Property" means an interest of any kind in any property or asset, whether real, personal or mixed, and whether tangible or intangible.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

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

"QFC Credit Support" shall have the meaning provided in Section 11.23.

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

"Qualifying FQ4 2022 Investments" shall mean Investments made during the Fiscal Quarter ending December 31, 2022 in accordance with this Agreement (a) consisting of the forgiveness (in whole or in part) by the Credit Parties (or any of them) of any fees otherwise owed by, or on behalf of, any Regulated Subsidiary, on the one hand, to, or for the benefit of, the Credit Parties (or any of them), on the other hand, pursuant to any managing general agent or service company agreement between any such Regulated Subsidiary and the Credit Parties (or any of them), and/or (b) made by any Credit Party or Subsidiary in any Subsidiary or Affiliate of any Credit Party that is *not* itself a Credit Party (including, for purposes of clarity, any Regulated Subsidiary), in any such case of the foregoing clauses (a) and (b), so long as no Event of Default exists at the time of making of such Investment or would result therefrom.

"Qualifying Reinsurer" means (a) the Florida Hurricane Catastrophe Fund, (b) any Person (which may include Affiliates of any Credit Party) providing reinsurance services with *at least* an "A–" financial strength

rating from A.M. Best Company (or any successor in interest thereto), or (c) any Person (which may include Affiliates of any Credit Party) providing reinsurance services that has collateralized its obligations to the Regulated Subsidiaries at a level consistent with the National Association of Insurance Commissioners' ("NAIC") requirements for credit on Schedule F of the statutory financial statements of the Regulated Subsidiaries.

"Qualifying Swap Provider" means: (a) any of Regions Bank and its Affiliates; and (b) any Person that (i) at the time it enters into a Swap Agreement with any Credit Party or any Subsidiary of a Credit Party, is a Lender or an Affiliate of a Lender, or (ii) in the case of a Swap Agreement with any Credit Party or any Subsidiary of a Credit Party in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in each such case under this clause (b), shall have provided a Secured Party Designation Notice to the Administrative Agent. For purposes hereof, the term "*Lender*" shall be deemed to include the Administrative Agent.

"Qualifying Treasury Management Bank" means: (a) any of Regions Bank and its Affiliates; and (b) any Person that (A) at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, or (B) in the case of a Treasury Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in each such case under this clause (b), shall have provided a Secured Party Designation Notice to the Administrative Agent. For purposes hereof, the term "*Lender*" shall be deemed to include the Administrative Agent.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by the Borrower or any of its Subsidiaries in any real property.

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

"Refunded Swingline Loans" has the meaning specified in Section 2.2(b)(iii).

"Register" has the meaning specified in Section 11.5(c).

"Regulated Subsidiary" means each of: (a) Pawtucket Insurance Company, Narragansett Bay Insurance Company, Heritage Property & Casualty Insurance Company, Zephyr Insurance Company, Inc. and Osprey Re Ltd.; and (b) any other Domestic Subsidiary of a Credit Party (i) that is a risk retention entity subject to regulation by a Governmental Authority and/or required by Applicable Laws to utilize statutory accounting principles and submit them to a Governmental Authority, and (ii) with respect to which the Administrative Agent has received prior written notification that such Domestic Subsidiary constitutes a Regulated Subsidiary.

"Reimbursement Date" has the meaning specified in Section 2.3(d).

"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.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Relevant Governmental Body" shall mean the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY, or any successor thereto.

"Removal Effective Date" has the meaning specified in Section 10.6(b).

"Required Lenders" means, as of any date of determination, *at least* two (2) Lenders (unless there is only one (1) Lender, in which case, such Lender) having Total Credit Exposure representing *more than* fifty percent (50.0%) of the Total Credit Exposures of all Lenders; provided, that, the Total Credit Exposure of any Defaulting Lender shall be *excluded* for purposes of making a determination of Required Lenders.

"Resignation Effective Date" has the meaning specified in Section 10.6(a).

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

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Person thereof), or any setting apart of funds or property for any of the foregoing.

"Revolving Commitment" means the commitment of a Lender to make, or otherwise fund, any Revolving Loan, and to acquire participations in Letters of Credit and Swingline Loans hereunder, and "Revolving Commitments" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Commitment, if any, as in effect on the Seventh Amendment Effective Date is set forth on Appendix A, or in the applicable Assignment Agreement or other agreement pursuant to which it becomes a party hereto after the Seventh Amendment Effective Date, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Closing Date was Fifty Million Dollars ($50,000,000), the aggregate amount of the Revolving Commitments as of the Fifth Amendment Effective Date was Seventy-Five Million Dollars ($75,000,000), and the aggregate amount of the Revolving Commitments as of the Seventh Amendment Effective Date is Fifty Million Dollars ($50,000,000).

"Revolving Commitment Percentage" means, for each Lender, a fraction (expressed as a percentage carried to the ninth (9^{th}) decimal place), the *numerator* of which is such Lender's Revolving Commitment and the *denominator* of which is the Aggregate Revolving Commitments. The Revolving Commitment Percentages as of the Seventh Amendment Effective Date are set forth on Appendix A.

"Revolving Commitment Period" means the period from, and including, the Closing Date to the *earlier* to occur of: (a) (i) in the case of Revolving Loans and Swingline Loans, the Revolving Commitment Termination Date, or (ii) in the case of the Letters of Credit, the expiration date thereof; or (b) in each case, the date on which the Revolving Commitments shall have been terminated as provided herein.

"Revolving Commitment Termination Date" means the *earliest* to occur of: (a) July 28, 2026; (b) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.11(b); and (c) the date of the termination of the Revolving Commitments pursuant to Section 9.2.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in Letter of Credit Obligations and Swingline Loans at such time.

"Revolving Loan" means a Loan made by a Lender to the Borrower pursuant to Section 2.1(a).

"Revolving Loan Note" means a promissory note in the form of Exhibit 2.5–1, as it may be amended, supplemented or otherwise modified from time to time.

"Revolving Obligations" means the Revolving Loans, the Letter of Credit Obligations and the Swingline Loans.

"Rhode Island Real Estate" means those certain parcels of real estate comprising 25 Maple Street, Pawtucket, Rhode Island 02862.

"S&P" means Standard & Poor's, a Standard & Poor's Financial Services LLC business, together with its successors.

"Sale and Leaseback Transaction" means, with respect to the Borrower or any Subsidiary, any arrangement, directly or indirectly, with any Person (other than a Credit Party) whereby the Borrower or such Subsidiary shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanctioned Country" means: (a) a country, territory or a government of a country or territory; (b) an agency of the government of a country or territory; or (c) an organization directly or indirectly owned or controlled by a country, territory or its government, that is subject to Sanctions.

"Sanctioned Person" means: (a) a Person named on the list of "Specially Designated Nationals" or any other Sanctions related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state; (b) any Person operating, organized or resident in a Sanctioned Country; or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

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

"SEC" means the United States Securities and Exchange Commission.

"Secured Party Designation Notice" means a notice in the form of Exhibit 1.1 (or other writing in form and substance satisfactory to the Administrative Agent) from a Qualifying Swap Provider or a Qualifying Treasury Management Bank to the Administrative Agent that it holds Obligations entitled to share in the guaranties and collateral interests provided herein in respect of a Secured Swap Agreement or Secured Treasury Management Agreement, as appropriate.

"Secured Swap Agreement" means any Swap Agreement between any Credit Party or any Subsidiary of a Credit Party, on the one hand, and a Qualifying Swap Provider, on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Swap Agreement shall be subject to the provisions of Section 9.3 and Section 10.10.

"Secured Swap Obligations" means all obligations owing to a Qualifying Swap Provider in connection with any Secured Swap Agreement including any and all cancellations, buy backs, reversals, terminations or assignments of any Secured Swap Agreement, any and all renewals, extensions and modifications of any Secured Swap Agreement and any and all substitutions for any Secured Swap Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

"Secured Treasury Management Agreement" means any Treasury Management Agreement between any Credit Party or any Subsidiary of a Credit Party, on the one hand, and a Qualifying Treasury Management Bank,

on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Treasury Management Agreement shall be subject to the provisions of Section 9.3 and Section 10.10.

"Secured Treasury Management Obligations" means all obligations owing to a Qualifying Treasury Management Bank under a Secured Treasury Management Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

"Securities" means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement (*e.g.*, stock appreciation rights), options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securitization Transaction" means any financing or factoring or similar transaction (or series of such transactions) entered by the Borrower or any of its Subsidiaries pursuant to which the Borrower or such Subsidiary may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment (the "Securitization Receivables") to a special purpose subsidiary or affiliate (a "Securitization Subsidiary") or any other Person.

"Senior Secured Notes" means those certain Senior Secured Notes Due 2023 issued by Heritage Insurance Holdings, Inc. pursuant to the terms of that certain Indenture dated as of December 15, 2016, in the aggregate original principal amount of Seventy-Nine Million Five-Hundred Thousand Dollars ($79,500,000).

"Seventh Amendment Effective Date" means November 7, 2022.

"Seventh Amendment" means that certain Seventh Amendment to Credit Agreement, dated as of the Seventh Amendment Effective Date, by and among the Borrower, the Guarantors, the Lenders and the Administrative Agent.

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Borrower and its Subsidiaries (including, for the avoidance of doubt, Regulated Subsidiaries) as of such date, determined in accordance with GAAP.

"Sixth Amendment Effective Date" means March 31, 2022.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding U.S. Government Securities Business Day; provided, that, if such published rate is subsequently corrected and provided by the SOFR Administrator, or on the SOFR Administrator's Website, within the *longer* of (i) one (1) hour of the time when such rate was first published, and (ii) the republication cut-off time for SOFR, if any, as specified by the SOFR Administrator in the applicable SOFR benchmark methodology, then "*SOFR*" shall instead mean such secured overnight financing rate for such Business Day subject to those corrections.

"SOFR Adjustment" means, a percentage equal to 0.10000% (10.000 basis points) per annum.

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

"SOFR Administrator's Website" means the website of the FRBNY accessible at (as of the Seventh Amendment Execution Date) https://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR-Based Rate" means each of Adjusted Term SOFR for any Interest Period, Daily Simple SOFR and Term SOFR for any Interest Period.

"SOFR Borrowing" means a Borrowing, the Loans in respect of which bear interest at a rate determined by reference to Adjusted Term SOFR for any available Interest Period, other than pursuant to clause (c) of the definition of "*Base Rate*" above.

"SOFR Loan" shall mean a Loan bearing interest at a rate determined by reference to Adjusted Term SOFR for any available Interest Period, other than pursuant to clause (c) of the definition of "*Base Rate*" above.

"SOFR Reference Rate" means the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR for an applicable tenor.

"Solvent" or "Solvency" means, with respect to any Person as of a particular date, that on such date:

(a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business;

(b) such Person does *not* intend to, and does *not* believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course;

(c) such Person is *not* engaged in a business or a transaction, and is *not* about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage;

(d) the fair value of the property of such Person is *greater than* the total amount of liabilities, including, without limitation, contingent liabilities, of such Person; and

(e) the present fair salable value of the assets of such Person is *not less than* the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured.

In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Credit Party" means, any Credit Party that is, at the time on which the Guaranty (or grant of security interest, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other entity that would *not* be an "eligible contract participant" under the Commodity Exchange Act at such time but for the effect of Section 4.8.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which *more than* fifty percent (50.0%) of the Voting Stock is at the time owned or controlled, directly or indirectly, by that Person, or the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided, that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Unless otherwise provided, "*Subsidiary*" shall refer to a Subsidiary of the Borrower or other Credit Party, as the context requires.

"Supported QFC" shall have the meaning provided in Section 11.23.

"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, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement; and

(b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or documentation, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

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

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements:

(a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s); and

(b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

"Swingline Lender" means Regions Bank in its capacity as Swingline Lender hereunder, together with its permitted successors and assigns in such capacity.

"Swingline Loan" means a Loan made by the Swingline Lender to the Borrower pursuant to Section 2.2.

"Swingline Note" means a promissory note in the form of Exhibit 2.5–2, as it may be amended, supplemented or otherwise modified from time to time.

"Swingline Rate" means the Base Rate *plus* the Applicable Margin applicable to Base Rate Loans (or, with respect to any Swingline Loan advanced pursuant to an Auto Borrow Agreement, such other rate as separately agreed in writing between the Borrower and the Swingline Lender).

"Swingline Sublimit" means, as of any date of determination, the *lesser* of: (a) Twenty-Five Million Dollars ($25,000,000); and (b) the aggregate unused amount of the Revolving Commitments then in effect.

"Synthetic Lease" means a lease transaction under which the parties intend that: (a) the lease will be treated as an "operating lease" by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as

amended; and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

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

"Term Loan" means the Term Loan A and any additional term loan established under Section 2.1(d)(iii).

"Term Loan A" has the meaning specified in Section 2.1(b).

"Term Loan A Commitment" means, for each Lender, on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, the commitment of such Lender to make a portion of the Term Loan A hereunder in three (3) separate advances on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, respectively, in accordance with such Lender's respective Term Loan A Commitment Percentage. The Term Loan A Commitment of each Lender on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, respectively, is set forth on Appendix A. The aggregate principal amount of the Term Loan A Commitments of all of the Lenders: (i) as in effect on the Closing Date was Seventy Five Million Dollars ($75,000,000); (ii) as in effect on the Fifth Amendment Effective Date was Thirteen Million Seven-Hundred Fifty Thousand Dollars ($13,750,000); and (iii) as in effect on the Seventh Amendment Effective Date is Twenty-Five Million Dollars ($25,000,000). The aggregate outstanding principal amount of the Term Loan A, as of the Seventh Amendment Effective Date immediately after giving effect to the Seventh Amendment and to the advance under the Term Loan A on the Seventh Amendment Effective Date, is Ninety-One Million Five-Hundred Thousand Dollars ($91,500,000).

"Term Loan A Commitment Percentage" means, for each Lender, with respect to the Closing Date, the Fifth Amendment Effective Date and the Seventh Amendment Effective Date, a fraction (expressed as a percentage carried to the ninth (9^{th}) decimal place): (a) the *numerator* of which is the outstanding principal amount of such Lender's portion of the Term Loan A on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, respectively (in each case, immediately after giving effect to the advance under the Term Loan A on such date); and (b) the *denominator* of which is the aggregate outstanding principal amount of the Term Loan A on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, respectively (in each case, immediately after giving effect to the advance under the Term Loan A on such date). The initial Term Loan A Commitment Percentage of each Lender as of the Closing Date, and the Term Loan A Commitment Percentages of each Lender as of the Fifth Amendment Effective Date and the Seventh Amendment Effective Date (respectively), are set forth on Appendix A.

"Term Loan A Maturity Date" means July 28, 2026.

"Term Loan A Note" means a promissory note in the form of Exhibit 2.5–3, as it may be amended, supplemented or otherwise modified from time to time.

"Term Loan Commitment Percentage" means, for each Lender providing a portion of a Term Loan, a fraction (expressed as a percentage carried to the ninth (9^{th}) decimal place): (a) the *numerator* of which is the outstanding principal amount of such Lender's portion of such Term Loan; and (b) the *denominator* of which is the aggregate outstanding principal amount of such Term Loan.

"Term Loan Commitments" means: (a) for each Lender, such Lender's Term Loan A Commitment on the Closing Date, on the Fifth Amendment Effective Date and on the Seventh Amendment Effective Date, as applicable; and (b) for each Lender providing an additional Term Loan pursuant to Section 2.1(d)(iii), the commitment of such Lender to make such additional Term Loan as set forth in the document(s) executed by the Borrower establishing such additional Term Loan.

"Term Loan Notes" means the Term Loan A Note and any other promissory notes given to evidence Term Loans hereunder.

"Term SOFR" means, as of any date of determination, for any calculations with respect to a SOFR Loan and/or a SOFR Borrowing and/or any determination of the Base Rate pursuant to clause (c) of the definition of "*Base Rate*" above, the rate per annum equal to the SOFR Reference Rate for a forward-looking tenor comparable to the then applicable or selected (as applicable) Interest Period for such SOFR Loan or SOFR Borrowing (or for a forward-looking one (1) month tenor, in the case of any determination of the Base Rate pursuant to clause (c) of the definition of "*Base Rate*" above), determined as of the date (such date, a "*Periodic Term SOFR Determination Date*") that is two (2) U.S. Government Securities Business Days *prior* to the first (1st) day of such Interest Period, as such rate is published by the Term SOFR Administrator on such Periodic Term SOFR Determination Date; provided, that, (a) if, as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Date, the SOFR Reference Rate for the applicable tenor has *not* been published by the Term SOFR Administrator, then "*Term SOFR*" shall instead mean the SOFR Reference Rate for such applicable tenor as published by the Term SOFR Administrator on the first (1st) preceding U.S. Government Securities Business Day for which such SOFR Reference Rate for such applicable tenor was published by the Term SOFR Administrator, subject to Section 3.1, and (b) if, at any time, Term SOFR (determined in accordance with the foregoing of this definition of "*Term SOFR*", including in accordance with the foregoing clause (a) of this proviso) is *less than* the Floor, then Term SOFR shall be deemed to equal the Floor for all purposes of this Agreement and the other Credit Documents. Any change(s) in Term SOFR for any Interest Period due to any change(s) in the SOFR Reference Rate for a comparable tenor shall be effective from, and including, the effective date of any such change(s) in such SOFR Reference Rate, without further notice to any Credit Party or Subsidiary, any other party to this Agreement or any other Credit Document, or any other Person.

"Term SOFR Administrator" means, the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the SOFR Reference Rate for any applicable tenor selected by the Administrative Agent in its reasonable discretion).

"Title Policy" has the meaning specified in Section 7.11(b)(iii).

"Total Credit Exposure" means, as to any Lender at any time: (a) the Outstanding Amount of the Term Loans of such Lender at such time; *plus* (b) the unused Revolving Commitments and Revolving Credit Exposure of such Lender at such time.

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Revolving Loans, all Swingline Loans and all Letter of Credit Obligations.

"Treasury Management Agreement" means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, commercial credit cards, purchasing cards, cardless e-payable services, debit cards, stored value cards, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services.

"Type", when used in reference to a 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 Adjusted Term SOFR for any Interest Period (other than pursuant to clause (c) of the definition of "*Base Rate*" above) or the Base Rate (including, for the avoidance of doubt, pursuant to clause (c) of the definition of "*Base Rate*" above).

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of New York (or any other applicable jurisdiction, as the context may require).

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

"U.S. Government Securities Business Day" means, any day, other than: (a) a Saturday or a Sunday; or (b) any day on which SIFMA recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"U.S. Special Resolution Regime" shall have the meaning provided in Section 11.23.

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

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

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.3(f).

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement without giving effect to the Benchmark Replacement Adjustment.

"Voting Stock" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Withholding Agent" means any Credit Party and the Administrative Agent.

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

Section 1.2 Accounting Terms.

(a) Except as otherwise expressly provided herein, all accounting terms *not* otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Lenders pursuant to clauses (a), (b), (c) and (d) of Section 7.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 7.1(g), if applicable). If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial covenant or requirement set forth in any Credit Document, and either the Borrower or the Required Lenders shall object in writing to determining compliance based on such change, then the Lenders and Borrower shall negotiate in good faith to amend such financial covenant, requirement or applicable defined terms to preserve the original intent thereof in light of such change to GAAP, provided, that, until so amended such computations shall continue to be made on a basis

consistent with the most recent financial statements delivered pursuant to clauses (a), (b), (c) and (d) of Section 7.1 as to which no such objection has been made.

(b) Notwithstanding anything to the contrary in the foregoing, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.8, including for purposes of determining the Applicable Margin, shall be made on a Pro Forma Basis.

(c) Notwithstanding anything to the contrary in the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Credit Parties and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470–20 on financial liabilities shall be disregarded.

Section 1.3 Rules of Interpretation.

(a) 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:

(i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document);

(ii) any reference herein to any Person shall be construed to include such Person's successors and assigns;

(iii) the words "*hereto*", "*herein*," "*hereof*" and "*hereunder*," and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision hereof or thereof;

(iv) all references in a Credit Document to Sections, Exhibits, Appendices and Schedules shall be construed to refer to Sections of, and Exhibits, Appendices and Schedules to, the Credit Document in which such references appear;

(v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any references to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time;

(vi) all references contained in a Section to clauses or definitions occurring "above" or "below" shall refer to the applicable clause of, or definition set forth in, such Section, and all general references contained in a Section or clause thereof to "the above" or "the below" shall refer, collectively, to all provisions of such Section or clause, as applicable, occurring prior to or after, as applicable, the occurrence of such general reference; and

(vii) 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.

(b) The terms lease and license shall include sub-lease and sub-license.

(c) All terms *not* specifically defined herein or by GAAP, which terms are defined in the UCC, shall have the meanings assigned to them in the UCC of the relevant jurisdiction, with the term "*instrument*" being that defined under Article 9 of the UCC of such jurisdiction.

(d) Unless otherwise expressly indicated, in the computation of periods of time from a specified date to a later specified date, the word "*from*" means "*from*, *and including*,", the words "*to*" and "*until*" each mean "*to*, *but excluding*,", and the word "*through*" means "*to*, *and including*,".

(e) To the extent that any of the representations and warranties contained in Article 6 under this Agreement, or in any of the other Credit Documents, is qualified by "Material Adverse Effect", the qualifier "in all material respects" contained in Section 5.2(c) and the qualifier "in any material respect" contained in Section 9.1(d) shall *not* apply.

(f) Whenever the phrase "*to the knowledge of*" or words of similar import relating to the knowledge of a Person are used herein or in any other Credit Document, such phrase shall mean and refer to the actual knowledge of the Authorized Officers of such Person.

(g) This Agreement and the other Credit Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Administrative Agent and the Credit Parties, and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Credit Documents are not intended to be construed against the Administrative Agent or any of the Lenders merely on account of the Administrative Agent's or any Lender's involvement in the preparation of such documents.

(h) Unless otherwise indicated, all references to a specific time shall be construed to Eastern Standard Time or Eastern Daylight Savings Time, as the case may be. Unless otherwise expressly provided herein, all references to dollar amounts and "$" shall mean Dollars.

(i) Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any permanent reduction in the stated amount of such Letter of Credit pursuant to the terms of such Letter of Credit); provided, that, with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one (1) or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

(j) Any reference herein or in any other Credit Document to a merger, transfer, consolidation, amalgamation, assignment, sale or disposition, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or disposition, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder and under each other Credit Document (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.4 Rules of Interpretation with Respect to Regulated Subsidiaries. Should an applicable Governmental Authority notify any Credit Party of a potentially actionable issue or concern related to control of a Regulated Subsidiary or determine that all or any of the Lenders, the Administrative Agent and/or the Collateral Agent is or are acting as control persons, as defined or used under the Florida Insurance Code, the Hawaii Insurance Code, Title 27 of the Rhode Island General Laws, or other Applicable Laws, of any Regulated Subsidiary due to one or more provisions of this Agreement, the parties agree to promptly further negotiate in good faith to modify this Agreement such that none of the Lenders, the Administrative Agent and the Collateral Agent are considered by such Governmental Authority to be control persons of the Regulated Subsidiaries and to

effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 1.5 Classifications of Loans and Borrowings. For purposes of this Agreement and the other Credit Documents, Loans may be classified and referred to by Class (*e.g.*, a "*Revolving Loan*" or the "*Term Loan A*"), by Type (*e.g.*, a "*SOFR Loan*" or a "*Base Rate Loan*"), or by Class and Type (*e.g.*, a "*Revolving SOFR Loan*"). Borrowings also may be classified and referred to by Class (*e.g.*, a "*Revolving Borrowing*"), by Type (*e.g.*, a "*SOFR Borrowing*" or a "*Base Rate Borrowing*"), or by Class and Type (*e.g.*, a "*Revolving SOFR Borrowing*").

Section 1.6 Cashless Rollovers. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, to the extent that any Lender agrees to extend the maturity date of, or replaces, renews and/or refinances any of, its then-existing Loans pursuant to any additional Term Loan established pursuant to Section 2.1(d)(iii) (including any additional advance under the Term Loan A) and/or any loans incurred under a new credit facility (including, without limitation, a new credit facility documented as an amendment and restatement of this Agreement), in each case of the foregoing, to the extent that such extension, replacement, renewal and/or refinancing is effected by means of a "cashless roll" by such Lender, then such extension, replacement, renewal and/or refinancing shall be deemed to comply with any requirement(s) under this Agreement or any other Credit Document that any related payment(s) to be made in effectuating such extension, replacement, renewal and/or refinancing be made "in Dollars", "in immediately available funds", "in cash" or any other similar requirement.

Section 1.7 Interest Rate Disclosure. The Administrative Agent does *not* warrant or accept responsibility for, and shall *not* have any liability whatsoever with respect to: (a) the continuation, administration, submission and/or calculation of, or any other matter related to, any of the Base Rate, the SOFR Reference Rate (for any applicable tenor) and/or any SOFR-Based Rate (for any Interest Period, as applicable), or any component definition used or referred to in, or any rate(s) used or referred to in, the definitions of any of the foregoing in Section 1.1, or for any alternative, successor or replacement rate thereto (including, without limitation, any Benchmark Replacement), including whether the composition and/or characteristics of any such actual or proposed alternative, successor or replacement rate (including, without limitation, any Benchmark Replacement) is or will be similar to, or produces or will produce the same or substantially equivalent value or economic equivalence of, or has or will have the same or a comparable volume or liquidity as, any of the Base Rate, the SOFR Reference Rate (for any applicable tenor), any SOFR-Based Rate (for any Interest Period, as applicable) and/or any other Benchmark prior to its discontinuance or unavailability; or (b) the effect, implementation and/or composition of any Conforming Changes. The Administrative Agent, together with its Affiliates and other related entities, may engage in transactions that affect the calculation of any of the Base Rate, the SOFR Reference Rate (for any applicable tenor), any SOFR-Based Rate (for any Interest Period, as applicable), any alternative, successor or replacement rate of any of the foregoing (including, without limitation, any Benchmark Replacement), and/or any relevant adjustments to any of the foregoing, in any such case of the foregoing, in a manner adverse to the Borrower and the other Credit Parties. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any of the Base Rate, the SOFR Reference Rate (for any applicable tenor), any SOFR-Based Rate (for any Interest Period, as applicable), and/or any other Benchmark, in each case of the foregoing, pursuant to the terms of this Agreement, and the Administrative Agent shall have no liability whatsoever to the Borrower, any other Credit Party, any Subsidiary, any Lender and/or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental and/or consequential damages, costs, losses and/or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or any component thereof) provided by any such information source or service.

Article 2

LOANS AND LETTERS OF CREDIT

Section 2.1 Revolving Loans and Term Loans.

(a) Revolving Loans. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make revolving loans (each such loan, a "Revolving Loan") to the Borrower in an aggregate amount up to but *not exceeding* such Lender's Revolving Commitment; provided, that, after giving effect to the making of any Revolving Loan: (i) the Total Revolving Outstandings shall *not exceed* the Aggregate Revolving Commitments; and (ii) the Revolving Credit Exposure of any Lender shall *not exceed* such Lender's Revolving Commitment. Amounts borrowed pursuant to this Section 2.1(a) may be repaid and reborrowed without premium or penalty (subject to Section 3.1(c)) during the Revolving Commitment Period. The Revolving Loans may consist of Base Rate Loans or SOFR Loans, or a combination thereof, as the Borrower may request. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full *no later than* such date.

(b) Term Loan A. On the Closing Date, the Lenders made an initial advance, each in an amount equal to their respective Term Loan A Commitments on the Closing Date, of a term loan to the Borrower in Dollars in an aggregate original principal amount equal to Seventy-Five Million Dollars ($75,000,000) (the "*Closing Date Advance*"). On the Fifth Amendment Effective Date, the Lenders made an additional advance, each in an amount equal to their respective Term Loan A Commitments on the Fifth Amendment Effective Date, of a term loan to the Borrower in Dollars in an aggregate original principal amount equal to Thirteen Million Seven-Hundred Fifty Thousand Dollars ($13,750,000) (the "*Fifth Amendment Advance*"). Immediately prior to the Seventh Amendment Effective Date, the aggregate outstanding principal amount of the Term Loan A was Forty-Eight Million Nine-Hundred Thousand Dollars ($48,900,000). Subject to the terms and conditions set forth in the Seventh Amendment, the Lenders that are Seventh Amendment Term Loan A Advance Lenders (as such term is defined in the Seventh Amendment) agree to make an additional advance, each in an amount equal to their respective Term Loan A Commitments on the Seventh Amendment Effective Date, under such term loan to the Borrowers in Dollars pursuant to clause (d)(iii) below on the Seventh Amendment Effective Date in an aggregate original principal amount, advanced on the Seventh Amendment Effective Date, equal to Twenty-Five Million Dollars ($25,000,000) (the "*Seventh Amendment Advance*"; and the Seventh Amendment Advance together with the Closing Date Advance and the Fifth Amendment Advance, collectively, the "*Term Loan A*"), such that the aggregate outstanding principal amount of the Term Loan A, as of the Seventh Amendment Effective Date (immediately *after* giving effect to the incurrence of the Seventh Amendment Advance), shall be Ninety-One Million Five-Hundred Thousand Dollars ($91,500,000). The Term Loan A may, from time to time, be outstanding as Base Rate Loans or SOFR Loans, or a combination thereof, as the Borrower may request. Amounts repaid on the Term Loan A may *not* be reborrowed.

(c) Mechanics for Revolving Loans and Term Loans.

(i) All Term Loans and, except pursuant to Section 2.2(b)(iii), all Revolving Loans shall be made in an aggregate minimum amount of Five Hundred Thousand Dollars ($500,000) and, if greater, in an integral multiple of One Hundred Thousand Dollars ($100,000) in excess thereof.

(ii) Whenever the Borrower desires that the Lenders make a Term Loan or a Revolving Loan, the Borrower shall deliver to the Administrative Agent a fully executed Funding Notice *no later than*: (x) 1:00 p.m. *at least* three (3) Business Days in advance of the proposed Credit Date in the case of a SOFR Loan; and (y) 1:00 p.m. *at least* one (1) Business Day in advance of the proposed Credit Date in the case of a Loan that is a Base Rate Loan. Except as otherwise provided herein, any Funding Notice for any Loans that are SOFR Loans shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of each Revolving Loan or Term Loan, together with the amount of each Lender's Revolving Commitment Percentage or Term Loan Commitment Percentage thereof, respectively, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided, that, the Administrative Agent shall have received such notice by 1:00 p.m.) *not later than* 4:00 p.m. on the same day as the Administrative Agent's receipt of such notice from the Borrower.

(iv) Each Lender shall make its Revolving Commitment Percentage of the requested Revolving Loan or its Term Loan Commitment Percentage of the requested Term Loan available to the Administrative Agent *not later than* 11:00 a.m. on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the applicable conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Credit Extension available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all Loans received by the Administrative Agent in connection with the Credit Extension from the Lenders to be credited to the account of the Borrower at the Administrative Agent's Principal Office or such other account as may be designated in writing to the Administrative Agent by the Borrower.

(d) Increase in Revolving Commitments and Establishment of Additional Term Loans. The Borrower may, at any time and from time to time on or prior to the Seventh Amendment Effective Date (but *not*, for purposes of clarity, at any time after the Seventh Amendment Effective Date), upon prior written notice by the Borrower to the Administrative Agent, increase the Revolving Commitments (but *not* the Letter of Credit Sublimit or the Swingline Sublimit) and/or establish one or more additional Term Loans (which may, for the avoidance of doubt, consist of an additional advance under the Term Loan A), subject to the following:

(i) The *sum of* (A) the aggregate committed amount of any increases in the Aggregate Revolving Commitments established pursuant to this Section 2.1(d), *plus* (B) the aggregate original principal amount of any additional Term Loans (including, for the avoidance of doubt, any additional advances under the Term Loan A) established pursuant to this Section 2.1(d) (including, for purposes of clarity, the aggregate original principal amount of the Seventh Amendment Advance), shall *not exceed* Twenty-Five Million Dollars ($25,000,000).

(ii) The Borrower may, at any time and from time to time on or prior to the Seventh Amendment Effective Date (but *not*, for purposes of clarity, at any time after the Seventh Amendment Effective Date), upon prior written notice by the Borrower to the Administrative Agent, increase the Aggregate Revolving Commitments (but *not* the Letter of Credit Sublimit or the Swingline Sublimit) with additional Revolving Commitments from any existing Lender with a Revolving Commitment or with new Revolving Commitments from any other Person that would qualify as Eligible Assignees selected by the Borrower and reasonably acceptable to the Administrative Agent and the Issuing Bank, provided, that:

(A) any such increase shall be in a minimum principal amount of Ten Million Dollars ($10,000,000) and, if greater, in integral multiples of Five Million Dollars ($5,000,000) in excess thereof;

(B) no Default or Event of Default shall exist before, and immediately after giving effect to, such increase;

(C)

(I) no existing Lender shall be under any obligation to increase its Revolving Commitment, and any such decision whether to increase its Revolving Commitment shall be in such Lender's sole and absolute discretion; and

(II) the Arrangers shall have no obligation to arrange any such increase without their written agreement to undertake such arrangement;

(D)

(I) any new Lender providing a Revolving Commitment in connection with any increase in Aggregate Revolving Commitments shall join this Agreement by executing such joinder documents reasonably required by the Administrative Agent; and

(II) any existing Lender electing to increase its Revolving Commitment shall have executed a commitment agreement reasonably satisfactory to the Administrative Agent;

(E) the Borrower shall have paid any applicable upfront and/or arrangement fees with respect to such increase;

(F) any such increase in the Revolving Commitments shall be subject to receipt by the Administrative Agent of a certificate of the Borrower, dated as of the date of such increase and signed by an Authorized Officer of the Borrower, (x) certifying and attaching the resolutions adopted by the Borrower and each Guarantor approving or consenting to such increase, and (y) certifying that, before and after giving effect to such increase:

(I) the Borrower shall be in compliance, on a Pro Forma Basis immediately after giving effect to the incurrence of any such increase in the Revolving Commitments (and assuming, for purposes of such calculation, that the Revolving Commitments as increased are fully drawn), with the financial covenants set forth in clauses (a) and (b) of Section 8.8, recomputed as of the last day of the most recently ended Fiscal Quarter of the Borrower for which financial statements have been delivered pursuant to Section 7.1; and

(II) the representations and warranties contained in Article 6 and the other Credit Documents are true and correct in all material respects on, and as of, the date of such increase, except to the extent that such representations and warranties specifically refer to an earlier date, in which case, they are true and correct in all material respects as of such earlier date, and except that, for purposes of this Section 2.1(d), the representations and warranties contained in Section 6.7 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) of Section 7.1;

(III) no Default or Event of Default exists;

(G) any increase in the Revolving Commitments shall have the same terms as the Revolving Commitments in existence immediately *prior* to giving effect to such increase; and

(H) the Administrative Agent shall have received all documents (including secretary's certificates, resolutions of the board of directors of the Credit Parties and customary opinions of counsel to the Credit Parties, if required to be provided by the Administrative Agent or the Lenders providing such increased Revolving Commitments) relating to the corporate or other necessary authority for such increase in the Aggregate Revolving Commitments and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent.

The Borrower shall prepay any Revolving Loans owing under this Agreement on the date of any such increase in the Revolving Commitments to the extent necessary to keep the outstanding Revolving

Loans ratable with any revised Revolving Commitments arising from any non-ratable increase in the Revolving Commitments under this Section.

(iii) The Borrower may, at any time and from time to time on or prior to the Seventh Amendment Effective Date (but *not*, for purposes of clarity, at any time after the Seventh Amendment Effective Date), upon prior written notice to the Administrative Agent, request the establishment of one or more additional Term Loans (which may, for the avoidance of doubt, consist of an additional advance under the Term Loan A) from existing Lenders or other Persons that would qualify as Eligible Assignees selected by the Borrower (other than the Borrower or any Affiliate or Subsidiary of the Borrower) and reasonably acceptable to the Administrative Agent, provided, that:

(A) any such establishment shall be in a minimum aggregate principal amount of Ten Million Dollars ($10,000,000) and, if greater, in integral multiples of Five Million Dollars ($5,000,000) in excess thereof;

(B) no Default or Event of Default shall exist either immediately before or immediately after giving effect to the establishment and incurrence of such additional Term Loan;

(C)

(I) no existing Lender shall be under any obligation to provide a portion of any additional Term Loan, and any such decision whether to provide a portion of any additional Term Loan shall be in such Lender's sole and absolute discretion; and

(II) the Arrangers shall have no obligation to arrange any such increase without their written agreement to undertake such arrangement;

(D)

(I) any new Lender shall join this Agreement by executing such joinder documents reasonably required by the Administrative Agent; and/or

(II) any existing Lender electing to provide a Term Loan Commitment with respect to such additional Term Loan shall have executed a commitment or joinder agreement reasonably satisfactory to the Administrative Agent;

(E) the Borrower shall have paid any applicable upfront and/or arrangement fees with respect to such increase;

(F) the establishment and incurrence of any additional Term Loan shall be subject to receipt by the Administrative Agent of a certificate of the Borrower, dated as of the date of the establishment and incurrence of such additional Term Loan and signed by an Authorized Officer of the Borrower, (x) certifying and attaching the resolutions adopted by the Borrower and each Guarantor approving or consenting to such establishment and incurrence, and (y) certifying that, both immediately before and immediately after giving effect to such establishment and incurrence:

(I) the representations and warranties contained in Article 6 and the other Credit Documents are true and correct in all material respects on, and as of, the date of establishment and incurrence of such additional Term Loan, except to the extent that such representations and warranties specifically refer to an earlier date, in which case, they are true and correct in all material respects as of such earlier date, and, except that for purposes of this Section 2.1(d), the representations and warranties contained in Section

6.7 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) of Section 7.1;

(II) no Default or Event of Default exists; and

(III) the Borrower shall be in compliance, on a Pro Forma Basis immediately *after* giving effect to the establishment and incurrence of any additional Term Loan (and after giving effect, on a Pro Forma Basis, to any Permitted Acquisition consummated simultaneously therewith and assuming, for purposes of such calculation, that the Revolving Commitments are fully drawn), with the financial covenants set forth in clauses (a) and (b) of Section 7.8, recomputed as of the last day of the most recently ended Fiscal Quarter of the Borrower for which financial statements have been delivered pursuant to Section 7.1;

(G) the Applicable Margin of any additional Term Loan shall be as set forth in the commitment or joinder agreement executed by the Borrower in connection therewith; provided, that, the all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but *excluding* arrangement, structuring and underwriting fees paid or payable to the Arrangers or their Affiliates) applicable to such additional Term Loan shall *not* be *more than* fifty hundredths of a percent (0.50%) *higher than* the corresponding all-in yield (determined on the same basis) applicable to the Term Loan A or any then outstanding additional Term Loan (it being understood that interest on the Term Loan A and any existing additional Term Loan may be increased to the extent necessary to satisfy this requirement);

(H) the maturity date for any additional Term Loan shall be as set forth in the commitment or joinder agreement executed by the Borrower in connection therewith; provided, that, such date shall *not* be *earlier than* the Term Loan A Maturity Date or the maturity date of any other then existing Term Loan;

(I) the scheduled principal amortization payments under any additional Term Loan shall be as set forth in the commitment or joinder agreement executed by the Borrower in connection therewith; provided, that, the weighted average life to maturity (as calculated by the Administrative Agent) of any such additional Term Loan shall *not* be *less than* the weighted life to maturity of the Term Loan A and any other then existing Term Loan; and

(J) the Administrative Agent shall have received all documents (including secretary's certificates, resolutions of the board of directors of the Credit Parties and customary opinions of counsel to the Credit Parties, if required to be provided by the Administrative Agent or the Lenders providing such additional Term Loan) relating to the corporate or other necessary authority for such additional Term Loan and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent.

Section 2.2 Swingline Loans.

(a) Swingline Loans Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swingline Lender may, in its sole discretion, make Swingline Loans to the Borrower in the aggregate amount up to but *not exceeding* the Swingline Sublimit; provided, that, after giving effect to the making of any Swingline Loan, in no event shall (i) the Total Revolving Outstandings *exceed* the Aggregate Revolving Commitments, and (ii) the Revolving Credit Exposure of any Lender *exceed* such Lender's Revolving Commitment. Amounts borrowed pursuant to this Section 2.2 may be repaid and reborrowed during the Revolving Commitment Period. The Swingline Lender's Revolving Commitment shall expire on the Revolving Commitment

Termination Date and all Swingline Loans and all other amounts owed hereunder with respect to the Swingline Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Swingline Loans.

(i) Subject to clause (vi) below, whenever the Borrower desires that the Swingline Lender make a Swingline Loan, the Borrower shall deliver to the Administrative Agent a Funding Notice *no later than* 11:00 a.m. on the proposed Credit Date.

(ii) The Swingline Lender shall make the amount of its Swingline Loan available to the Administrative Agent *not later than* 3:00 p.m. on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Swingline Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swingline Loans received by the Administrative Agent from the Swingline Lender to be credited to the account of the Borrower at the Administrative Agent's Principal Office, or to such other account as may be designated in writing to the Administrative Agent by the Borrower.

(iii) With respect to any Swingline Loans which have *not* been voluntarily prepaid by the Borrower pursuant to Section 2.11, the Swingline Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrower), *no later than* 11:00 a.m. on the day of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by the Borrower) requesting that each Lender holding a Revolving Commitment make Revolving Loans that are Base Rate Loans to the Borrower on such Credit Date in an amount equal to the amount of such Swingline Loans (the "Refunded Swingline Loans") outstanding on the date such notice is given which the Swingline Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding: (1) the proceeds of such Revolving Loans made by the Lenders other than the Swingline Lender shall be immediately delivered by the Administrative Agent to the Swingline Lender (and *not* to the Borrower) and applied to repay a corresponding portion of the Refunded Swingline Loans; and (2) on the day such Revolving Loans are made, the Swingline Lender's Revolving Commitment Percentage of the Refunded Swingline Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by the Swingline Lender to the Borrower, and such portion of the Swingline Loans deemed to be so paid shall no longer be outstanding as Swingline Loans and shall no longer be due under the Swingline Note of the Swingline Lender but shall instead constitute part of the Swingline Lender's outstanding Revolving Loans to the Borrower and shall be due under the Revolving Loan Note issued by the Borrower to the Swingline Lender. The Borrower hereby authorizes the Administrative Agent and the Swingline Lender to charge the Borrower's accounts with the Administrative Agent and the Swingline Lender (up to the amount available in each such account) in order to immediately pay the Swingline Lender the amount of the Refunded Swingline Loans to the extent the proceeds of such Revolving Loans made by the Lenders, including the Revolving Loans deemed to be made by the Swingline Lender, are insufficient to repay in full the Refunded Swingline Loans. If any portion of any such amount paid (or deemed to be paid) to the Swingline Lender should be recovered by, or on behalf of, the Borrower from the Swingline Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.14.

(iv) If for any reason Revolving Loans are not made pursuant to Section 2.2(b)(iii) in an amount sufficient to repay any amounts owed to the Swingline Lender in respect of any outstanding Swingline Loans on or before the third (3rd) Business Day after demand for payment thereof by the Swingline Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swingline Loans, and in an amount equal to its Revolving Commitment Percentage of the applicable unpaid amount together with accrued interest thereon; provided, that, any such participation purchased by a Lender shall be limited to an amount that would *not* cause the Revolving

Credit Exposure of such Lender (after giving effect to such participation) to *exceed* such Lender's Revolving Commitment. On the Business Day that notice is provided by the Swingline Lender (or by the 11:00 a.m. on the following Business Day if such notice is provided after 2:00 p.m.), each Lender holding a Revolving Commitment shall deliver to the Swingline Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of the Swingline Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of the Swingline Lender in form and substance reasonably satisfactory to the Swingline Lender. In the event any Lender holding a Revolving Commitment fails to make available to the Swingline Lender the amount of such Lender's participation as provided in this paragraph, the Swingline Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by the Swingline Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(v) Notwithstanding anything contained herein to the contrary:

(A) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swingline Loans pursuant to clause (iii) above, and each Lender's obligation to purchase a participation in any unpaid Swingline Loans pursuant to the immediately preceding paragraph, shall be absolute and unconditional and shall *not* be affected by any circumstance, including:

(I) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, any Credit Party or any other Person for any reason whatsoever;

(II) the occurrence or continuation of a Default or Event of Default;

(III) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party;

(IV) any breach of this Agreement or any other Credit Document by any party thereto; or

(V) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing;

provided, that, such obligations of each Lender are subject to the condition that the Swingline Lender had not received prior notice from the Borrower or the Required Lenders that any of the conditions under Section 5.2 to the making of the applicable Refunded Swingline Loans or other unpaid Swingline Loans were *not* satisfied at the time such Refunded Swingline Loans or other unpaid Swingline Loans were made; and

(B) the Swingline Lender shall not be obligated to make any Swingline Loans:

(I) if it has elected *not* to do so after the occurrence, and during the continuation, of a Default or Event of Default;

(II) it does *not* in good faith believe that all conditions under Section 5.2 to the making of such Swingline Loan have been satisfied or waived by the Required Lenders; or

(III) at a time when a Defaulting Lender exists, unless the Swingline Lender has entered into arrangements satisfactory to it and the Borrower to eliminate the Swingline Lender's risk with respect to the Defaulting Lender's participation in such Swingline Loan, including by Cash Collateralizing such Defaulting Lender's Revolving Commitment Percentage of the outstanding Swingline Loans in a manner reasonably satisfactory to the Swingline Lender and the Administrative Agent.

(vi) In order to facilitate the borrowing of Swingline Loans, the Borrower and the Swingline Lender may mutually agree to, and are hereby authorized to, enter into an auto borrow agreement in form and substance satisfactory to the Swingline Lender and the Administrative Agent (the "Auto Borrow Agreement") providing for the automatic advance by the Swingline Lender of Swingline Loans under the conditions set forth in the Auto Borrow Agreement, subject to the conditions set forth herein. At any time an Auto Borrow Agreement is in effect, advances under the Auto Borrow Agreement shall be deemed Swingline Loans for all purposes hereof, except that Borrowings of Swingline Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement. For purposes of determining the Total Revolving Outstandings at any time during which an Auto Borrow Agreement is in effect, the Outstanding Amount of all Swingline Loans shall be deemed to be the *sum of* the Outstanding Amount of Swingline Loans at such time *plus* the maximum amount available to be borrowed under such Auto Borrow Agreement at such time.

Section 2.3 Issuances of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Issuing Bank agrees to issue Letters of Credit for the account of the Borrower or any of its Subsidiaries in the aggregate amount up to, but *not exceeding*, the Letter of Credit Sublimit, provided, that:

(i) each Letter of Credit shall be denominated in Dollars;

(ii) the stated amount of each Letter of Credit shall *not* be *less than* Fifty Thousand Dollars ($50,000) or such lesser amount as is acceptable to the Issuing Bank;

(iii) after giving effect to such issuance, in no event shall: (A) the Total Revolving Outstandings *exceed* the Aggregate Revolving Commitments; (B) the Revolving Credit Exposure of any Lender *exceed* such Lender's Revolving Commitment; and (C) the Outstanding Amount of Letter of Credit Obligations *exceed* the Letter of Credit Sublimit; and

(iv) in no event shall any Letter of Credit have an expiration date *later than* the *earlier* of: (A) seven (7) days prior to the Revolving Commitment Termination Date; and (B) the date which is one (1) year from the date of issuance of such Letter of Credit.

Subject to the foregoing (other than clause (a)(iv)) the Issuing Bank may agree that a Letter of Credit will automatically be extended for one or more successive periods *not to exceed* one (1) year each, unless the Issuing Bank elects *not* to extend for any such additional period; provided, that, the Issuing Bank shall *not* extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time the Issuing Bank must elect to allow such extension; provided, further, that, in the event that any Lender is at such time a Defaulting Lender, unless the Issuing Bank has entered into arrangements satisfactory to the Issuing Bank (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Bank's Fronting Exposure with respect to such Lender (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Revolving Commitment Percentage of the Outstanding Amount of the Letter of Credit Obligations in a manner reasonably satisfactory to Agents, the Issuing Bank shall not be obligated to issue or extend any Letter of Credit hereunder. The Issuing Bank may send a Letter of Credit or conduct any communication to or from the

beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(b) Notice of Issuance. Whenever the Borrower desires the issuance of a Letter of Credit, the Borrower shall deliver to the Administrative Agent an Issuance Notice *no later than* 1:00 p.m. *at least* three (3) Business Days or such shorter period as may be agreed to by the Issuing Bank in any particular instance, in advance of the proposed date of issuance. Upon satisfaction or waiver of the conditions set forth in Section 5.2, the Issuing Bank shall issue the requested Letter of Credit only in accordance the Issuing Bank's standard operating procedures (including, without limitation, the delivery by the Borrower of such executed documents and information pertaining to such requested Letter of Credit, including any Issuer Documents, as the Issuing Bank or the Administrative Agent may require). Upon the issuance of any Letter of Credit or amendment or modification to a Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent and each Lender of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.3(e).

(c) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. As between the Borrower and the Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Bank shall not be responsible for:

(i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;

(ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;

(iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit;

(iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher;

(v) errors in interpretation of technical terms;

(vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof;

(vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or

(viii) any consequences arising from causes beyond the control of the Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, the Issuing Bank's rights or powers hereunder.

Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of the Issuing Bank to any Credit Party. Notwithstanding anything to the contrary contained in this Section 2.3(c), the Borrower shall retain any and all rights it may have against the Issuing Bank for any liability arising solely out of the gross negligence or willful misconduct of the Issuing Bank, as determined by a court of competent jurisdiction in a final, non-appealable order.

(d) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event the Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify the Borrower and the Administrative Agent, and the Borrower shall reimburse the Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the "Reimbursement Date") in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, that, anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and the Issuing Bank *prior* to 11:00 a.m. on the date such drawing is honored that the Borrower intends to reimburse the Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Funding Notice to the Administrative Agent requesting the Lenders to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 5.2, the Lenders shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the Issuing Bank for the amount of such honored drawing; and provided, further, that, if, for any reason, proceeds of Revolving Loans are not received by the Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrower shall reimburse the Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.3(d) shall be deemed to relieve any Lender from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.3(d).

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from the Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Revolving Commitment Percentage (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder; provided, that, any such participation purchased by a Lender shall be limited to an amount that would not cause the Revolving Credit Exposure of such Lender (after giving effect to such participation) to *exceed* such Lender's Revolving Commitment. In the event that the Borrower shall fail for any reason to reimburse the Issuing Bank as provided in clause (d) above, the Issuing Bank shall promptly notify each Lender of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Revolving Commitment Percentage. Each Lender shall make available to the Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Bank specified in such notice, *not later than* 12:00 p.m. on the first (1st) Business Day (under the laws of the jurisdiction in which such office of the Issuing Bank is located) after the date notified by the Issuing Bank. In the event that any Lender fails to make available to the Issuing Bank on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this clause (e), the Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by the Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this clause (e) shall be deemed to prejudice the right of any Lender to recover from the Issuing Bank any amounts made available by such Lender to the Issuing Bank pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of the Issuing Bank, as

determined by a court of competent jurisdiction in a final, non-appealable order. In the event the Issuing Bank shall have been reimbursed by other Lenders pursuant to this clause (e) for all or any portion of any drawing honored by the Issuing Bank under a Letter of Credit, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this clause (e) with respect to such honored drawing such Lender's Revolving Commitment Percentage of all payments subsequently received by the Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Appendix B or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by the Lenders pursuant to clause (d) above and the obligations of the Lenders under clause (e) above shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances:

(i) any lack of validity or enforceability of any Letter of Credit;

(ii) the existence of any claim, set-off, defense (other than that such drawing has been repaid) or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Bank, a Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or any of its Subsidiaries and the beneficiary for which any Letter of Credit was procured);

(iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) payment by the Issuing Bank under any Letter of Credit against presentation of a draft or other document which does *not* substantially comply with the terms of such Letter of Credit;

(v) any adverse change in the business, operations, properties, assets, or financial condition of the Borrower or any of its Subsidiaries;

(vi) any breach hereof or any other Credit Document by any party thereto;

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or

(viii) the fact that an Event of Default or a Default shall have occurred and be continuing;

provided, that, in each case, that payment by the Issuing Bank under the applicable Letter of Credit shall *not* have constituted gross negligence or willful misconduct of the Issuing Bank under the circumstances in question, as determined by a court of competent jurisdiction in a final, non-appealable order.

(g) Indemnification. Without duplication of any obligation of the Credit Parties under Section 11.2, in addition to amounts payable as provided herein, each of the Credit Parties hereby agrees, on a joint and several basis, to protect, indemnify, pay and save harmless the Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable out-of-pocket fees,

expenses and disbursements of counsel) which the Issuing Bank may incur or be subject to as a consequence, direct or indirect, of:

(i) the issuance of any Letter of Credit by the Issuing Bank, other than as a result of:

(A) the gross negligence or willful misconduct of the Issuing Bank, as determined by a court of competent jurisdiction in a final, non-appealable order; or

(B) the wrongful dishonor by the Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it; or

(ii) the failure of the Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) Applicability of ISP. Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(i) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of the Borrower, the Borrower shall be obligated to reimburse the Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

Section 2.4 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by the Lenders simultaneously and proportionately to their respective pro rata shares of the Loans, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Commitment or any Term Loan Commitment, or the portion of the aggregate outstanding principal amount of the Revolving Loans or the Term Loans, of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds.

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will *not* make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.1(c) or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with, and at the time required by, Section 2.1(c) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has *not* in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at: (A) in the case of a payment to be made by such Lender, the *greater of* the Federal Funds Rate and a rate determined by the Administrative Agent in

accordance with banking industry rules on interbank compensation; and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans, *plus*, in either case, any administrative, processing or similar fees customarily charged by the Administrative Agent in connection therewith. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Notices given by the Administrative Agent under this clause (b) shall be conclusive absent manifest error.

Section 2.5 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower and each other Credit Party to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; provided, that, the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitment or the Borrower's obligations in respect of any applicable Loans; and provided, further, that, in the event of any inconsistency between the Register and any Lender's records, the recordation's in the Register shall govern in the absence of demonstrable error therein.

(b) Notes. The Borrower shall execute and deliver to each (i) Lender on the Closing Date, (ii) Person who is a permitted assignee of such Lender pursuant to Section 11.5, and (iii) Person who becomes a Lender in accordance with Section 2.1(d), in each case, to the extent requested by such Person, a Note or Notes to evidence such Person's portion of the Revolving Loans, Swingline Loans or Term Loans, as applicable.

Section 2.6 Scheduled Principal Payments.

(a) Revolving Loans. The principal amount of Revolving Loans is due and payable in full on the Revolving Commitment Termination Date.

(b) Swingline Loans. The principal amount of the Swingline Loans is due and payable in full on the *earlier* to occur of: (i) the date of demand by the Swingline Lender; and (ii) the Revolving Commitment Termination Date.

(c) Term Loan A. The principal amount of the Term Loan A shall be repaid, (i) prior to the Fifth Amendment Effective Date, in equal quarterly installments, beginning with the Fiscal Quarter ending March 31,

2019, in the amount of One Million Eight-Hundred and Seventy-Five Thousand Dollars ($1,875,000) payable on the last Business Day of each such Fiscal Quarter, (ii) during the period on and after the Fifth Amendment Effective Date through, and including, the last Fiscal Quarter ending *prior* to the Seventh Amendment Effective Date, in equal quarterly installments, beginning with the Fiscal Quarter ending December 31, 2021, in the amount of Eight-Hundred Seventy-Five Thousand Dollars ($875,000) payable on the last Business Day of each such Fiscal Quarter, and (iii) during the period on and after the Seventh Amendment Effective Date through, and including, the Term Loan A Maturity Date, in equal quarterly installments, beginning with the Fiscal Quarter ending December 31, 2022, in the amount of Two Million Three-Hundred Seventy-Five Thousand Dollars ($2,375,000) payable on the last Business Day of each such Fiscal Quarter (in each case of the foregoing clauses (c)(i) through (c)(iii), as such installments may hereafter be adjusted as a result of prepayments made pursuant to Section 2.11), in each case of the foregoing clauses (c)(i) through (c)(iii), unless accelerated sooner pursuant to Article 9, with the outstanding principal balance of the Term Loan A payable in full on the Term Loan A Maturity Date.

(d) Additional Term Loans. The principal amount of any Term Loan established after the Closing Date pursuant to Section 2.1(d)(iii) shall be repaid in installments on the date and in the amounts set forth in the documents executed and delivered by the Borrower pursuant to which such additional Term Loan is established.

Section 2.7 Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Revolving Loans or the Term Loan A:

(A) if a Base Rate Loan (including, without limitation, Loans bearing interest at a rate determined by reference to clause (c) of the definition of "*Base Rate*" in Section 1.1), at the Base Rate *plus* the Applicable Margin; or

(B) if a SOFR Loan, at Adjusted Term SOFR *plus* the Applicable Margin; and

(ii) in the case of Swingline Loans, at the Swingline Rate (or with respect to any Swingline Loan advanced pursuant to an Auto Borrow Agreement, such other rate as separately agreed in writing between the Borrower and the Swingline Lender);

(iii) in the case of any additional Term Loan established pursuant to Section 2.1(d)(iii), at the percentages per annum specified in the lender joinder agreement(s) and/or the commitment agreement(s) whereby such Term Loan is established.

(b) The basis for determining the rate of interest with respect to any Loan (except a Swingline Loan, which may only be made and maintained at the Swingline Rate (unless and until converted into a Revolving Loan pursuant to the terms and conditions hereof)), and the Interest Period with respect to any SOFR Loan, shall be selected by the Borrower and notified to the Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If, on any day, a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has *not* been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day: (i) if such Loan is a SOFR Loan, such Loan shall become a Base Rate Loan; and (ii) if such Loan is a Base Rate Loan, such Loan shall remain a Base Rate Loan.

(c) In connection with SOFR Loans, there shall be *no more than* eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or a SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan: (i) if outstanding as a SOFR Loan, will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan; and (ii) if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base

Rate Loan. In the event the Borrower fails to specify an Interest Period for any SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower shall be deemed to have selected an Interest Period of one (1) month. As soon as practicable *after* 10:00 a.m. on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to each of the SOFR Loans for which an interest rate is then being determined (and for the applicable Interest Period) and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to this Section 2.7 shall be computed on the basis of: (i) for interest at the Base Rate (including, for the avoidance of doubt, the Base Rate determined by reference to clause (c) of the definition of "*Base Rate*" in Section 1.1), year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be; and (ii) for all other computations of fees and interest, a year of three hundred sixty (360) days, in each case, for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan, or the first (1st) day of an Interest Period applicable to such Loan, or, with respect to a Base Rate Loan being converted from a SOFR Loan, the date of conversion of such SOFR Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a SOFR Loan, the date of conversion of such Base Rate Loan to such SOFR Loan, as the case may be, shall be excluded; provided, that, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(e) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate, and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the Lenders promptly on demand (and in any event *not greater than* ten (10) days after such demand) by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This clause (e) shall *not* limit the rights of the Administrative Agent or any Lender, as the case may be, under any other provision of this Agreement. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations.

(f) Except as otherwise set forth herein, interest on each Loan shall accrue on a daily basis and shall be payable in arrears on and to: (i) each Interest Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan (other than a voluntary prepayment of a Revolving Loan or Term Loan which interest shall be payable in accordance with clause (i) above), to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

(g) The Borrower agrees to pay to the Issuing Bank, with respect to drawings honored under any Letter of Credit issued by the Issuing Bank, interest on the amount paid by the Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by, or on behalf of, the Borrower at a rate equal to:

(i) for the period from the date such drawing is honored to but *excluding* the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans; and

(ii) thereafter, a rate which is the *lesser* of: (y) two percent (2.0%) per annum in *excess* of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans; and (z) the Highest Lawful Rate.

(h) Interest payable pursuant to Section 2.7(g) shall be computed on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Issuing Bank of any payment of interest pursuant to Section 2.7(g), the Issuing Bank shall distribute to each Lender, out of the interest received by the Issuing Bank in respect of the period from the date such drawing is honored to, but *excluding*, the date on which the Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the Issuing Bank shall have been reimbursed by the Lenders for all or any portion of such honored drawing, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.3(e) with respect to such honored drawing such Lender's Revolving Commitment Percentage of any interest received by the Issuing Bank in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which the Issuing Bank was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

(i) In connection with the use and/or administration of SOFR, the SOFR Reference Rate (for any applicable tenor) and/or any SOFR-Based Rate, the Administrative Agent shall have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any amendment(s) implementing any such Conforming Changes shall become effective without any further action(s) and/or consent(s) of any other party to this Agreement or any other Credit Document or of any other Person. The Administrative Agent shall promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes implemented in connection with the use and/or administration of SOFR, the SOFR Reference Rate (for any applicable tenor) and/or any SOFR-Based Rate.

Section 2.8 Conversion/Continuation.

(a) So long as no Default or Event of Default shall have occurred and then be continuing or would result therefrom, the Borrower shall have the option:

(i) to convert at any time all, or any part, of any Loan equal to One Hundred Thousand Dollars ($100,000) and, if greater, in an integral multiple of Fifty Thousand Dollars ($50,000) in excess thereof from one Type of Loan to another Type of Loan; provided, that, a SOFR Loan may only be converted on the expiration of the Interest Period applicable to such SOFR Loan unless the Borrower shall pay all amounts due under Section 3.1(c) in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any SOFR Loan, to continue all or any portion of such Loan as a SOFR Loan.

(b) The Borrower shall deliver a Conversion/Continuation Notice to the Administrative Agent *no later than* 1:00 p.m. *at least* three (3) Business Days in advance of the proposed Conversion/Continuation Date. Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any SOFR Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith.

Section 2.9 Default Rate of Interest.

(a) If any amount of principal of any Loan is *not* paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(b) If any amount (other than principal of any Loan) payable by the Borrower under any Credit Document is *not* paid when due (after the expiration of any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then, at the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(c) During the continuance of an Event of Default under clauses (f) or (g) of Section 9.1, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(d) During the continuance of an Event of Default other than an Event of Default under clauses (f) or (g) of Section 9.1, the Borrower shall, at the request of the Required Lenders, pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(e) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(f) In the case of any SOFR Loan, upon the expiration of the Interest Period in effect at the time the Default Rate of interest is effective, each such SOFR Loan shall thereupon become a Base Rate Loan and shall thereafter bear interest at the Default Rate then in effect for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.9 is *not* a permitted alternative to timely payment and shall *not* constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

Section 2.10 Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Revolving Commitment Percentage, a commitment fee (the "Commitment Fee") equal to the Applicable Margin of the actual daily amount by which the Aggregate Revolving Commitments *exceeds* the Total Revolving Outstandings, subject to adjustments as provided in Section 2.16. The Commitment Fee shall accrue at all times during the Revolving Commitment Period, including at any time during which one or more of the conditions in Article 5 is *not* met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first (1st) such date to occur after the Closing Date, and on the Revolving Commitment Termination Date; provided, that, (1) no Commitment Fee shall accrue on any of the Revolving Commitment of a Defaulting Lender, so long as such Lender shall be a Defaulting Lender, and (2) any Commitment Fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall *not* be payable by the Borrower, so long as such Lender shall be a Defaulting Lender. The Commitment Fee shall be calculated quarterly in arrears, and, if there is any change in the Applicable Margin during any quarter, the actual daily amount shall be computed and *multiplied by* the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. For purposes hereof, Swingline Loans shall not be counted toward or be considered as usage of the Aggregate Revolving Commitments.

(b) Letter of Credit Fees.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender, in accordance with its Revolving Commitment Percentage, a Letter of Credit fee for each Letter of Credit equal to the Applicable Margin *multiplied by* the daily maximum amount available to be drawn under such Letter of Credit (collectively, the "Letter of Credit Fees"). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.3(i). The Letter of Credit Fees shall be computed on a quarterly basis in arrears, and shall be due and payable on the last Business Day of each March, June,

September and December, commencing with the first (1st) such date to occur after the issuance of such Letter of Credit, on the expiration date thereof and thereafter on demand; provided, that, (1) no Letter of Credit Fees shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender, and (2) any Letter of Credit Fees accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall *not* be payable by the Borrower so long as such Lender shall be a Defaulting Lender. If there is any change in the Applicable Margin during any quarter, the daily maximum amount available to be drawn under each Letter of Credit shall be computed and *multiplied by* the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, during the continuance of an Event of Default under clauses (f) and (g) of Section 9.1, all Letter of Credit Fees shall accrue at the Default Rate, and during the continuance of an Event of Default other than an Event of Default under clauses (f) or (g) of Section 9.1, then upon the request of the Required Lenders, all Letter of Credit Fees shall accrue at the Default Rate.

(ii) Fronting Fee and Documentary and Processing Charges Payable to Issuing Bank. The Borrower shall pay, directly to the Issuing Bank for its own account, a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the last Business Day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first (1st) payment), commencing with the first (1st) such date to occur after the issuance of such Letter of Credit, on its expiration date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.3(i). In addition, the Borrower shall pay directly to the Issuing Bank for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are non-refundable.

(c) Other Fees. The Borrower shall pay to Regions Capital Markets, a division of Regions Bank, and the Administrative Agent, for their own respective accounts, (i) fees in the amounts and at the times specified in (A) the Fee Letter, and (B) that certain fee letter agreement referred to in Section 5(k)(i) of the Fifth Amendment, and (ii) the Amendment Fees (as such term is defined in the Seventh Amendment) in the amounts and at the times specified in the Seventh Amendment. Such fees shall be fully earned when paid and shall *not* be refundable for any reason whatsoever, except to the extent set forth in the Fee Letter, in such fee letter agreement or in the Seventh Amendment (as the case may be).

Section 2.11 Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time, the Loans may be repaid in whole or in part without premium or penalty (subject to Section 3.1):

(A) with respect to Base Rate Loans (including, without limitation, Loans bearing interest at a rate determined by reference to clause (c) of the definition of "*Base Rate*" in Section 1.1), the Borrower may prepay any such Loans on any Business Day, in whole or in part, in an aggregate minimum amount of Five-Hundred Thousand Dollars ($500,000) and, if greater, in integral multiples of One-Hundred Thousand Dollars ($100,000) in excess thereof;

(B) with respect to SOFR Loans, the Borrower may prepay any such Loans on any Business Day, in whole or in part (together with any amounts due pursuant to Section 3.1(c)), in an aggregate minimum amount of Five-Hundred Thousand Dollars ($500,000) and, if greater, in integral multiples of One-Hundred Thousand Dollars ($100,000) in excess thereof; and

(C) with respect to Swingline Loans, the Borrower may prepay any such Loans on any Business Day, in whole or in part, in any amount;

(ii) All such prepayments shall be made:

(A) upon written or telephonic notice on the date of prepayment in the case of Base Rate Loans or Swingline Loans; and

(B) upon *not less than* three (3) Business Days' prior written or telephonic notice in the case of SOFR Loans;

in each case, given to the Administrative Agent or the Swingline Lender, as the case may be, by 11:00 a.m. on the date required and, if given by telephone, promptly confirmed in writing to the Administrative Agent (and the Administrative Agent will promptly transmit such telephonic or original notice for a Credit Extension by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.12(a).

(b) Voluntary Commitment Reductions.

(i) The Borrower may, from time to time upon *not less than* three (3) Business Days' prior written or telephonic notice confirmed in writing to the Administrative Agent (which original written or telephonic notice the Administrative Agent will promptly transmit by telefacsimile or telephone to each applicable Lender), at any time and from time to time, terminate, in whole or permanently reduce in part, the Revolving Commitments (ratably among the Lenders in accordance with their respective commitment percentage thereof), provided, that:

(A) any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of Five Million Dollars ($5,000,000) and, if greater, in integral multiples of One Million Dollars ($1,000,000) in excess thereof;

(B) the Borrower shall *not* terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the aggregate Total Revolving Outstandings *exceed* the Aggregate Revolving Commitments; and

(C) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit and/or the Swingline Sublimit *exceed* the amount of the Aggregate Revolving Commitments, the Letter of Credit Sublimit and/or the Swingline Sublimit, as applicable, shall be automatically reduced by the amount of such excess.

(ii) The Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in the Borrower's notice and shall reduce the Revolving Commitments of each Lender proportionately to its Revolving Commitment Percentage thereof.

(c) Mandatory Prepayments.

(i) Revolving Commitments. If, at any time:

(A) the Total Revolving Outstandings shall *exceed* the Aggregate Revolving Commitments;

(B) the Outstanding Amount of Letter of Credit Obligations shall *exceed* the Letter of Credit Sublimit; or

(C) the Outstanding Amount of Swingline Loans shall *exceed* the Swingline Sublimit;

then immediate prepayment will be made on, or in respect of, the Revolving Obligations in an amount equal to such excess; provided, that, except with respect to the foregoing clause (c)(i)(B), Letter of Credit Obligations will *not* be Cash Collateralized hereunder until the Revolving Loans and Swingline Loans have been paid in full.

(ii) Asset Sales and Involuntary Dispositions. Prepayment will be made on the Obligations on the third Business Day following receipt of Net Cash Proceeds in an amount equal to one hundred percent (100.0%) of the Net Cash Proceeds received from any Asset Sale or Involuntary Disposition involving any asset of any Credit Party or any of its Subsidiaries (other than (A) any Asset Sales the aggregate amount of Net Cash Proceeds of which does *not exceed* One Million Dollars ($1,000,000) in any Fiscal Year, and (B) any Involuntary Dispositions the aggregate amount of Net Cash Proceeds of which does *not exceed* One Million Dollars ($1,000,000) in any Fiscal Year, in each case, to the extent such Net Cash Proceeds are *not* reinvested in the assets (excluding current assets as classified by GAAP) of the Credit Parties and their Subsidiaries within one hundred eighty (180) days of the date of such Asset Sale or Involuntary Disposition (it being understood that such prepayment shall be due immediately upon the expiration of such 180-day period); provided, that, no such reinvestment shall be made upon the occurrence and during the continuance of any Default or Event of Default). Notwithstanding anything to the contrary in the foregoing, no prepayments will be required to be made on the Obligations with respect to the receipt of Net Cash Proceeds from the sale of any assets by any Regulated Subsidiary.

(iii) Debt Transactions. Prepayment will be made on the Obligations in an amount equal to one hundred percent (100.0%) of the Net Cash Proceeds from any Debt Transactions on the Business Day following receipt thereof.

(iv) Securitization Transactions. Prepayment will be made on the Obligations in an amount equal to one hundred percent (100.0%) of the Net Cash Proceeds from any Securitization Transaction on the Business Day following receipt thereof.

Notwithstanding any other provision of this Section 2.11, with respect to any amount of Net Cash Proceeds subject to the foregoing clauses (c)(ii), (c)(iii) or (c)(iv) attributable to a Foreign Subsidiary, in the event the Borrower determines in good faith in consultation with the Administrative Agent that the upstreaming of cash equal to such amount by such Foreign Subsidiary (i) would violate any local law (*e.g.*, financial assistance, thin capitalization, corporate benefit, or the fiduciary and statutory duties of the directors of such Foreign Subsidiary) or any term of any Organizational Document applicable to such Foreign Subsidiary required by Applicable Law, or (ii) would cause any material adverse tax consequence to the Borrower and its Subsidiaries, then such amount shall be excluded from such Net Cash Proceeds; provided, that, for one (1) year from the date on which the obligation to make the applicable prepayment arose, the Borrower and such Foreign Subsidiary shall use all commercially reasonable efforts to overcome or eliminate any such restrictions or minimize any such costs of prepayment and, if successful, shall promptly make the applicable prepayment, unless the Borrower shall have determined in good faith in consultation with the Administrative Agent that such actions would require the expenditure of a material amount of funds.

Section 2.12 Application of Prepayments. Within each Loan, prepayments will be applied, *first*, to Base Rate Loans, and *then*, to SOFR Loans in direct order of Interest Period maturities. In addition:

(a) Voluntary Prepayments. Voluntary prepayments will be applied as specified by the Borrower, provided, that, in the case of prepayments on any of the Term Loans:

(i) the prepayment will be applied ratably to the Term Loans then outstanding; and

(ii) with respect to each Term Loan then outstanding, the prepayments will be applied to remaining principal installments thereunder on a *pro rata* basis.

(b) Mandatory Prepayments. Mandatory prepayments will be applied as follows:

(i) Mandatory prepayments in respect of the Revolving Commitments under Section 2.11(c)(i) above shall be applied to the respective Revolving Obligations, as appropriate, but without a permanent reduction thereof.

(ii) Mandatory prepayments in respect of Asset Sales and Involuntary Dispositions under Section 2.11(c)(ii), Debt Transactions under Section 2.11(c)(iii) and Securitization Transactions under Section 2.11(c)(iv) shall be applied as follows: (A) *first*, ratably to the Term Loans, until paid in full; and (B) *then*, to the Revolving Obligations (without a permanent reduction thereof) as follows, (I) *first*, to the principal balance of the Swingline Loans, until the same shall have been paid in full, to the Swingline Lender, (II) *second*, to the principal balance of the Revolving Loans, until the same shall have been paid in full, *pro rata* to the Lenders based on their respective Revolving Commitments, and (III) *third*, to Cash Collateralize the Letters of Credit as of such date plus any accrued and unpaid fees thereon.

(iii) Mandatory prepayments with respect to each of the Term Loans will be applied to remaining principal installments thereunder (including the installment due on the Term Loan A Maturity Date) on a *pro rata* basis.

(c) Prepayments on the Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein (except for Defaulting Lenders where their share will be applied as provided in Section 2.16(a)(ii) hereof).

Section 2.13 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations hereunder or under any other Credit Document shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition. The Administrative Agent shall, and the Borrower hereby authorizes the Administrative Agent to, debit a deposit account of the Borrower or any of its Subsidiaries held with the Administrative Agent or any of its Affiliates and designated for such purpose by the Borrower or such Subsidiary in order to cause timely payment to be made to the Administrative Agent of all principal, interest and fees due hereunder or under any other Credit Document (subject to sufficient funds being available in its accounts for that purpose).

(b) In the event that the Administrative Agent is unable to debit a deposit account of the Borrower or any of its Subsidiaries held with the Administrative Agent or any of its Affiliates in order to cause timely payment to be made to the Administrative Agent of all principal, interest and fees due hereunder or any other Credit Document (including because insufficient funds are available in its accounts for that purpose), payments hereunder and under any other Credit Document shall be delivered to the Administrative Agent, for the account of the Lenders, *not later than* 2:00 p.m. on the date due at the Principal Office of the Administrative Agent or via wire transfer of immediately available funds to an account designated by the Administrative Agent (or at such other location as may be designated in writing by the Administrative Agent from time to time); for purposes of computing interest

and fees, funds received by the Administrative Agent after that time on such due date shall be deemed to have been paid by the Borrower on the next Business Day.

(c) All payments in respect of the principal amount of any Loan (other than voluntary repayments of Revolving Loans) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(d) The Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable *pro rata* share of all payments and prepayments of principal and interest due to such Lender hereunder, together with all other amounts due with respect thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(e) Notwithstanding anything to the contrary in the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its *pro rata* share of any SOFR Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(f) Subject to the provisos set forth in the definition of "*Interest Period*", whenever any payment to be made hereunder shall be stated to be due on a day that is *not* a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the Commitment Fee hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

(g) The Administrative Agent may, but shall *not* be obligated to, deem any payment by, or on behalf of, the Borrower hereunder that is *not* made in same day funds prior to 2:00 p.m. to be a non-conforming payment. Any such payment shall *not* be deemed to have been received by the Administrative Agent until the *later* of: (i) the time such funds become available funds; and (ii) the applicable next Business Day. The Administrative Agent shall give prompt telephonic notice to the Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 9.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event *less than* the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate (unless otherwise provided by the Required Lenders) from the date such amount was due and payable until the date such amount is paid in full.

Section 2.14 Sharing of Payments by Lenders. 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 Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon or other such obligations *greater than* its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by

the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; 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 Section 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 amounts applied by the Swingline Lender to outstanding Swingline Loans;

(C) any amounts applied to Letter of Credit Obligations by the Issuing Bank or Swingline Loans by the Swingline Lender, as appropriate, from Cash Collateral provided under Section 2.15 or 2.16; or

(D) any payment obtained by a Lender as consideration for the assignment of, or sale of, a participation in any of its Loans, or participations in Letter of Credit Obligations, Swingline Loans or other obligations hereunder, to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.14 shall apply).

Each of the Credit Parties consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Laws, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 2.15 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or the Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Bank, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letter of Credit Obligations, to be applied pursuant to clause (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.15 or Section 2.16 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.15 following:

(i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender); or

(ii) the determination by the Administrative Agent and the Issuing Bank that there exists excess Cash Collateral;

provided, that, (x) that Cash Collateral furnished by, or on behalf of, a Credit Party shall *not* be released during the continuance of a Default or Event of Default (and, following application as provided in this Section 2.15, may be otherwise applied in accordance with Section 9.3) but shall be released upon the cure, termination or waiver of such Default or Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and the Issuing Bank or Swingline Lender, as applicable, may agree that Cash Collateral shall *not* be released, but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.16 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(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 11.4(a)(iii).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amount (other than fees which any Defaulting Lender is not entitled to receive pursuant to clause (a)(iii) below) received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.3), shall be applied at such time or times as may be determined by the Administrative Agent as follows:

(A) *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder;

(B) *second*, to the payment on a *pro rata* basis of any amounts owing by that Defaulting Lender to the Issuing Bank or the Swingline Lender hereunder;

(C) *third*, to Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15;

(D) *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

(E) *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to: (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; and (y) Cash Collateralize the Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15;

(F) *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Bank or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or the Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement;

(G) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and

(H) *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided, that, if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has *not* fully funded its appropriate share, and (y) such Loans or Letter of Credit Borrowings were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied *solely* to the pay the Loans of, and Letter of Credit Borrowings owed to, all Non-Defaulting Lenders on a *pro rata* basis, prior to being applied to the payment of any Loans of, or Letter of Credit Borrowings owed to, such Defaulting Lender, until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations and Swingline Loans are held by the Lenders *pro rata* in accordance with their Revolving Commitments without giving effect to clause (a)(iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this clause (a)(ii) shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Such Defaulting Lender shall *not* be entitled to receive any Commitment Fee, any fees with respect to Letters of Credit (except as provided in clause (b) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and the Borrower shall *not* be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any fee *not* required to be paid to any Defaulting Lender pursuant to clause (a)(iii)(A) or (a)(iii)(B) above, the Borrower shall:

(I) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (a)(iv) below;

(II) pay to the Issuing Bank and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender; and

(III) *not* be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All, or any part, of such Defaulting Lender's participation in Letter of Credit Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment), but only to the extent that: (x) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time); and (y) such reallocation does *not* cause the aggregate Revolving Credit Exposure at such time to *exceed* such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law:

(A) *first*, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure; and

(B) *second*, Cash Collateralize the Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Swingline Lender and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon, as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held *pro rata* by the Lenders in accordance with the Revolving Commitments (without giving effect to clause (a)(iv) above), whereupon such Lender will cease to be a Defaulting Lender; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by, or on behalf of, the 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.

(c) New Swingline Loans / Letters of Credit. So long as any Lender is a Defaulting Lender:

(i) the Swingline Lender shall *not* be required to fund Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan; and

(ii) the Issuing Bank shall *not* be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.17 Removal or Replacement of Lenders. If:

(A) any Lender requests compensation under Section 3.2;

(B) any Credit Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3;

(C) any Lender gives notice of an inability to fund SOFR Loans under Section 3.1(b);

(D) any Lender is a Defaulting Lender; or

(E) any Lender (a "Non-Consenting Lender") does not consent (including by way of a failure to respond in writing to a proposed amendment, consent or waiver by the date and time specified by the Administrative Agent) to a proposed amendment, consent, change, waiver, discharge or termination hereunder or with respect to any Credit Document that has been approved by the Required Lenders;

then, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate without recourse (in accordance with, and subject to, the restrictions contained in, and consents required by, Section 11.5), all of its interests, rights (other than its rights under Section 3.2, Section 3.3 and Section 11.2) and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.5(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letter of Credit Borrowings, as applicable, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under Section 3.1(c)) 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);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.2 or payments required to be made pursuant to Section 3.3, such assignment is reasonably expected to result in a reduction in such compensation or payments thereafter;

(iv) such assignment does *not* conflict with Applicable Laws; and

(v) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed amendment, consent, change, waiver, discharge or termination, the successor replacement Lender shall have consented to the proposed amendment, consent, change, waiver, discharge or termination.

Each Lender agrees that in the event it, or its interests in the Loans and obligations hereunder, shall become subject to the replacement and removal provisions of this Section, it will cooperate with the Borrower and the Administrative Agent to give effect to the provisions hereof, including execution and delivery of an Assignment Agreement in connection therewith, but the replacement and removal provisions of this Section shall be effective regardless of whether an Assignment Agreement shall have been given.

A Lender shall *not* be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Article 3

YIELD PROTECTION

Section 3.1 Making or Maintaining SOFR Loans; Benchmark Replacement.

(a) Inability to Determine Rates. Notwithstanding anything to the contrary in this Agreement or any other Credit Document (provided, that, for the avoidance of doubt, any Swap Agreement shall be deemed *not* to be a "*Credit Document*" for purposes of this Section 3.1), in the event that the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties to this Agreement), on any Interest Rate Determination Date with respect to any SOFR Loans, that reasonable and adequate means do *not* exist for ascertaining the interest rate applicable to such SOFR Loans on the basis provided for in the definition of "*Adjusted Term SOFR*" (and any related defined terms used therein) in Section 1.1, then the Administrative Agent shall give notice (either by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon and whereafter, (i) no Loans may or shall be made as, or continued as or converted into, SOFR Loans until such time as the Administrative Agent shall have notified the Borrower and the Lenders in writing that the event(s) and/or circumstance(s) giving rise to such initial determination no longer exist, (ii) any Funding Notice(s) and/or any Conversion / Continuation Notice(s) given by the Borrower with respect to any Loan(s) in respect of which such determination was made shall be deemed to have been rescinded by the Borrower, and (iii) all such Loan(s) described in the foregoing clause (a)(ii) shall be automatically made or continued as, or converted into, as applicable, Base Rate Loans on the last day of the then-current Interest Period applicable thereto (without reference to clause (c) of the definition of "*Base Rate*" in Section 1.1), unless the Borrower shall have prepaid such Loan(s) in accordance with this Agreement; provided, that, if the event(s) and/or circumstance(s) giving rise to such initial determination shall have occurred but only with respect to certain (but *not* all) of the tenors of the then applicable term rate Benchmark (including, for the avoidance of doubt, the SOFR Reference Rate for any applicable tenor), then (A) the Administrative Agent may modify the definition of "*Interest Period*" in Section 1.1 (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor, and (B) if a tenor that was removed pursuant to the foregoing clause (a)(A) is subsequently displayed on a screen or information service for a Benchmark, then the Administrative Agent may modify the definition of "*Interest Period*" in Section 1.1 (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(b) Illegality or Impracticability of the Benchmark. Subject to clause (g) below, in the event that, on any date, any Lender shall have determined (which determination (A) shall be final and conclusive and binding upon all parties to this Agreement, but (B) shall be made only after written notice to, and consultation with, the Borrower and the Administrative Agent) that a Benchmark Illegality / Impracticability Event has occurred with respect to such Lender, then such Lender shall be an "*Affected Lender*" and such Lender shall, on that date, give notice (either by telefacsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each other Lender). Thereafter: (i) the obligation of such Affected Lender to make Loans as, or to continue Loans as or to convert Loans to, SOFR Loans shall be suspended, until such notice shall have been withdrawn by such Affected Lender in writing to the Administrative Agent and the Borrower; (ii) to the extent that such determination by such Affected Lender relates to a SOFR Loan, or to a continuation thereof or a conversion of outstanding Loans thereto, then being requested by the Borrower pursuant to a Funding Notice or Conversion / Continuation Notice (as applicable), then the Affected Lender shall make such Loan as (or convert such Loan to, as applicable) a Base Rate Loan, determined without reference to clause (c) of the definition of "*Base Rate*" in Section 1.1; (iii) such Affected Lender's obligation to maintain its outstanding SOFR Loans (the "*Affected Loans*") shall be terminated at the *earlier* to occur of (A) the expiration of the Interest Period then in effect with respect to such Affected Loans, or (B) when required by Applicable Law; and (iv) such Affected Loans shall automatically convert into Base Rate Loans, determined without reference to clause (c) of the definition of "*Base Rate*" in Section 1.1, on the date of such termination described in the foregoing clause (b)(iii). Notwithstanding anything to the contrary in the foregoing of this clause (b), to the extent that a determination by an Affected Lender as described above

relates to a SOFR Loan (or a continuation thereof or a conversion of outstanding Loans thereto) then being requested by the Borrower pursuant to a Funding Notice or Conversion / Continuation Notice (as applicable), then the Borrower shall have the option, subject to the provisions of the foregoing clause (a), to rescind such Funding Notice or Conversion / Continuation Notice (as applicable) as to all Lenders by giving notice (either by telefacsimile or telephone confirmed in writing) to the Administrative Agent of such rescission on the date on which such Affected Lender gives notice of its determination as described in the foregoing of this clause (b) (which notice of rescission the Administrative Agent shall promptly transmit to each other Lender). Except as otherwise provided in the immediately preceding sentence, nothing in this clause (b) shall affect the obligation of any Lender, other than an Affected Lender, to make or maintain Loans as, or to continue outstanding Loans as or convert outstanding Loans into, SOFR Loans in accordance with the terms of this Agreement. Notwithstanding anything to the contrary in the foregoing, if a Benchmark Illegality / Impracticability Event shall have occurred but only with respect to certain (but *not* all) of the tenors of the then applicable term rate Benchmark (including, for the avoidance of doubt, the SOFR Reference Rate for any applicable tenor), then: (I) the Administrative Agent may modify the definition of "*Interest Period*" in Section 1.1 (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor; and (II) if a tenor that was removed pursuant to the foregoing clause (b)(I) is *not*, or is no longer, subject to a Benchmark Illegality / Impracticability Event, then the Administrative Agent may modify the definition of "*Interest Period*" in Section 1.1 (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. The Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable out-of-pocket losses, expenses and liabilities (including any interest paid, or calculated to be due and payable, by such Lender to lenders of funds borrowed by it to make or carry its SOFR Loans, and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds, but *excluding* loss of anticipated profits) that such Lender sustains if: (i) for any reason (other than a default by such Lender), a borrowing of any SOFR Loans does *not* occur on a date specified therefor in a Funding Notice (or a telephonic request for borrowing), or a conversion to, or continuation of, any SOFR Loans does *not* occur on a date specified therefor in a Conversion / Continuation Notice (or a telephonic request for conversion or continuation); (ii) any prepayment or other principal payment of, or any conversion of, any of its SOFR Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to Section 2.17; or (iii) any prepayment of any of its SOFR Loans is *not* made on any date specified in a notice of prepayment given by the Borrower.

(d) Booking of SOFR Loans. Any Lender may make, carry or transfer SOFR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Certificates for Reimbursement. A certificate of a Lender setting forth, in reasonable detail, the amount(s) necessary to compensate such Lender, as specified in the foregoing clause (c), and the circumstances giving rise thereto, shall be delivered to the Borrower and shall be conclusive absent manifest error. In the absence of any such manifest error, the Borrower shall pay to the applicable Lender or the Issuing Bank, as the case may be, the amount(s) shown as due on any such certificate promptly and, in any event, within ten (10) Business Days after receipt thereof.

(f) Delay in Requests. The Borrower shall *not* be required to compensate a Lender pursuant to the foregoing clause (c) for any such amount(s) incurred *more than* six (6) calendar months *prior* to the date on which such Lender shall have delivered to the Borrower the certificate referenced in the foregoing clause (e).

(g) Benchmark Replacement.

(i) *Generally*. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, if the Administrative Agent determines (which determination shall be conclusive and binding

absent manifest error), or the Required Lenders (individually or jointly) notify the Administrative Agent (with, in the case of the Required Lenders, a copy delivered to the Borrower) that the Required Lenders (as applicable) have determined, that a Benchmark Illegality / Impracticability Event has occurred, then, on a date and time determined by the Administrative Agent (any such date, a "*Benchmark Replacement Date*"), which date shall be at the end of an Interest Period or on the relevant Interest Payment Date, as applicable, for interest calculated, the then current Benchmark shall be replaced under this Agreement and the other Credit Documents with the Benchmark Replacement.

(ii) *Amendment*. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, (A) if the Administrative Agent determines that any alternative Benchmark (other than the SOFR Reference Rate for any applicable tenor) set forth in the definition of "*Benchmark Replacement*" in Section 1.1 is available on, or prior to, the applicable Benchmark Replacement Date, or (B) a Benchmark Illegality / Impracticability Event has occurred with respect to a Benchmark Replacement (other than the SOFR Reference Rate for any applicable tenor) then in effect, then, in each case of the foregoing clauses (g)(ii)(A) and (g)(ii)(B), the Administrative Agent and the Borrower may amend this Agreement *solely* for the purpose of replacing the SOFR Reference Rate (for any applicable tenor), or any then current Benchmark Replacement, in accordance with this Section 3.1 at the end of any applicable Interest Period, relevant Interest Payment Date or payment period for interest calculated, as applicable, with another alternate benchmark rate, in any such case, giving due consideration to any evolving, or then existing, convention(s) for similar Dollar-denominated syndicated credit facilities for such alternative benchmark(s), and, in each case, including any mathematical or other adjustments to such benchmark(s) (giving due consideration to any evolving, or then existing, convention(s) for similar Dollar-denominated syndicated credit facilities for such benchmark(s)), which adjustment(s), or method(s) for calculating such adjustment(s), shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustment(s) shall constitute a Benchmark Replacement. Any such amendment shall become effective at 5:00 P.M. (New York City time) on the date that is five (5) Business Days *after* the date on which the Administrative Agent shall have posted a copy of such proposed amendment to all Lenders and the Borrower, without any further action(s) and/or consent(s) of any Credit Party, any other party to this Agreement or any other Credit Document and/or any other Person, so long as the Administrative Agent has *not* received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(iii) *Notices*. The Administrative Agent shall notify (in one (1) or more notices) the Borrower and each Lender of the implementation of any Benchmark Replacement.

(iv) *Administration of Benchmark Replacement*. Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent that such market practice is *not* administratively feasible for the Administrative Agent, then such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

(v) *Floor*. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, if, at any time, any Benchmark Replacement, as determined in accordance with this Section 3.1 and the related definitions in Section 1.1, shall be *less than* the Floor, then such Benchmark Replacement shall be deemed to equal the Floor for all purposes of this Agreement and the other Credit Documents; provided, that, notwithstanding anything to the contrary in this Agreement or in any other Credit Document, at any time that the applicable interest rate for Base Rate Loans is determined without reference to clause (c) of the definition of "*Base Rate*" in Section 1.1 by operation of this Section 3.1, then the "*Floor*", for purposes of calculating such applicable interest rate, shall be increased by one percent (1.00%) per annum.

(vi) *Conforming Changes*. In connection with the use, administration, adoption and/or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make

Conforming Changes from time to time, and, notwithstanding anything to the contrary in this Agreement or in any other Credit Document, any amendments implementing such Conforming Changes will become effective without any further action(s) and/or consent(s) of any Credit Party, any other party to this Agreement or any other Credit Document and/or any other Person; provided, that, with respect to any such amendment effected in reliance on this clause (g)(vi), the Administrative Agent shall post a copy of such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

(vii) *Standards for Decisions and Determinations*. Any determination, decision, or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this clause (g), including, without limitation, any determination with respect to a tenor, rate or adjustment, or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take, or refrain from taking, any action or any selection, will be conclusive and binding absent manifest error, and may be made in its or their, as applicable, sole discretion, and, in any event, without consent from any Credit Party, any other party to this Agreement or any other Credit Document or any other Person, except, in each case, as expressly required pursuant to this clause (g).

Section 3.2 Increased Costs.

(a) Increased Costs Generally. 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 or participated in by, any Lender or the Issuing Bank;

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

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

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

(b) Capital and Liquidity Requirements. If any Lender, the Issuing Bank or the Swingline Lender (for purposes hereof, may be referred to collectively as "the Lenders" or a "Lender") determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements has or would have 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, the commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or 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 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 suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in clauses (a) or (b) above and the circumstances giving rise thereto shall be delivered to the Borrower and shall be conclusive absent manifest error. In the absence of any such manifest error, the Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall *not* constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, provided, that, the Borrower shall *not* be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered *more than* six (6) months prior to the date that such Lender or the Issuing Bank, as the case may be, delivers to the Borrower the certificate referenced in clause (c) above and notifies the Borrower of such Lender's or the Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.3 Taxes.

(a) Issuing Bank. For purposes of this Section 3.3, the term "*Lender*" shall include the Issuing Bank and the term "*Applicable Laws*" shall include FATCA.

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

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification.

(i) The Credit Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify the Administrative Agent, within ten (10) Business Days after demand therefor, for:

(A) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has *not* already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so);

(B) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.5(d) relating to the maintenance of a Participant Register; and

(C) any Excluded Taxes attributable to such Lender;

in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d)(ii).

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

(f) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (f)(ii)(A), (f)(ii)(B) and (f)(ii)(D) below) shall *not* be required if, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

(II) duly completed and executed originals of IRS Form W–8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871 or 881(c) of the Internal Revenue Code: (x) a certificate substantially in the form of Exhibit 3.3–1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate"); and (y) duly completed and executed originals of IRS Form W–8BEN–E (or W–8BEN as applicable); or

(IV) to the extent a Foreign Lender is not the beneficial owner, duly completed and executed originals of IRS Form W–8IMY, accompanied by IRS Form W–8ECI, IRS Form W–8BEN–E (or W–8BEN as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3–2 or Exhibit 3.3–3, IRS Form W–9, and/or other certification documents from each beneficial owner, as applicable; provided, that, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3–4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), duly executed originals of any other form prescribed by Applicable Laws 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 Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit 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 Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times

reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Laws (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that, if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.3 (including by the payment of additional amounts pursuant to this Section 3.3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.3 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (g) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification, and giving rise to such refund, had not been deducted, withheld or otherwise imposed, and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 3.3 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

Section 3.4 Mitigation Obligations; Designation of a Different Lending Office. If any Lender requests compensation under Section 3.2, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment: (i) would eliminate or reduce amounts payable pursuant to Section 3.2 or Section 3.3, as the case may be, in the future; and (ii) would *not* subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Article 4

GUARANTY

Section 4.1 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent, the Lenders, the Qualifying Swap Providers, the Qualifying Treasury Management Banks and the other holders of the Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "Guaranteed Obligations") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that, if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that, in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein, in any other of the Credit Documents, Swap Agreements, Treasury Management Agreements or other documents relating to the Obligations:

(a) the obligations of each Guarantor under this Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would *not* render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law; and

(b) the Guaranteed Obligations of a Guarantor shall *exclude* any Excluded Swap Obligations with respect to such Guarantor.

Section 4.2 Obligations Unconditional.

The obligations of the Guarantors under Section 4.1 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents, Swap Agreements or Treasury Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by Applicable Laws, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article 4 until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Applicable Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Secured Swap Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Swap Provider, or any Secured Treasury Management Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Treasury Management Bank, or any other

agreement or instrument referred to in the Credit Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Secured Swap Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Swap Provider or any Secured Treasury Management Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Treasury Management Bank, or any other agreement or instrument referred to in the Credit Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, the Administrative Agent or any Lender or Lenders as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Secured Swap Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Swap Provider or any Secured Treasury Management Agreement between any Credit Party or any Subsidiary of a Credit Party and any Qualifying Treasury Management Bank, or any other agreement or instrument referred to in the Credit Documents, such Secured Swap Agreements or such Secured Treasury Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations.

Section 4.3 Reinstatement.

The obligations of the Guarantors under this Article 4 shall be automatically reinstated if, and to the extent that, for any reason, any payment by, or on behalf of, any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

Section 4.4 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.2 and through the exercise of rights of contribution pursuant to Section 4.6.

Section 4.5 Remedies.

The Guarantors agree that, to the fullest extent permitted by Applicable Law, as between the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.2) for purposes of Section 4.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming

automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.1. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

Section 4.6 Rights of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Credit Documents and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full and the Commitments have terminated.

Section 4.7 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article 4 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

Section 4.8 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Specified Credit Party to honor all of such Specified Credit Party's obligations under the Guaranty and the Collateral Documents in respect of Swap Obligations (provided, that, each Qualified ECP Guarantor shall only be liable under this Section 4.8 for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article 4, voidable under applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 4.8 shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full and the commitments relating thereto have expired or terminated, or, with respect to any Guarantor, if earlier, such Guarantor is released from its Guaranteed Obligations in accordance with Section 10.10(a). Each Qualified ECP Guarantor intends that this Section 4.8 constitute, and this Section 4.8 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Credit Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Article 5

CONDITIONS PRECEDENT

Section 5.1 Conditions Precedent to Initial Credit Extensions. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction of the following conditions on or before the Closing Date:

(a) Executed Credit Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Credit Documents, in each case, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and duly executed by the appropriate parties thereto.

(b) Organizational Documents. Receipt by the Administrative Agent of the following:

(i) Charter Documents. Copies of articles of incorporation, certificate of organization or formation, or other like document for each of the Credit Parties certified as of a recent date by the appropriate Governmental Authority.

(ii) Organizational Documents Certificate.

(A) Copies of bylaws, operating agreement, partnership agreement or like document;

(B) copies of resolutions approving the transactions contemplated in connection with the financing and authorizing execution and delivery of the Credit Documents; and

(C) incumbency certificates, for each of the Credit Parties, in each case, certified by an Authorized Officer in form and substance reasonably satisfactory to the Administrative Agent.

(iii) Good Standing Certificate. Copies of certificates of good standing, existence or the like of a recent date for each of the Credit Parties from the appropriate Governmental Authority of its jurisdiction of formation or organization.

(c) Closing Certificate. Receipt by the Administrative Agent of a certificate from an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, confirming, among other things:

(i) all consents, approvals, authorizations, registrations, or filings required to be made or obtained by the Borrower and the other Credit Parties, if any, in connection with this Agreement and the other Credit Documents and the transactions contemplated herein and therein have been obtained and are in full force and effect, and all waiting periods with respect thereto shall have expired;

(ii) no investigation or inquiry by any Governmental Authority regarding this Agreement and the other Credit Documents and the transactions contemplated herein and therein is ongoing;

(iii) since the date of the most-recent annual audited financial statements for the Borrower, there has been no event or circumstance which could be reasonably expected to have a Material Adverse Effect;

(iv) the most-recent annual audited financial statements were prepared in accordance with GAAP consistently applied, except as noted therein, and fairly present in all material respects the financial condition and results from operations of the Credit Parties and their Subsidiaries;

(v) the Borrower, individually, and the Borrower and its Subsidiaries, taken as a whole, are Solvent after giving effect to the transactions contemplated hereby and the incurrence of Indebtedness related thereto; and

(vi) the conditions set forth in clauses (c) and (d) of Section 5.2 have been met as of the Closing Date.

(d) Opinions of Counsel. Receipt by the Administrative Agent of customary opinions of counsel for each of the Credit Parties, including, among other things, opinions regarding the due authorization, execution and delivery of the Credit Documents and the enforceability thereof.

(e) Personal Property Collateral. Receipt by the Collateral Agent of the following:

(i) UCC Financing Statements. Such UCC financing statements necessary or appropriate to perfect the security interests in the personal property collateral, as determined by the Collateral Agent.

(ii) Intellectual Property Filings. Such patent, trademark and copyright notices, filings and recordations necessary or appropriate to perfect the security interests in intellectual property and intellectual property rights, as determined by the Collateral Agent.

(iii) Pledged Equity Interests. Original certificates evidencing any certificated Equity Interests pledged as collateral, together with undated stock transfer powers executed in blank.

(iv) Evidence of Insurance. Certificates of insurance for casualty, liability and any other insurance required by the Credit Documents, identifying the Collateral Agent as lender's loss payee with respect to the casualty insurance and additional insured with respect to the liability insurance, as appropriate.

(f) Financial Statements. Receipt and satisfactory review by the Administrative Agent of copies of:

(i) the internally-prepared quarterly unaudited consolidated financial statements of the Credit Parties and their Subsidiaries for (A) the Fiscal Quarter ending June 30, 2018, and (B) to the extent available prior to the Closing Date, the Fiscal Quarter ending September 30, 2018; and

(ii) the audited consolidated financial statements for the Credit Parties and their Subsidiaries for the Fiscal Year ending December 31, 2017.

(g) Funding Notice; Funds Disbursement Instructions. The Administrative Agent shall have received:

(i) a duly executed Funding Notice with respect to the Credit Extension to occur on the Closing Date; and

(ii) duly executed disbursement instructions (with wiring instructions and account information) for all disbursements to be made on the Closing Date.

(h) Florida Taxes. The Administrative Agent shall have received either: (i) execution and delivery affidavits evidencing execution and delivery of this Agreement and the Notes outside of the State of Florida; or (ii) evidence that all applicable Florida stamp tax fees have been paid or will be paid contemporaneously with closing of the transactions contemplated hereby.

(i) Refinancing of Existing Indebtedness. Receipt by the Administrative Agent of evidence of the payment in full of existing Indebtedness (other than (x) Indebtedness permitted hereunder and (y) the Senior Secured Notes), and any releases, terminations or other documents reasonably required by the Administrative Agent to evidence the payoff of such Indebtedness and release or termination of liens related thereto.

(j) Fees and Expenses. The Administrative Agent shall have confirmation that all reasonable out-of-pocket fees and expenses (and all filing and recording fees and taxes) required to be paid on or before the Closing Date have been paid, including the reasonable out-of-pocket fees and expenses of counsel for the Administrative Agent.

(k) Patriot Act; Anti-Money Laundering Laws. The provision by the Credit Parties of all documentation and other information that the Administrative Agent or any Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, including without limitation the certification regarding beneficial ownership of legal entity customers (the "Beneficial Ownership Certification").

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory

to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

The funding of the initial Loans hereunder on the Closing Date shall evidence the satisfaction of the foregoing conditions.

Section 5.2 Conditions to Each Credit Extension. The obligation of each Lender to fund its respective Term Loan Commitment Percentage or Revolving Commitment Percentage of any Credit Extension on any Credit Date, including, without limitation, the Closing Date, the Fifth Amendment Effective Date and Seventh Amendment Effective Date, are subject to the satisfaction, or waiver in accordance with Section 11.4, of the following conditions precedent:

(a) the Administrative Agent shall have received a fully executed and delivered Funding Notice, together with the documentation and certifications required therein with respect to each Credit Extension;

(b) after making the Credit Extension requested on such Credit Date:

(i) the Total Revolving Outstandings shall *not exceed* the Aggregate Revolving Commitments then in effect; and

(ii) the aggregate outstanding principal amount of the Term Loans shall *not exceed* the respective Term Loan Commitments then in effect;

(c) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (except to the extent that any such representations and warranties are qualified by a Material Adverse Effect or other materiality, in which case, such representations and warranties shall be true and correct in all respects) on and as of that Credit Date, to the same extent as though made on and as of that date, except, to the extent such representations and warranties specifically relate to an earlier date, in which case, such representations and warranties shall have been true and correct in all material respects (except to the extent that any such representations and warranties are qualified by a Material Adverse Effect or other materiality, in which case, such representations and warranties shall be true and correct in all respects) on and as of such earlier date;

(d) after giving effect to the requested Credit Extension on a Pro Forma Basis, the Credit Parties shall be in compliance with the financial covenants set forth in Section 8.8; and

(e) as of such Credit Date, no event shall have occurred and be continuing, or would result from the consummation of the applicable Credit Extension, that would constitute an Event of Default or a Default.

The Administrative Agent and the Required Lenders shall be entitled, but *not* obligated, to request and receive, prior to the making of any Credit Extension, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the reasonable good faith judgment of such Agent or Required Lenders, such request is warranted under the circumstances.

Article 6

REPRESENTATIONS AND WARRANTIES

In order to induce the Agents and the Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, the Borrower and each other Credit Party represents and warrants to the Administrative Agent and each Lender as follows:

Section 6.1 Organization; Requisite Power and Authority; Qualification. Each Credit Party and its Subsidiaries:

(a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation (as the case may be) as identified in Schedule 6.1;

(b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby; and

(c) is qualified to do business and in good standing in every jurisdiction where necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has *not* had, and could *not* be reasonably expected to have, a Material Adverse Effect.

Section 6.2 Equity Interests and Ownership. Schedule 6.2 correctly sets forth the ownership interest of each Credit Party in its Subsidiaries as of the Fifth Amendment Effective Date. The Equity Interests of each Credit Party and its Subsidiaries have been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 6.2, as of the Fifth Amendment Effective Date, there is no existing option, warrant, call, right, commitment, buy-sell, voting trust or other shareholder agreement or other agreement to which any Subsidiary is a party requiring, and there is no membership interest or other Equity Interests of any Subsidiary outstanding which upon conversion or exchange would require, the issuance by any Subsidiary of any additional membership interests or other Equity Interests of any Subsidiary or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Subsidiary.

Section 6.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

Section 6.4 No Conflict. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties, and the consummation of the transactions contemplated by the Credit Documents, do *not* and will *not*:

(a) violate, in any material respect, any provision of any Applicable Laws relating to any Credit Party, any of the Organizational Documents of any Credit Party, or any order, judgment or decree of any court or other agency of government binding on any Credit Party;

(b) except as could *not* reasonably be expected to have a Material Adverse Effect, conflict with, result in a breach of or constitute (with due notice or lapse of time or both), a default under any other Contractual Obligations of any Credit Party;

(c) result in, or require the creation or imposition of, any Lien upon any of the properties or assets of any Credit Party (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent for the benefit of the holders of the Obligations), whether now owned or hereafter acquired; or

(d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of any Credit Party.

Section 6.5 Governmental Consents. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do *not* and will *not* require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing and/or recordation, (a) as of the Closing Date, with respect to each Credit Document executed on the Closing Date, (b) as of the Fifth Amendment Effective Date, *solely* with respect to the Fifth Amendment, and (c) as of the Seventh Amendment Effective Date, *solely* with respect to the Seventh Amendment, and other filings, recordings or consents which have been obtained or made, as applicable.

Section 6.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by Debtor Relief Laws or by equitable principles relating to enforceability.

Section 6.7 Financial Statements.

(a) The audited consolidated and consolidating balance sheet of the Borrower and its Subsidiaries for the most recent Fiscal Year ended with respect to which the Borrower has delivered financial statements in accordance with Section 7.1(b), and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, and the summaries/schedules prepared by management of the Borrower with respect to the Regulated Subsidiaries and the other Subsidiaries of the Borrower, including the notes thereto:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date 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; and

(iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheet of the Borrower and its Subsidiaries for the most recent Fiscal Quarter ended with respect to which the Borrower has delivered financial statements in accordance with Section 7.1(a), and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter, and the summaries/schedules prepared by management of the Borrower with respect to the Regulated Subsidiaries and the other Subsidiaries of the Borrower:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (b)(i) and (b)(ii), to the absence of footnotes and to normal year-end audit adjustments; and

(iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) The consolidated and consolidating forecasted balance sheet and statements of income and cash flows of the Credit Parties and their Subsidiaries most recently delivered by the Borrower in accordance with Section 7.1(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's good faith estimate of its future financial condition and performance based upon assumptions believed to be reasonable at the time.

Section 6.8 No Material Adverse Effect; No Default.

(a) No Material Adverse Effect. Since December 31, 2017, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(b) No Default. No Default or Event of Default has occurred and is continuing.

Section 6.9 Tax Matters. Each Credit Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their respective properties, assets, income, businesses and franchises otherwise due and payable, except those being actively contested in good faith and by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Credit Party or any of its Subsidiaries that would, if made, have a Material Adverse Effect.

Section 6.10 Properties.

(a) Title. Each of the Credit Parties and its Subsidiaries has:

(i) good, sufficient and legal title to (in the case of fee interests in real property),

(ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and

(iii) good title to (in the case of all other personal property),

all of their respective properties and assets reflected in their financial statements and other information referred to in Section 6.7 and in the most recent financial statements delivered pursuant to Section 7.1, in each case, except for assets disposed of since the date of such financial statements as permitted under Section 8.10. All such properties and assets are free and clear of Liens other than Permitted Liens.

(b) Real Estate. As of the Fifth Amendment Effective Date, Schedule 6.10(b) contains a true, accurate and complete list of all Real Estate Assets of the Credit Parties.

(c) Intellectual Property. Each Credit Party and its Subsidiaries owns, or is validly licensed to use, all Intellectual Property that is necessary for the present conduct of its business, free and clear of Liens (other than Permitted Liens), without conflict with the rights of any other Person, unless the failure to own or benefit from such valid license could *not*, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of each Credit Party, no Credit Party nor any of its Subsidiaries is infringing, misappropriating, diluting, or otherwise violating the Intellectual Property rights of any other Person unless such infringement, misappropriation, dilution or violation could *not*, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.11 Environmental Matters.

(a) No Credit Party, nor any of its Subsidiaries nor any of their respective current Facilities (*solely* during, and with respect to, such Person's ownership thereof) or operations, and to their knowledge, no former Facilities (*solely* during, and with respect to, any Credit Party's or its Subsidiary's ownership thereof), are subject to any outstanding order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(b) no Credit Party nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law;

(c) there are and, to each Credit Party's and its Subsidiaries' knowledge, have been, no Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against such Credit Party or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and

(d) no Credit Party nor any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility (*solely* during and with respect to such Credit Party's or its Subsidiary's ownership thereof), and no Credit Party's nor any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260–270 or any equivalent state rule defining hazardous waste, except in compliance with Environmental Law.

Compliance with all current requirements pursuant to or under Environmental Laws could *not* be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.12 No Defaults. No Credit Party nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, except, in each case, where the consequences, direct or indirect, of such default or defaults, if any, could *not* reasonably be expected to have a Material Adverse Effect.

Section 6.13 No Litigation or other Adverse Proceedings. There are no Adverse Proceedings that: (a) purport to affect or pertain to this Agreement or any other Credit Document, or any of the transactions contemplated hereby; or (b) could reasonably be expected to have a Material Adverse Effect. No Credit Party nor any of its Subsidiaries is subject to, or in default with respect to, any final judgments, writs, injunctions, decrees, rules or regulations of any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.14 Information Regarding the Credit Parties and their Subsidiaries. Set forth on Schedule 6.14 is the jurisdiction of incorporation or formation (as the case may be), the exact legal name (and for the prior five (5) years or since the date of its incorporation or formation (as the case may be) has been) and the true and correct U.S. taxpayer identification number (or foreign equivalent, if any) of each Credit Party and each of its Subsidiaries as of the Fifth Amendment Effective Date.

Section 6.15 Governmental Regulation.

(a) No Credit Party or any of its Subsidiaries is subject to regulation under the Investment Company Act of 1940. No Credit Party or any of its Subsidiaries is an "investment company" or a company "controlled" by a

"registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

(b)

(i) No Credit Party nor any of its Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq*.), as amended.

(ii) To its knowledge, no Credit Party or any of its Subsidiaries is in violation of: (A) the Trading with the Enemy Act, as amended; (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto; or (C) the Patriot Act.

(iii) No Credit Party or any of its Subsidiaries: (A) is a blocked person described in Section 1 of the Anti-Terrorism Order; or (B) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

(c) Each Credit Party, its Subsidiaries and their respective directors, officers and employees and, to the knowledge of such Credit Party, its agents, are in compliance with applicable Sanctions and are *not* engaged in any activity that would reasonably be expected to result in any Credit Party being designated as a Sanctioned Person. None of the Credit Parties, their Subsidiaries and their respective Affiliates is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time.

(d)

(i) None of the Credit Parties and their Subsidiaries, or, to the knowledge of each Credit Party or its Subsidiaries, any of their respective directors, officers, employees or Affiliates: (A) is a Sanctioned Person; (B) has any of its assets located in a Sanctioned Country (unless approved by the Lenders); or (C) derives any of its operating income from investments in, or transactions with Sanctioned Persons (unless approved by the Lenders).

(ii) The proceeds of any Credit Extension or other transaction contemplated by this Agreement or any other Credit Document have *not* been used: (A) in violation of any Sanctions; (B) to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country; or (C) in any other manner that would result in a violation of Sanctions by any Person (including the Administrative Agent, the Collateral Agent, the Lenders or any other Person participating in the Credit Extensions, whether as an underwriter, advisor, investor or otherwise).

(e) Each of the Credit Parties and their Subsidiaries, and, to the knowledge of each Credit Party and its Subsidiaries, each of their respective directors, officers, employees and Affiliates, is in material compliance with Anti-Corruption Laws. None of the Credit Parties or their respective Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value: (i) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office; (ii) to a foreign official, foreign political party or party official or any candidate for foreign political office; and (iii) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or any of its Subsidiaries or to any other Person, in violation of any Anti-Corruption Law. No part of the proceeds of any Credit Extension or other transaction contemplated by this Agreement or any other Credit Document will violate Anti-Corruption Laws.

(f) To the extent applicable, each Credit Party and its Subsidiaries are in compliance with Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (as amended from time to time, the "Patriot Act").

(g) No Credit Party or any Subsidiary of a Credit Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to such Credit Party will be used:

(i) to purchase or carry any such Margin Stock, or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, Regulation U or Regulation X of the Federal Reserve Board, as in effect from time to time; or

(ii) to finance or refinance any: (A) commercial paper issued by such Credit Party; or (B) any other Indebtedness, except for Indebtedness that such Credit Party incurred for general corporate or working capital purposes.

(h) No Credit Party is an Affected Financial Institution.

Section 6.16 Employee Matters. No Credit Party or any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is:

(i) no unfair labor practice complaint pending against any Credit Party or any of its Subsidiaries, or to the best knowledge of each Credit Party, threatened in writing against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Credit Party or any of its Subsidiaries or to the best knowledge of each Credit Party, threatened in writing against any of them,

(ii) no strike or work stoppage in existence or to the knowledge of each Credit Party, threatened in writing that involves any Credit Party or any of its Subsidiaries, and

(iii) to the best knowledge of each Credit Party, no union representation question existing with respect to the employees of any Credit Party or any of its Subsidiaries and, to the best knowledge of each Credit Party, no union organization activity that is taking place,

except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as could *not* reasonably be expected to have a Material Adverse Effect.

Section 6.17 Pension Plans.

(a) Except as could *not* reasonably be expected to have a Material Adverse Effect, each of the Credit Parties and their Subsidiaries are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to its Pension Plan, and have performed all their obligations under each Pension Plan in all material respects.

(b) Each Pension Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter or is the subject of a favorable opinion letter from the Internal Revenue Service indicating that such Pension Plan is so qualified and, to the knowledge of the Credit Parties, nothing has occurred subsequent to the issuance of such determination letter which would cause such Pension Plan to lose its qualified status, except where such event could *not* reasonably be expected to result in a Material Adverse Effect.

(c) Except as could *not* reasonably be expected to have a Material Adverse Effect, no liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Pension Plan (other than for routine

claims and required funding obligations in the ordinary course) or any trust established under Title IV of ERISA has been incurred by any Credit Party, any of its Subsidiaries or any of their ERISA Affiliates.

(d) Except as would *not* reasonably be expected to result in liability to any Credit Party or any of its Subsidiaries in *excess* of $1,500,000, no ERISA Event has occurred.

(e) Except to the extent required under Section 4980B of the Internal Revenue Code and Section 601 *et seq*. of ERISA or similar state laws, and except as could not reasonably be expected to have a Material Adverse Effect, no Pension Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Credit Party or any of its Subsidiaries.

(f) As of the Seventh Amendment Effective Date, no Credit Party nor any of its Subsidiaries is a Benefit Plan.

Section 6.18 Solvency. The Borrower, individually, is, and each Credit Party and its Subsidiaries taken as a whole on a consolidated basis are, and, upon the incurrence of any Credit Extension on any date on which this representation and warranty is made (including, without limitation, the Closing Date, the Fifth Amendment Effective Date and Seventh Amendment Effective Date), will be, Solvent.

Section 6.19 Compliance with Laws. Each Credit Party and its Subsidiaries is in compliance with: (a) the Patriot Act and OFAC rules and regulations, as provided in Section 6.15; and (b) except such non-compliance with such other Applicable Laws that, individually or in the aggregate, could *not* reasonably be expected to result in a Material Adverse Effect, all other Applicable Laws. Each Credit Party and its Subsidiaries possesses all certificates, authorities or permits issued by appropriate Governmental Authorities necessary to conduct the business now operated by them and the failure of which to have could reasonably be expected to have a Material Adverse Effect and have *not* received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit the failure of which to have or retain could reasonably be expected to have a Material Adverse Effect.

Section 6.20 Disclosure.

(a) No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to the Lenders by, or on behalf of, any Credit Party or any of its Subsidiaries for use in connection with the transactions contemplated hereby (other than projections and pro forma financial information contained in such materials) contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party, in the case of any document *not* furnished by any of them) necessary in order to make the statements contained herein or therein *not* misleading in any material manner in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such projections as to future events are *not* to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and that such differences may be material. There are no facts known to any Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have *not* been disclosed herein or in such other documents, certificates and statements furnished to the Lenders.

(b) As of the Seventh Amendment Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 6.21 Insurance. The properties of the Credit Parties and their Subsidiaries are insured with financially sound and licensed insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Credit Party or the applicable Subsidiary operates.

The insurance coverage of the Credit Parties and their Subsidiaries as in effect on the Fifth Amendment Effective Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.21.

Section 6.22 Pledge and Security Agreement. The Pledge and Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Obligations, a legal, valid and enforceable security interest in the Collateral identified therein, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law), and the Pledge and Security Agreement shall create a fully perfected Lien on, and security interest in, all right, title and interest of the obligors thereunder in such Collateral, in each case prior and superior in right to any other Lien (other than Permitted Liens):

(a) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) and is evidenced by a certificate, when such Collateral is delivered to the Collateral Agent with duly executed stock powers with respect thereto;

(b) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) but is not evidenced by a certificate, when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor or when "control" (as such term is defined in the UCC) is established by the Collateral Agent over such interests in accordance with the provision of Section 8–106 of the UCC, or any successor provision; and

(c) with respect to any such Collateral that is *not* a "security" (as such term is defined in the UCC), when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor (to the extent such security interest can be perfected by filing under the UCC).

Section 6.23 Mortgages. Each of the Mortgages is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Obligations, a legal, valid and enforceable security interest in the Real Estate Assets identified therein in conformity with Applicable Laws, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law), and, when the Mortgages and UCC financing statements in appropriate form are duly recorded at the locations identified in the Mortgages, and recording or similar taxes, if any, are paid, the Mortgages shall constitute a legal, valid and enforceable Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Real Estate Assets, in each case prior and superior in right to any other Lien (other than Permitted Liens).

Section 6.24 No Casualty. Neither the businesses nor the properties of any Credit Party or any of its Subsidiaries are affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Article 7

AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, until the Obligations shall have been paid in full or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article 7.

Section 7.1 Financial Statements and Other Reports. The Borrower will deliver, or will cause to be delivered, to the Administrative Agent:

(a) Quarterly Financial Statements for the Borrower and its Subsidiaries. Upon the *earlier* to occur of (x) the date that is sixty (60) days after the end of each of the first (1st) three (3) Fiscal Quarters of each Fiscal Year (but *not*, for purposes of clarity, the last Fiscal Quarter of each Fiscal Year), or (y) such information being filed with the SEC, the unaudited consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and the related consolidated and consolidating statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter, and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case in comparative form, the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date, together with a Financial Officer Certification with respect thereto;

(b) Annual Financial Statements for the Borrower and its Subsidiaries. Upon the *earlier* of the date that (x) is one hundred twenty (120) days after the end of each Fiscal Year, or (y) such information is filed with the SEC:

(i) the audited consolidated balance sheets, and unaudited consolidating balance sheets, of the Borrower and its Subsidiaries as of the end of such Fiscal Year and the related audited consolidated, and unaudited consolidating, statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, setting forth, in each case in comparative form, the corresponding figures for the previous Fiscal Year, in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date, together with a Financial Officer Certification with respect thereto; and

(ii) with respect to such audited consolidated financial statements, a report thereon of Plante & Moran, PLLC or other independent certified public accountants selected by the Borrower and reasonably acceptable to the Administrative Agent, which report shall be unqualified as to going concern and scope of audit (except to the extent any qualification results solely from a current maturity of any Indebtedness under this Agreement), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as of the dates indicated, and the results of their operations and their cash flows for the periods indicated, in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(c) Compliance Certificate; Summaries/Schedules. Together with each delivery of the financial statements pursuant to clauses (a) or (b) above: (i) a duly completed Compliance Certificate; and (ii) summaries/schedules prepared by management of the Borrower, accompanied by a Financial Officer Certification with respect thereto, setting forth: (A) principal and interest payments made by the Borrower and its Subsidiaries (other than Regulated Subsidiaries) with respect to intercompany Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary; (B) intercompany Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary that is eliminated upon consolidation in accordance with GAAP; and (C) with respect to each consolidating financial statement contemporaneously

delivered, columns demonstrating such results (i) calculated on a combined basis with respect to the Regulated Subsidiaries only and otherwise prepared in accordance with GAAP, and (ii) calculated on a combined basis with respect to the Borrower and its Subsidiaries but *excluding* all Regulated Subsidiaries, and otherwise prepared in accordance with GAAP;

(d) Annual Budget. Within sixty (60) days following the end of each Fiscal Year, forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries, as well as of combined balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries but *excluding* all Regulated Subsidiaries, in each case on a quarterly basis for the immediately following Fiscal Year (including the Fiscal Year(s) in which the Term Loan A Maturity Date, the maturity date of any additional Term Loan established pursuant to Section 2.1(d)(iii) after the Closing Date, and the Revolving Commitment Termination Date occur);

(e) Statutory Accounting Principles Statement. Within forty five (45) days following the end of each of the first (1st) three (3) Fiscal Quarters of each Fiscal Year, and within sixty (60) days following the end of each Fiscal Year, statutory accounting principles statements for each Regulated Subsidiary of the Borrower.

(f) Information Regarding Credit Parties. Each Credit Party will furnish to the Collateral Agent prior written notice of any change in such Credit Party's: (i) legal name; (ii) corporate structure; (iii) Federal Taxpayer Identification Number; or (iv) jurisdiction of incorporation, formation or organization, as applicable;

(g) Securities and Exchange Commission Filings. Promptly after the same are filed, copies of all annual, regular, periodic and special reports and registration statements that the Borrower may file, or be required to file, with the SEC under Section 13 or 15(d) of the Exchange Act, provided, that, any documents required to be delivered pursuant to this clause (g) 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, or (ii) on which such documents are posted on the Borrower's behalf on SyndTrak or other relevant website, if any to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). Notwithstanding anything to the contrary, as to any information contained in materials furnished pursuant to this clause (g), the Borrower shall not be separately required to furnish such information under clauses (a) or (b) above, or pursuant to any other requirement of this Agreement or any other Credit Document;

(h) Notice of Default and Material Adverse Effect. Promptly (and in any event within two (2) Business Days) upon any Authorized Officer of any Credit Party obtaining knowledge:

(i) of any condition or event that constitutes a Default or an Event of Default, or that notice has been given to any Credit Party with respect thereto;

(ii) that any Person has given any notice to any Credit Party or any of its Subsidiaries, or taken any other action with respect to any event or condition set forth in Section 9.1(b);

(iii) of the occurrence of any Material Adverse Effect;

(iv) of the institution or any Credit Party's receipt of any threat in writing of the institution of any action, suit, investigation or proceeding against or affecting any Credit Party or any Regulated Subsidiary, including any such investigation or proceeding by any Insurance Regulatory Authority or other Governmental Authority (other than routine periodic inquiries, investigations or reviews), that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; or

(v) of the receipt by any Credit Party or any Regulated Subsidiary from any Insurance Regulatory Authority or other Governmental Authority of any notice of any actual or threatened

suspension, limitation or revocation of, failure to renew, imposition of any restraining order, escrow or impoundment of funds in connection with, or the taking of any other materially adverse action in respect of, any license, permit, accreditation or authorization of any Credit Party or any Regulated Subsidiary, where such action could reasonably be expected to have a Materially Adverse Effect;

deliver to the Administrative Agent a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition or change, and what action the Credit Parties have taken, are taking and propose to take with respect thereto;

(i) ERISA.

(i) Promptly upon becoming aware of the occurrence of, or forthcoming occurrence of, any ERISA Event, a written notice specifying the nature thereof, what action the any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and

(ii)

(A) promptly upon reasonable request of the Administrative Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates with respect to each Pension Plan; and

(B) promptly after their receipt, copies of all notices received by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event;

(j) Securities and Exchange Commission Investigations. Promptly and, in any event, within five (5) Business Days after receipt thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from the Securities and Exchange Commission (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party, Regulated Subsidiary or any of their respective Subsidiaries;

(k) Asset Sales, Involuntary Dispositions and Debt Transactions. Concurrently with delivery of each Compliance Certificate, notice of:

(i) the occurrence and amount of Net Cash Proceeds of any Asset Sale or Involuntary Disposition (in each case, regardless of whether the Net Cash Proceeds therefrom fall below the threshold amounts set forth in Section 2.11(c)(ii) and/or have already been, or are anticipated to be, re-invested pursuant to the reinvestment provisions thereof) in *excess* of $500,000; and

(ii) the occurrence of any Debt Transactions and the amount of Net Cash Proceeds therefrom;

(l) Changes in Accounting or Financial Reporting Practices. Promptly and, in any event, within ten (10) Business Days after implementation thereof, notice of any material change in accounting policies or financial reporting practices of any Credit Party, any Regulated Subsidiary or any of their respective Subsidiaries;

(m) Insurance Filings. Within fifteen (15) Business Days after the required filing date, copies of any annual statement or quarterly statement required to be filed with any Insurance Regulatory Authority by any Credit

Party or any of its Subsidiaries (including Regulated Subsidiaries), in each case, in the form filed with such Insurance Regulatory Authority in conformity with the requirements thereof; and

(n) Other Information.

(i) Promptly upon their becoming available, copies of all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower to its security holders acting in such capacity or by any Subsidiary of the Borrower to its security holders, if any, other than the Borrower or another Subsidiary of the Borrower, provided, that, no Credit Party shall be required to deliver to the Administrative Agent or any Lender the minutes of any meeting of its Board of Directors;

(ii) such other information and data with respect to the Borrower or any of its Subsidiaries as from time to time may be reasonably requested by the Administrative Agent or the Required Lenders; and

(iii) prompt written notice of any change to the information set forth in any Beneficial Ownership Certificate that would result in a change to the list of beneficial owners set forth therein.

Each notice pursuant to clauses (i) and (j) above shall be accompanied by a statement of an Authorized Officer of the Borrower (x) setting forth details of the occurrence referred to therein, and (y) stating what action the Borrower and/or the other applicable Credit Party has taken and proposes to take with respect thereto. Each notice pursuant to clause (h) above shall describe with particularity any and all provisions of this Agreement and any other Credit Document that have been breached.

Section 7.2 Existence. Each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (a) its existence, and (b) except to the extent that failure to do so would *not* reasonably be expected to result in a Material Adverse Effect, all rights and franchises, licenses and permits material to its business, except to the extent permitted by Section 8.10 or not constituting an Asset Sale hereunder.

Section 7.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay (a) all federal, state and other material taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and (b) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, that, no such tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, (ii) in the case of a tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such tax or claim, and (iii) the failure to make payment pending such contest could *not* reasonably be expected to result in a Material Adverse Effect. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than any the Borrower or any Subsidiary).

Section 7.4 Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of any Credit Party and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except where failure to do so would *not* materially adversely affect the operations of the business of the Borrower and its Subsidiaries, taken as a whole.

Section 7.5 Insurance. The Credit Parties will maintain or cause to be maintained, with financially sound and licensed insurers, property insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the each Credit Party and its Subsidiaries as may customarily be carried or maintained under similar circumstances by

Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Credit Party and its Subsidiaries will maintain, or cause to be maintained: (a) flood insurance with respect to each Flood Hazard Property, if any, that is located in a community that participates in the National Flood Insurance Program, in each case, in compliance with any applicable regulations of the Federal Reserve Board; and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall: (i) name the Collateral Agent, on behalf of the holders of the Obligations, as an additional insured thereunder as its interests may appear; and (ii) in the case of each property insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the holders of the Obligations, as the loss payee thereunder and provides for *at least* thirty (30) days' prior written notice (or such shorter prior written notice as may be agreed by the Collateral Agent in its reasonable discretion) to the Collateral Agent of any modification or cancellation of such policy.

Section 7.6 Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, permit representatives and independent contractors of the Administrative Agent (which may include representatives of Lenders) to visit and inspect any of its properties, to conduct field audits, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, that, (i) when an Event of Default exists the 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 without advance notice, and (ii) unless an Event of Default has occurred and is continuing, the Borrower shall *not* be responsible for the expense of any such inspections other than one (1) inspection per Fiscal Year by the Administrative Agent. Notwithstanding anything to the contrary in this Section 7.6, neither the Borrower nor any Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (x) in respect of which disclosure to the Administrative Agent or any Lender (or their representatives) is prohibited by Applicable Law, fiduciary duty or any binding agreement, or (y) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 7.7 Lenders Meetings. The Borrower will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and the Lenders once during each Fiscal Year to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent.

Section 7.8 Compliance with Laws and Material Contracts. Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with (a) the Patriot Act and OFAC rules and regulations, and, (b) except where the failure to do so would *not* reasonably be expected to have a Material Adverse Effect, (i) all other Applicable Laws, and (ii) all Material Contracts and material lease agreements entered into by any Credit Party or any Subsidiary of a Credit Party.

Section 7.9 Use of Proceeds. The Credit Parties will use the proceeds of the Credit Extensions (i) for working capital, capital expenditures and other lawful general corporate purposes, (ii) to refinance existing indebtedness (including the Senior Secured Notes and a portion of the Convertible Notes), and/or (iii) to pay transaction fees, costs and expenses related to credit facilities established pursuant to this Agreement and the other Credit Documents, in each case, *not* in contravention of Applicable Laws or of any Credit Document.

Section 7.10 Environmental Matters.

(a) Environmental Disclosure. Each Credit Party will deliver to the Administrative Agent and the Lenders with reasonable promptness, such documents and information as from time to time may be reasonably requested by the Administrative Agent or any Lender.

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) respond to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7.11 Additional Real Estate Assets.

(a) In the event that any Credit Party owns or acquires a Real Estate Asset, then such Credit Party, *no later than* forty-five (45) days (or such longer period as may be agreed in writing by the Collateral Agent) after acquiring such Real Estate Asset shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgages, documents, instruments, agreements, opinions and certificates similar to those described in clause (b) immediately below that the Collateral Agent shall reasonably request to create in favor of the Collateral Agent, for the benefit of the holders of the Obligations, a valid and, subject to any filing and/or recording referred to herein, enforceable Lien on, and security interest in such Real Estate Asset. The Administrative Agent may, in its reasonable judgment, grant extensions of time for compliance or exceptions with respect to the provisions of this Section 7.11 by any Credit Party. In addition to the foregoing, the applicable Credit Party shall, at the request of the Required Lenders, deliver, from time to time, to the Administrative Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which the Collateral Agent has been granted a Lien.

(b) In order to create in favor of the Collateral Agent, for the benefit of the holders of the Obligations, a valid and, subject to any filing and/or recording referred to herein, enforceable Lien on, and security interest in, any Real Estate Asset that is prior and superior in right to any other Lien (other than Permitted Liens), the Administrative Agent and the Collateral Agent (with copies sufficient for each Lender) shall have received from the Borrower with respect to such Real Estate Asset:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Real Estate Asset;

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to the Collateral Agent) in each state in which such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as the Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Collateral Agent;

(iii)

(A) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by one or more title companies reasonably satisfactory to the Collateral Agent (each, a "Title Policy") with respect to such Real Estate Asset, in amounts not less than the fair market value of such Real Estate Asset, together with a title report issued by a title company with respect thereto and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Collateral Agent; and

(B) evidence reasonably satisfactory to the Collateral Agent that the Borrower has paid to the title company or to the appropriate Governmental Authorities all expenses and

premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgage for such Real Estate Asset in the appropriate real estate records;

(iv) a recently issued flood zone determination certificate;

(v) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Federal Reserve Board, in form and substance reasonably satisfactory to the Collateral Agent;

(vi) if an exception to the Title Policy with respect to any Real Estate Asset subject to a Mortgage would arise without such ALTA surveys, ALTA surveys of such Real Estate Asset; and

(vii) reports and other reasonable information, in form, scope and substance reasonably satisfactory to the Administrative Agent, regarding environmental matters relating to such Real Estate Asset.

Section 7.12 Pledge of Personal Property Assets.

(a) Equity Interests. The Borrower and each other Credit Party shall cause:

(i) one hundred percent (100.0%) of the issued and outstanding Equity Interests of each Domestic Subsidiary (including, without limitation, each Domestic Subsidiary resulting from the division or allocation of any limited liability company that is *not* a Regulated Subsidiary); and

(ii) sixty-five percent (65.0%) (or such greater percentage that (A) could *not* reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary, as determined for United States federal income tax purposes, to be treated as a deemed dividend to such Foreign Subsidiary's United States parent, and (B) could *not* reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956–2(c)(2)), and one hundred percent (100.0%) of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956–2(c)(2)), of each Foreign Subsidiary that is directly owned by any Credit Party or any Domestic Subsidiary;

to be subject, at all times, to a first priority lien (subject to any Permitted Lien) in favor of the Collateral Agent, for the benefit of the Lenders, pursuant to the terms and conditions of the Collateral Documents, together with opinions of counsel and any filings and deliveries or other items reasonably requested by the Collateral Agent necessary in connection therewith (to the extent *not* delivered on the Closing Date, the Fifth Amendment Effective Date) or the Seventh Amendment Effective Date to perfect the security interests therein, all in form and substance reasonably satisfactory to the Collateral Agent.

(b) Personal Property. The Borrower and each other Credit Party (including any Credit Party resulting from the division or allocation of any limited liability company) shall (i) cause all of its owned and leased personal property (other than Excluded Property) to be subject, at all times, to first priority (subject to any Permitted Lien), perfected Liens in favor of the Collateral Agent, for the benefit of the holders of the Obligations, to secure the Obligations pursuant to the terms and conditions of the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the Collateral Agent shall reasonably request, subject in any case to Permitted Liens, and (ii) deliver such other documentation as the Collateral Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC–1 financing statements, certified resolutions and other organizational and authorizing documents of such Person, opinions of counsel to such Person (which shall cover, among other things, the legality,

validity, binding effect and enforceability of the documentation referred to above and the perfection of the Collateral Agent's Liens thereunder) and other items reasonably requested by the Collateral Agent necessary in connection therewith to perfect the security interests therein, all in form, content and scope reasonably satisfactory to the Collateral Agent. Notwithstanding anything to the contrary in the foregoing, unless requested to do so in writing by the Collateral Agent in its sole discretion, no Credit Party shall be required to enter into any deposit account control agreement or securities account control agreement.

(c) Landlord Consents. Upon the reasonable request of the Collateral Agent, the Credit Parties shall use commercially reasonable efforts to obtain landlord consents with respect to leased locations where corporate records or material amounts of personal property of any of the Credit Parties are maintained, which landlord consents shall be in form and substance reasonably acceptable to the Collateral Agent.

Section 7.13 Books and Records. Each Credit Party will keep proper books of record and account in which full, true and correct in all material respects entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Borrower in conformity with GAAP.

Section 7.14 Additional Subsidiaries.

Within forty-five (45) days (or such later date as the Administrative Agent may agree in its sole discretion) after the acquisition or formation of any Subsidiary (including, without limitation, upon the inception of any Subsidiary resulting from the division or allocation of a limited liability company or upon the reinstatement or reincorporation of a formerly dissolved Subsidiary), the Credit Parties shall:

(a) notify the Administrative Agent thereof in writing, together with the:

(i) jurisdiction of incorporation or formation (as the case may be);

(ii) number of shares of each class of Equity Interests outstanding;

(iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by any Credit Party or any Subsidiary; and

(iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and

(b) if such Subsidiary is a Domestic Subsidiary that is *not* a Regulated Subsidiary, cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a Guarantor Joinder Agreement or such other documents as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in clauses (b) and (e) of Section 5.1 and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in the immediately foregoing clause (b)(i)), all in form, content and scope satisfactory to the Administrative Agent.

Section 7.15 Maintenance of Reinsurance. The Credit Parties and their Subsidiaries shall maintain a program of reinsurance *at least* equal to that (a) required by the applicable Insurance Regulatory Authority of its state of domicile, and (b) determined by Demotech, Inc. to be necessary for a company to obtain an "A" rating.

Article 8

NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, until the Obligations shall have been paid in full or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article 8.

Section 8.1 Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, other than:

(a) the Obligations;

(b) (i) Indebtedness of the Borrower to any other Credit Party, and (ii) unsecured Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary in an aggregate principal amount *not to exceed* the aggregate principal amount of Indebtedness permitted under clause (i) below at any time outstanding, provided, that, any Indebtedness incurred pursuant to this clause (b)(ii) shall be subordinated pursuant to terms reasonably acceptable to the Administrative Agent;

(c) Guarantees with respect to Indebtedness permitted under this Section 8.1;

(d) Indebtedness existing on the Closing Date and described in Schedule 8.1, together with any Permitted Refinancing thereof;

(e) Indebtedness with respect to (i) Capital Leases (provided, that, any such Indebtedness shall be secured only by the asset subject to such Capital Lease), and (ii) purchase money Indebtedness (provided, that, any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness); provided, that, the *sum of* the aggregate principal amount of any Indebtedness under this clause (e) at any time outstanding shall *not exceed* $5,000,000;

(f) Indebtedness in respect of any Swap Agreement that is entered into in the ordinary course of business to hedge or mitigate risks to which any Credit Party or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities (it being acknowledged by the Borrower that a Swap Agreement entered into for speculative purposes or of a speculative nature is *not* a Swap Agreement entered into in the ordinary course of business to hedge or mitigate risks);

(g) to the extent constituting Indebtedness, all obligations in connection with each Permitted Acquisition, including, without limitation, Earn Out Obligations;

(h) Indebtedness representing deferred compensation to officers, directors, employees of the Borrower and its Subsidiaries;

(i) Indebtedness of any of the Regulated Subsidiaries owing to the Federal Home Loan Bank; provided, that, (i) any such Indebtedness incurred in reliance on this clause (i) is *not* recourse to any of the Credit Parties, and (ii) the aggregate principal amount of any Indebtedness incurred in reliance on this clause (i) shall *not exceed* Seventy Five Million Dollars ($75,000,000) at any time outstanding;

(j) Indebtedness under the Convertible Notes and any Permitted Refinancing thereof;

(k) Guarantees by the Borrower of Indebtedness of any Subsidiary (other than any Regulated Subsidiary) and by any Subsidiary (other than any Regulated Subsidiary) of Indebtedness of the Borrower or any other Subsidiary (other than any Regulated Subsidiary); provided, that, Guarantees by any Credit Party of Indebtedness

of any Subsidiary (other than any Regulated Subsidiary) that is *not* a Credit Party shall be subject to compliance with Section 8.6;

(l) Indebtedness owed to any Person (including obligations in respect of letters of credit for the benefit of such Person) providing workers' compensation, health, disability or other employee benefits or property, casualty, liability insurance, self-insurance, pursuant to reimbursement or indemnification obligations to such Person or to finance insurance premiums, in each case incurred in the ordinary course of business or consistent with past practice;

(m) Indebtedness in respect of or guarantee of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees, workers' compensation claims, letters of credit, bank guarantees and banker's acceptances, warehouse receipts or similar instruments and similar obligations (other than in respect of other Indebtedness for borrowed money) in each case provided in the ordinary course of business or consistent with past practice; provided, that, any Indebtedness arising from the provision by any Credit Party of any of the foregoing for the benefit of any Person other than a Credit Party is subject to compliance with Section 8.6;

(n) cash management obligations and other Indebtedness in respect of netting services, overdraft protection and similar arrangements, in each case, in connection with cash management and deposit accounts maintained in the ordinary course of business;

(o) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries (other than any Regulated Subsidiary);

(p) performance guarantees primarily guaranteeing performance of contractual obligations to a third party and not for the purpose of guaranteeing payment of Indebtedness;

(q) Indebtedness of the Regulated Subsidiaries to any Credit Party under "surplus notes" in an aggregate principal amount *not to exceed* $25,000,000 at any time outstanding; provided, that, to the extent *not* expressly prohibited from being pledged in the governing documents therefor and/or by Applicable Laws, such notes are, at all times, held in the possession of the Collateral Agent, together with a duly executed allonge;

(r) Indebtedness of Osprey Re Ltd. owing to the Borrower solely in connection with the funding of reinsurance obligations pursuant to Applicable Law in an aggregate principal amount *not to exceed* $20,000,000 at any time outstanding; and

(s) other unsecured Indebtedness of the Borrower or its Subsidiaries in an aggregate principal amount *not to exceed* $5,000,000 at any time outstanding.

For purposes of determining compliance with this Section 8.1, in the event that an item of Indebtedness (or any portion thereof, but *excluding* any Indebtedness incurred pursuant to Section 8.1(i)) at any time meets the criteria of more than one of the categories described above in Section 8.1, the Borrower, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such item of Indebtedness (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness in one of the above clauses. Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest, premium, fees or expenses, in the form of additional Indebtedness, or preferred stock (in each case so long as such additional Indebtedness or preferred stock is in the same form and on the same terms as the Indebtedness to which such payment relates) shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 8.1.

Section 8.2 Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on, or with respect to, any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any Credit Party or any

of its Subsidiaries, whether now owned or hereafter acquired, created or licensed or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any Applicable Laws related to intellectual property, except:

(a) Liens in favor of the Collateral Agent for the benefit of the holders of the Obligations granted pursuant to any Credit Document;

(b) Liens for Taxes *not* yet due, or for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings diligently conducted;

(c) statutory Liens of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) or 4068 of ERISA that would constitute an Event of Default under Section 9.1(j)), in each case, incurred in the ordinary course of business (i) for amounts *not* yet overdue, or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case, which do *not* and will *not* interfere in any material respect with the ordinary conduct of the business of any Credit Party or any of its Subsidiaries, taken as a whole, including, without limitation, all encumbrances shown on any policy of title insurance in favor of the Collateral Agent with respect to any Real Estate Asset;

(f) any interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder;

(g) Liens *solely* on any cash earnest money deposits made by any Credit Party or any of its Subsidiaries in connection with any letter of intent, or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) 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;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by any Credit Party or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of such Credit Party or such Subsidiary;

(l) Liens existing as of the Closing Date and described in Schedule 8.2;

(m) Liens securing purchase money Indebtedness and Capital Leases to the extent permitted pursuant to Section 8.1(e); provided, that, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness or the assets subject to such Capital Lease, respectively;

(n) Liens in favor of the Issuing Bank or the Swingline Lender on cash collateral securing the obligations of a Defaulting Lender to fund risk participations hereunder;

(o) Liens consisting of judgment or judicial attachment liens relating to judgments which do *not* constitute an Event of Default hereunder;

(p) licenses (including licenses of Intellectual Property), sublicenses, leases or subleases granted to third parties in the ordinary course of business;

(q) Liens in favor of collecting banks under Section 4–210 of the UCC;

(r) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(s) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(t) Liens on the assets of Regulated Subsidiaries securing the Indebtedness permitted under clause (i) of Section 8.1;

(u) Liens on insurance policies and the proceeds thereof granted in the ordinary course of business to secure the financing of insurance premiums with respect thereto;

(v) Liens of bailees in the ordinary course of business;

(w) utility and similar deposits in the ordinary course of business;

(x) Liens secured by the Existing Mortgaged Property and Permitted Refinancing thereof;

(y) Liens *not* otherwise permitted hereunder securing Indebtedness or other obligations *not* in *excess* of $1,000,000 in the aggregate at any one time outstanding.

For purposes of determining compliance with this Section 8.2: (x) a Lien need *not* be incurred *solely* by reference to one category of Liens described above but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category); and (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Liens described above, the Borrower, in its sole discretion, may classify or may subsequently reclassify at any time such Lien (or any portion thereof) in any manner that complies with this covenant.

Section 8.3 No Further Negative Pledges. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any Contractual Obligation (other than this Agreement and the other Credit Documents) that limits the ability of any Credit Party or any such Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, that, this Section 8.3 shall *not* prohibit:

(i) any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.1(e), *solely* to the extent any such negative pledge relates to the property financed by or subject to Permitted Liens securing such Indebtedness;

(ii) any Permitted Lien or any document or instrument governing any Permitted Lien, provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien;

(iii) customary restrictions and conditions contained in any agreement relating to the disposition of any property or assets permitted under Section 8.10 pending the consummation of such disposition; and

(iv) customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business.

Section 8.4 Restricted Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary of the Borrower may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower may declare and make dividend payments or other distributions payable *solely* in common Equity Interests of such Person;

(c) [*reserved*];

(d) Restricted Payments consisting of announced dividends that satisfied the conditions of any other clause of this Section 8.4 at the time of announcement thereof;

(e) other Restricted Payments, so long as:

(i) no Default or Event of Default exists at the time of making such Restricted Payment or would result therefrom;

(ii) any such Restricted Payment made in reliance on this clause (e) is actually made during the Fiscal Quarter ending December 31, 2022; and

(iii) the aggregate amount of all such Restricted Payments made in reliance on this clause (e) does *not exceed* Two Million Dollars ($2,000,000).

(f) Restricted Payments consisting of dividends paid by Zephyr Acquisition Company to Heritage Property & Casualty Insurance Company as a holder of preferred Equity Interests pursuant to the terms of a consent order issued by an applicable Insurance Regulatory Authority; and

(g) other Restricted Payments, so long as:

(i) no Default or Event of Default exists or would result therefrom;

(ii) on a Pro Forma Basis after giving effect to any such Restricted Payment, the Consolidated Leverage Ratio is *at least* 0.25:1.00 (a "quarter turn") *less than* the Consolidated Leverage Ratio required for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended;

(iii) after giving effect to any such Restricted Payment, there remains *at least* Twenty-Five Million Dollars ($25,000,000) of Liquidity; and

(iv) the Consolidated Tangible Net Worth, measured as of the end of the last ended Fiscal Quarter, is *equal to* or *greater than* the *sum of* (without duplication): (A) one hundred percent (100.0%) of Consolidated Tangible Net Worth measured as of the end of the Fiscal Quarter ended September 30, 2022 (as supported by financial statements reasonably acceptable to the Administrative Agent); *plus* (B) fifty percent (50.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to the Fiscal Quarter ending December 31, 2022 (to the extent such Fiscal Quarter has ended); *plus* (C) fifty percent (50.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to each full Fiscal Year ended to date after December 31, 2022 (but *not*, for the avoidance of doubt, including the Fiscal Year ending December 31, 2022); *plus* (D) one hundred percent (100.0%) of the Net Cash Proceeds of any Equity Transaction of the Borrower and its Subsidiaries (including Regulated Subsidiaries) occurring on or after the Seventh Amendment Effective Date.

Section 8.5 Burdensome Agreements. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any such Person to:

(i) pay dividends or make any other distributions to the Borrower or other Credit Party on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits;

(ii) pay any Indebtedness or other obligation owed to the Borrower or any other Credit Party;

(iii) make loans or advances to the Borrower or any other Credit Party;

(iv) sell, lease or transfer any of its property to the Borrower or any other Credit Party;

(v) pledge its property pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof; or

(vi) act as a Credit Party pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof;

except (in respect of any of the matters referred to in clauses (i) through (iv) above) for:

(A) this Agreement and the other Credit Documents;

(B) any document or instrument governing Indebtedness incurred pursuant to Section 8.1(e), provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith;

(C) any Permitted Lien or any document or instrument governing any Permitted Lien, provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien;

(D) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.10 pending the consummation of such sale;

(E) any restrictions regarding licensing or sublicensing by the Borrower and its Subsidiaries of Intellectual Property in the ordinary course of business;

(F) customary provision in leases and other contracts restricting the assignment thereof; and

(G) restrictions that arise in connection with Indebtedness permitted to be incurred pursuant to Section 8.1(l).

Section 8.6 Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any joint venture and any Foreign Subsidiary, except:

(a) Investments in cash and Cash Equivalents and deposit accounts or securities accounts in connection therewith;

(b) equity Investments owned as of the Closing Date in any Subsidiary;

(c) intercompany loans to the extent permitted under Section 8.1(b), and guarantees to the extent permitted under Section 8.1(c);

(d) Investments existing on the Closing Date and described on Schedule 8.6;

(e) Investments constituting Swap Agreements permitted by Section 8.1(f);

(f) Permitted Acquisitions;

(g) Investments constituting accounts receivable, trade debt and deposits for the purchase of goods, in each case made in the ordinary course of business;

(h) Investments made by Regulated Subsidiaries: (i) in the ordinary course of business that are consistent with the respective investment policies of each such Regulated Subsidiary in effect on the Closing Date, as such policy may be amended or modified from time to time by board (or equivalent) approval; and (ii) consisting of the repurchase of Convertible Notes in accordance with the terms of Section 8.13(c);

(i) Guarantees by Borrower or any Subsidiary constituting Indebtedness permitted by Section 8.1;

(j) loans or advances to employees, officers or directors of the Borrower or any Subsidiary in the ordinary course of business for travel, relocation and related expenses; provided, that, the aggregate amount of all such loans and advances does *not exceed* $500,000 in the aggregate at any time outstanding;

(k) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and 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) Investments resulting from pledges or deposits described in clause (d) of Section 8.2;

(m) Investments consisting of cash earnest money deposits in connection with a Permitted Acquisition or other Investment permitted hereunder;

(n) Investments consisting of endorsements for collection or deposit in the ordinary course of business;

(o)

(i) Investments by the Borrower and its Subsidiaries in Credit Parties;

(ii) Investments by Subsidiaries of the Borrower that are *not* Credit Parties in other Subsidiaries that are *not* Credit Parties; and

(iii) Investments by the Credit Parties (including, without limitation, the provision of a Letter of Credit for the benefit of any Regulated Subsidiary) in Subsidiaries that are *not* Credit Parties to the extent required to provide capital support for such Regulated Subsidiaries in amounts sufficient to maintain a risk-based capital ratio of *at least* one-hundred and fifty percent (150.0%) of company action level (or similar term as used under Applicable Laws or by any applicable Insurance Regulatory Authority) or as otherwise required by an applicable Insurance Regulatory Authority, so long as:

(A) no Default or Event of Default exists or would result from such Investment;

(B) on a Pro Forma Basis after giving effect to any such Investment, the Credit Parties are in compliance with Section 8.8; and

(C) after giving effect to any such Investment, either (i) there shall be *at least* $25,000,000 of Liquidity, or (ii) on a Pro Forma Basis, the Consolidated Leverage Ratio shall be *at least* 0.25:1.00 (a "quarter turn") *less than* the Consolidated Leverage Ratio required for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended;

(p) Investments in joint ventures in an aggregate amount *not to exceed* $5,000,000 at any time outstanding;

(q) Qualifying FQ4 2022 Investments; and

(r) other Investments *not* listed above and *not* otherwise prohibited by this Agreement in an aggregate amount outstanding at any time (on a cost basis) *not to exceed* $1,000,000.

Notwithstanding anything to the contrary in the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Payment *not* otherwise permitted under the terms of Section 8.4.

For purposes of determining compliance with this Section 8.6: (x) an Investment need *not* be made solely by reference to one category of Investments described in clauses (a) through (o) of this Section 8.6 above but may be made under any combination of such categories (including in part under one such category and in part under any other such category); (y) in the event that an Investment (or any portion thereof) meets the criteria of one or more of such categories of Investments described in clauses (a) through (o) above, the Borrower, in its sole discretion, may classify or may subsequently reclassify at any time such Investment (or any portion thereof) in any manner that complies with this covenant; and (z) any Investment that is written down, written off or forgiven by Borrower or any of its Subsidiaries shall continue to count against any cap set forth in the clause or clauses of this Section 8.6 pursuant to which such Investment is permitted.

Any Investment that *exceeds* the limits of any particular clause set forth above may be allocated amongst more than one of such clauses to permit the incurrence or holding of such Investment to the extent such excess is permitted as an Investment under such other clauses.

Section 8.7 Use of Proceeds. No Credit Party shall use the proceeds of any Credit Extension of the Loans except pursuant to Section 7.9. No Credit Party shall use, and each Credit Party shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall *not* use, the proceeds of any Credit Extension:

(i) to refinance any commercial paper;

(ii) in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate any applicable Sanctions, Regulation T, Regulation U or Regulation X of the Federal Reserve Board, as in effect from time to time or any other regulation thereof or to violate the Exchange Act;

(iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws; or

(iv) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country.

Section 8.8 Financial Covenants. The Credit Parties shall *not*:

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio, as of the end of any Fiscal Quarter of the Borrower (commencing with the Fiscal Quarter of the Borrower ending December 31, 2018), to be *greater than*: (i) for the Fiscal Quarter ended December 31, 2018 and each Fiscal Quarter ending thereafter through, and including, the Fiscal Quarter ending December 31, 2019, 3.25:1.00; (ii) for the Fiscal Quarter ending March 31, 2020 and each Fiscal Quarter ending thereafter through, and including, the Fiscal Quarter ending December 31, 2020, 3.00:1.00; (iii) for the Fiscal Quarter ending March 31, 2021 and each Fiscal Quarter ending thereafter through, and including, the Fiscal Quarter ending March 31, 2023, 2.75:1.00; (iv) for the Fiscal Quarter ending June 30, 2023 and each Fiscal Quarter ending thereafter through, and including, the Fiscal Quarter ending March 31, 2024, 2.50:1.00; (v) for the Fiscal Quarter ending June 30, 2024 and each Fiscal Quarter ending thereafter through, and including, the Fiscal Quarter ending March 31, 2025, 2.25:1.00; and (vi) for the Fiscal Quarter ending June 30, 2025 and for each Fiscal Quarter ending thereafter, 2.00:1.00.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter of the Borrower (commencing with the Fiscal Quarter of the Borrower ending December 31, 2018), to be *less than* 1.20:1.00.

(c) Consolidated Net Worth. Permit:

(i) the Consolidated Net Worth (as defined in the Credit Agreement as in effect immediately *prior* to the Fifth Amendment Effective Date), as of the end of any Fiscal Quarter ending *prior* to the Fifth Amendment Effective Date, to be *less than* the *sum of:* (A) seventy five percent (75.0%) of the Consolidated Net Worth (as so defined) of the Borrower and its Subsidiaries (including Regulated Subsidiaries) as of December 31, 2017; *plus* (B) seventy-five percent (75.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to each full Fiscal Quarter ended to date after December 31, 2017; *plus* (C) one hundred percent (100.0%) of the Net Cash Proceeds of any Equity Transaction of the Borrower and its Subsidiaries (including Regulated Subsidiaries) occurring on or after the Closing Date;

(ii) the Consolidated Net Worth, as of the end of any Fiscal Quarter ending *after* the Fifth Amendment Effective Date but *prior* to the Sixth Amendment Effective Date, to be *less than* the *sum of:* (A) seventy five percent (75.0%) of the Consolidated Net Worth of the Borrower and its Subsidiaries (including Regulated Subsidiaries) as of March 31, 2021; *plus* (B) twenty-five percent (25.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to each full Fiscal Quarter ended to date after March 31, 2021; *plus* (C) one hundred percent (100.0%) of the Net Cash Proceeds of any Equity Transaction of the Borrower and its Subsidiaries (including Regulated Subsidiaries) occurring on or after the Fifth Amendment Effective Date;

(iii) the Consolidated Tangible Net Worth, as of the end of any Fiscal Quarter ending *on* or *after* the Sixth Amendment Effective Date but *prior* to (and, for the avoidance of doubt, *excluding*) the Fiscal Quarter ending September 30, 2022, to be *less than* the *sum of* (without duplication): (A) One-Hundred Sixty-Two Million Three-Hundred Thirty-Three Thousand Seven-Hundred Fifty Dollars ($162,333,750); *plus* (B) twenty-five percent (25.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to each full Fiscal Quarter ended to date after March 31, 2022; *plus* (C) one hundred percent (100.0%) of the Net Cash Proceeds of

any Equity Transaction of the Borrower and its Subsidiaries (including Regulated Subsidiaries) occurring on or after the Sixth Amendment Effective Date; and

(iv) the Consolidated Tangible Net Worth, as of the end of the Fiscal Quarter ending December 31, 2022 and each Fiscal Quarter ending thereafter, to be *less than* the *sum of* (without duplication): (A) One-Hundred Million Dollars ($100,000,000); *plus* (B) fifty percent (50.0%) of the *sum of* the positive Consolidated Net Income of the Borrower and its Subsidiaries (including Regulated Subsidiaries) earned with respect to each full Fiscal Quarter ended to date after September 30, 2022; *plus* (C) one hundred percent (100.0%) of the Net Cash Proceeds of any Equity Transaction of the Borrower and its Subsidiaries (including Regulated Subsidiaries) occurring on or after the Seventh Amendment Effective Date.

Section 8.9 Fundamental Changes; Disposition of Assets; Acquisitions. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any Acquisition or transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or make any Asset Sale, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory and materials and the acquisition of equipment and capital expenditures in the ordinary course of business, subject to Section 8.9) the business, property or fixed assets of, or Equity Interests or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person (including, in each case, pursuant to the division or allocation of a limited liability company), except:

(a) any Subsidiary of any Credit Party may be merged with or into the Borrower or any Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one (1) transaction or a series of transactions, to the Borrower or any other Subsidiary; provided, that, in the case of such a merger, (i) if the Borrower is party to the merger, the Borrower shall be the continuing or surviving Person, and (ii) if any Guarantor is a party to such merger, then a Guarantor shall be the continuing or surviving Person;

(b) Asset Sales, the proceeds of which, when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, do *not exceed* $10,000,000; provided, that, (i) the consideration received for such assets shall be in an amount *at least* equal to the fair market value thereof (determined in good faith by the board of directors of the applicable Credit Party (or similar governing body)), and (ii) *no less than* seventy-five percent (75.0%) of such proceeds shall be paid in cash;

(c) Investments made in accordance with Section 8.6; and

(d) sales of any assets made by any Regulated Subsidiary in the ordinary course of business.

Section 8.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Equity Interests of any of its Subsidiaries in compliance with the provisions of Section 8.9 and except for Liens securing the Obligations, no Credit Party shall, nor shall it permit any of its Subsidiaries to:

(a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to qualify directors if required by Applicable Laws; or

(b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to another Credit Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by Applicable Laws.

Section 8.11 Sales and Lease-Backs. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease

of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Credit Party or any Subsidiary:

(a) has sold or transferred, or is to sell or to transfer, to any other Person (other than the Borrower or any other Credit Party); or

(b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower or any other Credit Party to any Person (other than the Borrower or any other Credit Party) in connection with such lease.

Section 8.12 Transactions with Affiliates and Insiders. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any officer, director or Affiliate of the Borrower or any its Subsidiaries on terms that are *less* favorable to the Borrower or such Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is *not* an officer, director or Affiliate of the Borrower or any of its Subsidiaries; provided, that, the foregoing restriction shall *not* apply to:

(a) any transaction between or among the Credit Parties;

(b) compensation (including bonuses and equity or other consideration) and employee benefit arrangements paid to, indemnities provided for the benefit of, and employment and severance arrangements entered into with, and reimbursement of expenses of officers and directors and approved by the Board of Directors of the Borrower;

(c) any Restricted Payment to the extent permitted by Section 8.4; and

(d) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, employee stock options and employee stock ownership plans.

Section 8.13 Modification or Prepayment of Other Funded Debt. No Credit Party shall, nor shall it permit any of its Subsidiaries to:

(a) after the issuance thereof, amend or modify (or permit the termination, amendment or modification of) the terms of any Funded Debt in a manner adverse in any material respect to the interests of the Lenders (including specifically shortening any maturity or average life to maturity or requiring any payment sooner than previously scheduled or increasing the interest rate or fees applicable thereto), except to the extent any such amendment or modification constitutes a Permitted Refinancing;

(b) make any payment in contravention of the terms of any Subordinated Debt;

(c) with respect to any Funded Debt (other than Funded Debt constituting Obligations), pay, prepay, redeem, purchase, defease or otherwise satisfy or obligate itself to do so prior to the scheduled maturity thereof in any manner (including by the exercise of any right of setoff), provided, that, the Borrower may (i) pay scheduled amortization payments for any Funded Debt and scheduled payments of interest for any Funded Debt, each in accordance with their terms and subject to the governing documents with respect thereto, and (ii) the Borrower may redeem or repurchase Convertible Notes and/or make voluntary prepayments with respect to any intercompany Indebtedness owing by any Credit Party or Subsidiary (other than a Regulated Subsidiary) to any Regulated Subsidiary permitted under Section 8.1(b)(ii), so long as:

(i) no Default or Event of Default exists or would result therefrom;

(ii) before giving effect on a Pro Forma Basis, and after giving effect on a Pro Forma Basis, to any such redemption, purchase or voluntary prepayment, the Consolidated Leverage Ratio is *at least*

0.25:1.00 (a "*quarter turn*") *less than* the Consolidated Leverage Ratio required for the period consisting of the four (4) consecutive full Fiscal Quarters most recently ended;

(iii) after giving effect to any such redemption, purchase or voluntary prepayment, there remains *at least* Twenty Five Million Dollars ($25,000,000) of Liquidity; and

(iv) immediately upon any purchase of any Convertible Notes, the Indebtedness evidenced thereby is irrevocably cancelled; or

(d) except in connection with a Permitted Refinancing, make any voluntary prepayment, redemption, defeasance or acquisition for value of (including by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), or refund, refinance or exchange of, any Funded Debt (other than the Indebtedness under the Credit Documents and intercompany Indebtedness permitted hereunder owing to any Credit Party).

Section 8.14 Conduct of Business. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Credit Party or such Subsidiary on the Closing Date and businesses that are substantially similar, related or incidental thereto.

Section 8.15 Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to, change its Fiscal Year-end from December 31.

Section 8.16 Amendments to Organizational Agreements / Material Agreements. No Credit Party shall, nor shall it permit any of its Subsidiaries to: (a) amend or permit any amendments to its Organizational Documents, if such amendment could reasonably be expected to be materially adverse to the Lenders or the Administrative Agent; (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract (other than any managing general agent or service company agreement entered into by any Credit Party or any Subsidiary of any Credit Party), unless such amendment, termination, or waiver would *not* have, and would *not* be expected to have, a Material Adverse Effect on the Administrative Agent or the Lenders; or (c) amend or permit any amendments to, or terminate or waive any provision of, any managing general agent or service company agreement entered into by any Credit Party or any Subsidiary of any Credit Party, unless such amendment, termination, or waiver would *not* have, and would *not* be expected to have, an adverse effect on the Credit Parties, the Administrative Agent or the Lenders, provided, that, notwithstanding anything to the contrary in the foregoing of this clause (c), so long as no Default or Event of Default has occurred and is continuing, the Credit Parties and their Subsidiaries shall be permitted to waive any provision of any managing general agent or service company agreement entered into by any Credit Party or any Subsidiary thereof in order to reduce or waive, in whole or in part, managing general agency fees, expenses and/or other amounts that are then due and payable thereunder and/or have already been paid but which are subsequently waived in accordance with applicable Law by the Credit Party or Subsidiary to whom such fees, expenses and/or other amounts would otherwise have been paid thereunder, as applicable.

Section 8.17 Accounting and Reporting Changes. No (i) Credit Party or any Subsidiary (other than any Regulated Subsidiary) may make any significant change in accounting treatment or reporting practices, except as required by GAAP or the SEC and (ii) Regulated Subsidiary may make any significant change in accounting treatment or reporting practices, except as required by statutory accounting principles.

Section 8.18 Statutory Capitalization / Risk Based Capital Ratio. As of the end of each Fiscal Year, all Credit Parties and their Subsidiaries subject to any minimum statutory capitalization and/or risk-based capital ratio requirements imposed by any Insurance Regulatory Authority and/or Applicable Laws shall meet or *exceed* such requirements and, in any event, maintain a risk-based capital ratio of *at least* one-hundred and fifty percent (150.0%) of company action level (or similar term as used under Applicable Laws or by any applicable Insurance Regulatory Authority); provided, that, in the event that the Credit Parties and their Subsidiaries shall fail to comply

with the foregoing, the Credit Parties and their Subsidiaries shall have a period of six (6) months following the applicable Fiscal Year end to return to compliance with the foregoing.

Article 9

EVENTS OF DEFAULT; REMEDIES; APPLICATION OF FUNDS.

Section 9.1 Events of Default. If any one (1) or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by any Credit Party to pay:

(i) the principal of any Loan when due, whether at stated maturity, by acceleration or otherwise;

(ii) within one (1) Business Day of when due, any amount payable to the Issuing Bank in reimbursement of any drawing under a Letter of Credit; or

(iii) within five (5) Business Days of when due, any interest on any Loan or any fee or any other amount due hereunder;

(b) Default in Other Agreements.

(i) Failure of any Credit Party or any of its Subsidiaries to pay when due any principal of or interest on, or any other amount payable in respect of, one or more items of Indebtedness (other than Indebtedness referred to in clause (a) above but including, without limitation, Indebtedness under the Convertible Notes or Senior Secured Notes) in an aggregate principal amount of $2,000,000 or more, in each case, beyond the grace or cure period, if any, provided therefor; or

(ii) breach or default by any Credit Party with respect to any other term of (A) one (1) or more items of Indebtedness in the aggregate principal amounts referred to in clause (b)(i) above, or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case, beyond the grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be;

provided, that, so long as the Administrative Agent has *not* exercised any remedies under this Article 9, any Default or Event of Default under this clause (b) shall be immediately cured and no longer continuing (without any action on the part of the Administrative Agent, any Lender or otherwise) as and when any such failure (x) is remedied by the Borrower or applicable Subsidiary, or (y) is waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness.

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in clause (a), (b) or (c) of Section 7.1 (and such default or compliance remains uncured for a period of five (5) Business Days), Section 7.1(h), Section 7.2(a), Section 7.6, Section 7.9 or Section 7.15, or Article 8.

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document, or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto, or in connection herewith or therewith, shall be false in any material respect as of the date made or deemed made;

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of, or compliance with, any term contained herein or in any of the other Credit Documents, other than any such term referred to in any other clause of this Section 9.1, and such default shall *not* have been remedied or waived within thirty (30) days after the *earlier* to occur of:

(i) an Authorized Officer of any Credit Party becoming aware of such default; or

(ii) receipt by the Borrower of notice from the Administrative Agent or any Lender of such default;

(f) Involuntary Bankruptcy; Appointment of Receiver, etc.

(i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Credit Party or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or

(ii)

(A) an involuntary case shall be commenced against any Credit Party or any of its Subsidiaries under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect;

(B) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Credit Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered;

(C) there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Credit Party or any of its Subsidiaries for all, or a substantial part, of its property; or

(D) a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Credit Party or any of its Subsidiaries;

and any such event described in this clause (f)(ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged;

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.

(i) Any Credit Party or any of its Subsidiaries shall:

(A) have an order for relief entered with respect to it;

(B) commence a voluntary case under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect;

(C) consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law;

(D) consent to the appointment of, or taking possession by, a receiver, trustee or other custodian for all, or a substantial part, of its property;

(E) make any assignment for the benefit of creditors; or

(F) be unable, or fail generally, or admit in writing its inability, to pay its debts as such debts become due; or

(ii) the board of directors (or similar governing body) of any Credit Party or any of its Subsidiaries, or any committee thereof, shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in this clause (g) or in clause (f) above;

(h) Judgments and Attachments.

(i) Any one or more final, non-appealable money judgments, writs or warrants of attachment or similar process involving an aggregate amount at any time in *excess* of $2,000,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage in writing) shall be entered or filed against any Credit Party or any of its Subsidiaries, or any of their respective assets, and shall remain undischarged, un-vacated, un-bonded or un-stayed for a period of sixty (60) days; or

(ii) any non-monetary judgment or order shall be rendered against any Credit Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, un-vacated, un-bonded or un-stayed for a period of sixty (60) days;

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party or any of its Subsidiaries decreeing the dissolution or split up of such Credit Party or such Subsidiary, and such order shall remain undischarged or un-stayed for a period in *excess* of thirty (30) days;

(j) Pension Plans. There shall occur one (1) or more ERISA Events which, individually or in the aggregate, results in liability of any Credit Party or any of its Subsidiaries in *excess* of $2,000,000 during the term hereof and which is not paid by the applicable due date;

(k) Change of Control. A Change of Control shall occur;

(l) Invalidity of Credit Documents and Other Documents. At any time after the execution and delivery thereof:

(i) this Agreement or any other Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations (other than contingent and indemnified obligations *not* then due and owing) in accordance with the terms hereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document; or

(ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party;

(m) Risk Retention. On June 1st of each calendar year, the net pre-tax catastrophe retention of each Regulated Subsidiary, whose surpluses are available for payment of claims on policies issued by the Credit Parties and their Subsidiaries, *exceeds* (i) fifty-five percent (55.0%) with respect to Zephyr Insurance Company, or (ii) thirty percent (30.0%) with respect to any Regulated Subsidiary other than Zephyr Insurance Company and Osprey Re Ltd., of the immediately preceding March 31st statutory surplus in the event of a 1/100 Probable Maximum Loss followed by a subsequent event equivalent to a 1/50 Probable Maximum Loss, as measured by a catastrophe model that has been approved by the appropriate Insurance Regulatory Authority; or

(n) Reinsurer Concentration. The aggregate amount of risk retention for catastrophic excess reinsurance provided for payment of claims on policies purchased by the Credit Parties and their Subsidiaries provided by any individual (or affiliated) Qualifying Reinsurer(s) (other than the Florida Hurricane Catastrophe Fund) or individual (or affiliated) Non-Qualifying Reinsurer(s) *exceeds* fifteen percent (15.0%) of the aggregate of all such risk retention provided by all Qualifying Reinsurers and Non-Qualifying Reinsurers; provided, that, (i) for purposes of determining whether an Event of Default exists under this clause (n), reinsurance provided by Non-Qualifying Reinsurers shall *not* be included in the calculation of the foregoing percentage of aggregate risk retention to the extent that the aggregate amount of reinsurance provided by Non-Qualifying Reinsurers *exceeds* fifteen percent (15.0%) of the aggregate amount of all reinsurance maintained by, or for the benefit of, the Insurance Affiliates whose surpluses are available for payment of claims on policies issued by the Credit Parties and their Subsidiaries, and (ii) no Event of Default shall arise under this clause (n) to the extent *solely* arising from the merger, after the Effective Date but prior to renewal of the applicable agreement(s), of any Qualifying Reinsurer or Non-Qualifying Reinsurer into any other Qualifying Reinsurer or Non-Qualifying Reinsurer, so long as no party to any such merger is an Affiliate of any Credit Party.

Section 9.2 Remedies. (a) Upon the occurrence of any Event of Default described in clause (f) or (g) of Section 9.1, automatically, and (b) upon the occurrence, and during the continuance, of any other Event of Default, at the request of (or with the consent of) the Required Lenders, upon notice to the Borrower by the Administrative Agent:

(i) the Revolving Commitments, if any, of each Lender having such Revolving Commitments, and the obligation of the Issuing Bank to issue any Letter of Credit, each shall immediately terminate;

(ii) each of the following shall immediately become due and payable, in each case, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each of the Credit Parties:

(A) the unpaid principal amount of, and accrued interest on, the Loans;

(B) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit); and

(C) all other Obligations;

provided, that, the foregoing sub-clauses (ii)(A), (ii)(B) and (ii)(C) shall *not* affect in any way the obligations of the Lenders under Section 2.2(b)(iii) or Section 2.3(e);

(iii) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents; and

(iv) the Administrative Agent shall direct the Borrower to pay (and the Borrower hereby agrees, upon receipt of such notice, or upon the occurrence of any Event of Default specified in clause (f) or (g) of Section 9.1, to pay) to the Administrative Agent such additional amounts of cash, to be held as security for the Borrower's reimbursement Obligations in respect of Letters of Credit then outstanding under arrangements acceptable to the Administrative Agent, equal to the Outstanding Amount of the Letter of Credit Obligations at such time.

Notwithstanding anything herein or otherwise to the contrary, any Event of Default occurring hereunder shall continue to exist (and shall be deemed to be continuing) until such time as such Event of Default has been cured to the satisfaction of the Required Lenders or waived in writing in accordance with the terms of Section 11.4.

Section 9.3 Application of Funds. After the exercise of remedies provided for in Section 9.2 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal, interest and Letter of Credit Fees but including without limitation all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.1, Section 3.2 and Section 3.3) payable to the Administrative Agent and the Collateral Agent, in each case, in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders, including, without limitation, all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.1, Section 3.2 and Section 3.3), ratably among the Lenders in proportion to the respective amounts described in this *Second clause* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, Letter of Credit Borrowings and other Obligations ratably among such parties in proportion to the respective amounts described in this *Third clause* payable to them;

Fourth, to:

(A) payment of that portion of the Obligations constituting unpaid principal of the Loans and Letter of Credit Borrowings;

(B) payment of breakage, termination or other amounts owing in respect of any Swap Agreement between any Credit Party or any of its Subsidiaries and any Qualifying Swap Provider, to the extent such Swap Agreement is permitted hereunder;

(C) payments of amounts due under any Treasury Management Agreement between any Credit Party or any of its Subsidiaries and any Qualifying Treasury Management Bank; and

(D) the Administrative Agent for the account of the Issuing Bank, to Cash Collateralize that portion of the Letter of Credit Obligations comprised of the aggregate undrawn amount of Letters of Credit;

ratably among such parties in proportion to the respective amounts described in this *Fourth clause* payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Laws.

Subject to Section 2.3, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to the *Fourth clause* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Excluded Swap Obligations with respect to any Guarantor shall *not* be paid with amounts received from such Guarantor or such Guarantor's assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in this Section 9.3.

Notwithstanding anything to the contrary in the foregoing, Secured Swap Obligations and Secured Treasury Management Obligations shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Qualifying Swap Provider or Qualifying Treasury Management Bank, as the case may be. Each Qualifying Swap Provider or Qualifying Treasury Management Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article 10 for itself and its Affiliates as if a "*Lender*" party hereto.

Article 10

AGENCY

Section 10.1 Appointment and Authority.

(a) Each of the Lenders and the Issuing Bank hereby irrevocably appoints Regions Bank to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 10 are *solely* for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Credit Party nor any of its Subsidiaries shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is *not* intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Each of the Lenders hereby irrevocably appoints, designates and authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and each Collateral Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any Collateral Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any Collateral Document, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any Collateral Document or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the Collateral Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Agent shall act on behalf of the Lenders with respect to any Collateral and the Collateral Documents, and the Collateral Agent shall have all of the benefits and immunities: (i) provided to the Administrative Agent under the Credit Documents with respect to any acts taken or omissions suffered by the Collateral Agent in connection with any Collateral or the Collateral Documents as fully as if the term "Administrative Agent" as used in such Credit Documents included the Collateral Agent with respect to such acts or omissions; and (ii) as additionally provided herein or in the Collateral Documents with respect to the Collateral Agent.

Section 10.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender, and may exercise the same as though it were *not* the Administrative Agent, and the term "*Lender*" or "*Lenders*" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own

securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with the Borrower or any Subsidiary of the Borrower or other Affiliate thereof, as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 10.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

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

(ii) shall *not* have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided, that, the Administrative Agent shall *not* be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or Applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall *not*, except as expressly set forth herein and in the other Credit 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 Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall *not* be liable for any action taken or not taken by it: (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.4 and Section 9.2); or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed *not* to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender or the Issuing Bank.

(c) The Administrative Agent shall *not* be responsible for or have any duty to ascertain or inquire into:

(i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit 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 Credit Document or any other agreement, instrument or document; or

(v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent and any assignor of a Loan or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in any document delivered in connection with this Agreement, including, without limitation, the relevant Assignment Agreement or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Institution. The Administrative Agent shall *not* be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution, or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Section 10.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower and its Subsidiaries), 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 10.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 10.5 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States (but which shall not be a Disqualified Institution), 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 Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law by notice in writing to

the Borrower and such Person remove such Person as the Administrative Agent and, in consultation with 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 (or such earlier day as shall be agreed by the Required Lenders (the "Removal Effective Date")), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable): (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Bank under any of the Credit Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed); and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor 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 Credit Documents, the provisions of this Article 10 and Section 11.2 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 10.7 Non-Reliance on Administrative Agent and Other Lenders. Each of the Lenders and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 10.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Documentation Agents or Syndication Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Bank hereunder.

Section 10.9 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 Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank

and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Section 2.10 and 11.2) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.10 and 11.2).

Section 10.10 Collateral Matters.

(a) The Lenders (including the Issuing Bank and the Swingline Lender) irrevocably authorize the Administrative Agent and the Collateral Agent, at its option and in its discretion:

(i) to release any Lien on any property granted to or held under any Credit Document securing the Obligations:

(A) upon termination of the commitments under this Agreement and payment in full of all Obligations (other than contingent indemnification obligations and obligations under any Secured Swap Agreement or Secured Treasury Management Agreement) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the Issuing Bank shall have been made);

(B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Credit Documents or consented to in accordance with the terms of this Agreement; or

(C) subject to Section 11.4, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any property granted to or held under any Credit Document securing the Obligations to the holder of any Lien on such property that is permitted by Section 8.2(m); and

(iii) to release any Guarantor from its obligations under this Agreement and the other Credit Documents if such Person ceases to be a Guarantor as a result of a transaction permitted under the Credit Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement pursuant to this Section 10.10.

(b) The Administrative Agent shall *not* be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in

connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Anything contained in any of the Credit Documents to the contrary notwithstanding, each of the Credit Parties, the Administrative Agent, the Collateral Agent and each holder of the Obligations hereby agree that:

(i) no holder of the Obligations shall have any right individually to realize upon any of the Collateral or to enforce this Agreement, the Notes or any other Credit Agreement, it being understood and agreed that all powers, rights and remedies hereunder may be exercised *solely* by the Administrative Agent, on behalf of the holders of the Obligations in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised *solely* by the Collateral Agent; and

(ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of the holders of the Obligations (but *not* any Lender or Lenders in its or their respective individual capacities, unless the 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 Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

(d) No Secured Swap Agreement or Secured Treasury Management Agreement will create (or be deemed to create) in favor of any Qualifying Swap Provider or any Qualifying Treasury Management Bank, respectively that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of the Borrower or any other Credit Party under the Credit Documents except as expressly provided herein or in the other Credit Documents. By accepting the benefits of the Collateral, each such Qualifying Swap Provider and Qualifying Treasury Management Bank shall be deemed to have appointed the Collateral Agent as its agent and agreed to be bound by the Credit Documents as a holder of the Obligations, subject to the limitations set forth in this clause (d). Furthermore, it is understood and agreed that the Qualifying Swap Provider and Qualifying Treasury Management Banks, in their capacity as such, shall *not* have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Credit Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Credit Documents) other than in its capacity as a Lender and, in any case, only as expressly provided herein.

Section 10.11 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, the Issuing Bank, any other holder(s) of the Obligations or any other Person(s) who has received funds on behalf of a Lender, the Issuing Bank or any other holder(s) of the Obligations (any such Lender, Issuing Bank, other holder(s) of the Obligations or other recipient(s), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after its receipt of any notice delivered pursuant to clause (b) below) that any funds received by such Payment Recipient from the Administrative Agent, or any of its Affiliates, were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, other holder(s) of the Obligations or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall, at all times, remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank, other holder(s) of the Obligations or other Payment Recipient shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in *no* event *later than* two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency

so received), together with interest thereon in respect of each day from, and including, the date on which such Erroneous Payment (or portion thereof) was received by such Payment Recipient to, and including, the date on which such amount is repaid to the Administrative Agent in same day funds at the *greater of* the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice delivered from the Administrative Agent to any Payment Recipient pursuant to this clause (a) shall be conclusive and binding, absent manifest error.

(b) Without limiting anything in the immediately foregoing clause (a), each Lender, the Issuing Bank, each other holder(s) of the Obligations party hereto and each other Payment Recipient party hereto hereby further agrees that, if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (I) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (II) that was *not* preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (III) that such Lender, Issuing Bank, other holder(s) of the Obligations or other Payment Recipient(s) otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case of the foregoing:

(i) (A) in any such case of the immediately preceding clauses (b)(I) or (b)(II), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary), or (B) in any such case of the immediately preceding clause (b)(III), an error has been made, in each case of the foregoing clauses (b)(i)(A) and (b)(i)(B), with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank, other holder(s) of the Obligations or other Payment Recipient(s) shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in any event, within one (1) Business Day of its obtaining knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this clause (b).

(c) Each Lender, the Issuing Bank, each other holder of the Obligations party hereto and each other Payment Recipient party hereto hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s) under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender, the Issuing Bank, such other holder(s) of the Obligations and/or such other Payment Recipient(s) from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is *not* recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with foregoing clause (a), from any Lender, the Issuing Bank, any other holder(s) of the Obligations or any other Payment Recipient(s) that has received such Erroneous Payment (or portion thereof) (and/or from any other recipient who received such Erroneous Payment (or portion thereof) on the respective behalf of any of the foregoing) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s), as the case may be, at any time: (i) such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s), as the case may be, shall be deemed to have assigned (to the extent it has any such Loans) its Loans (but *not* its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of such Loans (but *not* Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par *plus* any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s), as

the case may be, is hereby (together with the Borrower) deemed to have executed and delivered an Assignment Agreement (or, to the extent applicable, an agreement incorporating an Assignment Agreement by reference pursuant to Debtdomain, Intralinks, Syndtrak, or a substantially similar electronic transmission system as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and further, such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s), as the case may be, shall deliver any Notes evidencing any such Loans to the Administrative Agent; (ii) the Administrative Agent, as the assignee Lender, shall be deemed to acquire the Erroneous Payment Deficiency Assignment; (iii) upon such deemed acquisition, the Administrative Agent, as the assignee Lender, shall become a Lender, the Issuing Bank or such other type of holder of the Obligations, as the case may be, hereunder with respect to such Erroneous Payment Deficiency Assignment, and further, the assigning Lender, the Issuing Bank or such other holder(s) of the Obligations shall cease to be a Lender, the Issuing Bank or such other holder of the Obligations, as the case may be, hereunder with respect to such Erroneous Payment Deficiency Assignment, but *excluding*, for the avoidance of doubt, such Person's obligations under the indemnification provisions of this Agreement and its applicable Commitments, which shall survive as to such assigning Lender, Issuing Bank or other holder(s) of the Obligations; and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and, upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender, the Issuing Bank, the other applicable holder(s) of the Obligations or the other such applicable Payment Recipient(s), as the case may be, shall be *reduced* by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender, the Issuing Bank, such other holder(s) of the Obligations or such other Payment Recipient(s), as the case may be (and/or against any recipient that receives funds on the respective behalf of any of the foregoing). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or the Issuing Bank, and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all of the rights and interests of the applicable Lender, the Issuing Bank or any other applicable holder(s) of the Obligations under the Credit Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) Each of the parties hereto agree that an Erroneous Payment shall *not* pay, prepay, repay, discharge, or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent that such Erroneous Payment is, and *solely* with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and each party hereto, to the extent constituting a Payment Recipient, hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's respective obligations, agreements and waivers under this Section 10.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, any Lender, the Issuing Bank or any other holder(s) of the Obligations, the termination of any or all of the Commitments, and/or the repayment, satisfaction or discharge of any or all of the Obligations (or any portion thereof) under any Credit Document.

Article 11

MISCELLANEOUS

Section 11.1 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Administrative Agent, the Borrower or any other Credit Party, to the address, telecopier number, electronic mail address or telephone number specified in Appendix B; and

(ii) if to any Lender, the Issuing Bank or the Swingline Lender, to the address, telecopier number, electronic mail address or telephone number in its Administrative Questionnaire on file with the Administrative Agent.

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 telecopier 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 clause (b) below, shall be effective as provided in clause (b) below.

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that, the foregoing shall *not* apply to notices to any Lender or the Issuing Bank pursuant to Article 2 if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent and the Borrower that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or any Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that, approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes:

(i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); and

(ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor,

provided, that, with respect to clauses (b)(i) and (b)(ii) above, 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.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall *not* be obligated to, make the Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debtdomain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, 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 Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower or the other Credit Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any other Credit Party's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by, or on behalf of, any Credit Party pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through the Platform.

Section 11.2 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Credit Parties shall pay, on a joint and several basis, each of the following:

(i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (which, in the case of legal counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent, the Collateral Agent, the Lenders, the Issuing Bank, the Swingline Lender and their respective Affiliates, taken as a whole, and of one special and local counsel to the Administrative Agent, the Collateral Agent, the Lenders, the Issuing Bank, the Swingline Lender and their respective Affiliates, taken as a whole, in each applicable jurisdiction retained by the Administrative Agent and/or the Collateral Agent, and, in the event of any actual or potential conflict of interest, one additional primary, special and local counsel, as applicable, for each of the foregoing subject to a conflict) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated);

(ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and

(iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank (which, in the case of legal counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent, the Collateral Agent, the Lenders, the Issuing Bank, the Swingline Lender and their respective Affiliates, taken as a whole, and of one special and local counsel to the Administrative Agent, the Collateral Agent, the Lenders, the Issuing Bank, the Swingline Lender and their respective Affiliates, taken as a whole, in each applicable jurisdiction retained

by the Administrative Agent and/or the Collateral Agent, and, in the event of any actual or potential conflict of interest, one additional primary, special and local counsel, as applicable, for each of the foregoing subject to a conflict) in connection with the enforcement or protection of its rights:

(A) in connection with this Agreement and the other Credit Documents, including its rights under this Section; or

(B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify, on a joint and several basis, the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (which, in the case of legal counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel for the Indemnitees, taken as a whole, and of one special and local counsel to the Indemnitees, taken as a whole, in each applicable jurisdiction retained by the Administrative Agent and/or the Collateral Agent, and, in the event of any actual or potential conflict of interest, one additional primary, special and local counsel, as applicable, for each Indemnitee subject to a conflict), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Credit Party) other than such Indemnitee or its Related Parties arising out of, in connection with, or as a result of:

(i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby;

(ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit);

(iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any other Credit Party, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries; or

(iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing sub-clauses (b)(i), (b)(ii), or (b)(iii), whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any of its Subsidiaries, and regardless of whether any Indemnitee is a party thereto;

provided, that, such indemnity shall *not*, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses: (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee; or (y) result from a claim brought by the Borrower or any Credit Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the Borrower or such Credit Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This clause (b) shall *not* apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under clauses (a) or (b) above to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the

foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's *pro rata* share (in each case, determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Issuing Bank in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of this Agreement that provide that their obligations are several in nature, and not joint and several.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, none of the Credit Parties shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly, but in any event within ten (10) Business Days after written demand therefor (including delivery of copies of applicable invoices, if any).

(f) Survival. The provisions of this Section shall survive resignation or replacement of the Administrative Agent, Collateral Agent, the Issuing Bank, the Swingline Lender or any Lender, termination of the commitments hereunder and repayment, satisfaction and discharge of the loans and obligations hereunder.

Section 11.3 Set-Off. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable 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, the Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Credit Document to such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or such Affiliate shall have made any demand under this Agreement or any other Credit Document and although such obligations of the Borrower or such Credit Party may be contingent or un-matured or are owed to a branch, office or Affiliate of such Lender or the Issuing Bank 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 Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have. Each of the Lenders and the Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

Section 11.4 Amendments and Waivers.

(a) Required Lenders' Consent. Subject to clauses (b) and (c) below, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Administrative Agent and the Required Lenders, provided, that:

(i) the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does *not* adversely affect the rights of any Lender or the Issuing Bank;

(ii) each of the Fee Letter and any Auto Borrow Agreement may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto;

(iii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitments, Loans and/or Letter of Credit Obligations of such Lender may *not* be increased or extended without the consent of such Lender;

(iv) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein; and

(v) the Required Lenders shall determine whether or not to allow any Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender except as provided in clause (a)(iii) above) that would be affected thereby, but subject to Section 3.1(a), no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the Revolving Commitment Termination Date;

(ii) waive, reduce or postpone any scheduled repayment (but *not* prepayment) or alter the required application of any prepayment pursuant to Section 2.12 or the application of funds pursuant to Section 9.3, as applicable;

(iii) extend the stated expiration date of any Letter of Credit, beyond the Revolving Commitment Termination Date;

(iv) reduce the principal of or the rate of interest on any Loan (other than any waiver of the imposition of the Default Rate pursuant to Section 2.9) or any fee or premium payable hereunder; provided, that, only the consent of the Required Lenders shall be necessary:

(A) to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest at the Default Rate; or

(B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(v) extend the time for payment of any such interest or fees;

(vi) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;

(vii) amend, modify, terminate or waive any provision of this clause (b), the below clause (c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) change the percentage of the outstanding principal amount of Loans that is required for the Lenders or any of them to take any action hereunder or amend the definition of "*Required Lenders*";

(ix) release all or substantially all of the Collateral or all or substantially all of the Guarantors from their obligations hereunder, in each case, except as expressly provided in the Credit Documents;

(x) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Credit Document (except pursuant to a transaction permitted hereunder);

(xi) subordinate, in whole or in part, the Obligations to any other Indebtedness or other obligation(s) (other than Indebtedness incurred hereunder or otherwise constituting Obligations); or

(xii) subordinate, in whole or in part, the Liens granted to the Collateral Agent, for the benefit of the holders of the Obligations, to Liens securing any other Indebtedness or other obligation(s) (other than Indebtedness incurred hereunder or otherwise constituting Obligations).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by the Borrower or any other Credit Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender, provided, that, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swingline Sublimit or the Swingline Loans without the consent of the Swingline Lender;

(iii) amend, modify, terminate or waive any obligation of Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.3(e) without the written consent of the Administrative Agent and of the Issuing Bank; or

(iv) amend, modify, terminate or waive any provision of this Article 11 as the same applies to the Administrative Agent, or any other provision hereof as the same applies to the rights or obligations of the Administrative Agent, in each case, without the consent of the Administrative Agent.

Notwithstanding any of the foregoing to the contrary:

(A) the consent of the Borrower and the other Credit Parties shall *not* be required for any amendment, modification or waiver of the provisions of Article 10 (other than the provisions of Section 10.6 or Section 10.10), so long as such amendment is not adverse to the interests of the Borrower and the other Credit Parties;

(B) the Credit Parties, the Administrative Agent and/or the Collateral Agent, without the consent of any Lender, may enter into any amendment, modification or waiver of any Credit Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the holders of the Obligations, or as required by

local law to give effect to, or protect any security interest for the benefit of the holders of the Obligations, in any property or so that the security interests therein comply with applicable law;

(C) the Administrative Agent, the Collateral Agent and the Borrower may amend, modify or supplement this Agreement or any other Credit Document to cure or correct administrative or technical errors or omissions or any ambiguity, mistake, defect, inconsistency, obvious error or to make any necessary or desirable administrative or technical change, and such amendment shall become effective without any further consent of any other party to such Credit Document so long as such amendment, modification or supplement does *not* adversely affect the rights of any Lender or any other holder of the Obligations in any material respect; and

(D) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder, and shall have been paid in full all principal, interest and other amounts owing to it, or accrued for its account, under this Agreement.

(d) Execution of Amendments, etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 11.4 shall be binding upon the Administrative Agent, each Lender at the time outstanding, each future Lender and, if signed by the Borrower, on the Borrower.

Section 11.5 Successors and Assigns.

(a) Successors and Assigns Generally. 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 neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder, except:

(i) to an assignee in accordance with the provisions of clause (b) below;

(ii) by way of participation in accordance with the provisions of clause (d) below; or

(iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (e) below (and any other attempted assignment or transfer by any party hereto shall be null and void).

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 clause (d) below and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees (other than to any Disqualified Institution) all, or a portion, of its rights and obligations under this Agreement (including all, or

a portion, of its Commitments, Loans and obligations hereunder at the time owing to it), provided, that, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's commitments and the loans at the time owing to it (in each case, with respect to any credit facility) or contemporaneous assignments to Approved Funds (that equal *at least* to the amounts specified in clause (b)(i)(B) below in the aggregate) or, in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) above, the aggregate amount of the commitment (which for this purpose includes loans and obligations in respect thereof outstanding thereunder) or, if the commitment is not then in effect, the principal outstanding balance of the loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall *not* be *less than* One Million Dollars ($1,000,000), in the case of any assignment in respect of any Revolving Commitments and/or Revolving Loans, or One Million Dollars ($1,000,000), in the case of any assignment in respect of any Term Loan Commitments and/or Term Loans, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. 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 with respect to the Commitments and Loans assigned, except that this clause (b)(ii) shall *not* prohibit any Lender from assigning all, or a portion, of its rights and obligations on a non-*pro rata* basis as between its Revolving Commitment and/or Revolving Loans, on the one hand, and any Term Loan Commitment and/or Term Loans, on the other the hand.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) above and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required, unless (x) an Event of Default shall have occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that, the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent *not* to be unreasonably withheld or delayed) shall be required for assignments in respect of:

(I) commitments under revolving credit facilities and unfunded commitments under term loan facilities if such assignment is to a Person that is *not* a Lender with a commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; or

(II) a funded Term Loan to a Person who is *not* a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the Issuing Bank (such consent *not* to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Commitment; and

(D) the consent of the Swingline Lender (such consent *not* to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Commitment.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement, together with a processing and recordation fee in the amount of Three Thousand Five Hundred Dollars ($3,500), unless waived, in whole or in part by the Administrative Agent in its discretion. The assignee, if it is *not* a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to: (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries; (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (b)(v)(B); or (C) a Disqualified Institution, provided, that, any assignment made to a Disqualified Institution in violation of this clause (b)(v)(C) shall *not* be void, but the provisions of clause (f)(ii) below may apply.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. 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 Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the 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 Administrative Agent, the Issuing Bank, the Swingline Lender and each other Lender hereunder (and interest accrued thereon); and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage. Notwithstanding anything to the contrary in 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.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) below, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, 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 Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement 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 Section 2.16, Section 2.17 and Section 11.2 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that, except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Borrower will execute and deliver on request, at its own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does *not* comply with this subsection (other than

an assignment or transfer to a Disqualified Institution) 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 clause (d) below.

(c) Register. The Administrative Agent, acting *solely* for this purpose as an agent of the Borrower, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the 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. 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.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries or a Disqualified Institution) (each, a "Participant") in all, or a portion, of such Lender's rights and/or obligations under this Agreement (including all, or a portion, of its Commitment and/or the Loans owing to it); provided, that, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain *solely* responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Bank and Lenders shall continue to deal *solely* and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.2(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (b) or (c) of Section 11.4 that affects such Participant; provided, further, that, any such agreement or instrument shall require the applicable Participant to represent and warrant for the benefit of the Borrower and such Lender that such Participant is *not* a Disqualified Institution. The Borrower agrees that each Participant shall be entitled to the benefits of Section 3.2, Section 3.1 and Section 3.3 (subject to the requirements and limitations therein, including the requirements under Section 3.3(f) (it being understood that the documentation required under Section 3.3(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) above; provided, that, such Participant (A) agrees to be subject to the provisions of Section 2.17 and Section 3.4 as if it were an assignee under clause (b) below, and (B) shall *not* be entitled to receive any greater payment under Section 3.2 or Section 3.3 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.17 with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 11.3 as though it were a Lender; provided, that, such Participant agrees to be subject to Section 2.14 as though it were a Lender. Each Lender that sells a participation shall, acting *solely* for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided, that, no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person, except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103–1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such

participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 11.5 shall *not* apply to any such pledge or assignment of a security interest; provided, that, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Disqualified Institution.

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date on which the assigning Lender entered into an Assignment Agreement or participation agreement, as applicable, with such Person (unless the Borrower has consented to such assignment to such entity, in which case, such entity will not be considered a Disqualified Institution for the purpose of such assignment).

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (f)(i) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all Obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, and (B) in the case of an outstanding portion of any Term Loan held by such Disqualified Institution, prepay or purchase such portion of the Term Loans, in each case, *plus* accrued interest, fees and other amounts payable to such Disqualified Institution hereunder; provided, that, the Borrower may not use the proceeds of any Revolving Loans to repay outstanding Obligations owing to a Disqualified Institution pursuant to the foregoing clauses (f)(ii)(A) and (f)(ii)(B).

(iii) Notwithstanding anything to the contrary herein, Disqualified Institutions (x) will *not* have the right to receive information, reports or other materials provided to the Lenders by the Borrower, the Administrative Agent or any other Lender, attend or participate in meetings attended by the Lenders and the Administrative Agent or access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders, and (y) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under, this Agreement or any other Credit Document, each Competitor will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter. The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent to post the Disqualified Institution List on the Platform, including the portion of the Platform that is designated for "public side" Lenders and/or provide the Disqualified Institution List to each Lender requesting the same.

Section 11.6 Independence of Covenants. All covenants hereunder shall be given independent effect so that, if a particular action or condition is *not* permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 11.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Section 3.1(c), Section 3.2, Section 3.3, Section 11.2, Section 11.3, and Section 11.10, and the

agreements of the Lenders and the Agents set forth in Section 2.14, Section 10.3 and Section 11.2(c), shall survive the payment of the Loans, the cancellation, expiration or cash collateralization of the Letters of Credit, and the termination hereof.

Section 11.8 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to the Administrative Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents, any Swap Agreements or any Treasury Management Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 11.9 Marshalling; Payments Set Aside. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Administrative Agent, the Issuing Bank, the Swingline Lender or the Lenders (or to the Administrative Agent, on behalf of Lenders), or the Administrative Agent, the Collateral Agent, the Issuing Bank or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 11.10 Severability. In case any provision in or obligation hereunder or any Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 11.11 Obligations Several; Independent Nature of Lenders' Rights. The obligations of the Lenders hereunder are several and no Lender shall be responsible for the obligations or Revolving Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to Section 10.10(c), each Lender shall be entitled to protect and enforce its rights arising under this Agreement and the other Credit Documents and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 11.12 Headings. Section headings herein are included herein for convenience of reference only and shall *not* constitute a part hereof for any other purpose or be given any substantive effect.

Section 11.13 Applicable Laws.

(a) Governing Law. This Agreement and the other Credit Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of, or relating to this Agreement or any other Credit Document (except, as to any other Credit Document, as expressly set forth therein), and the transactions contemplated hereby and thereby, shall be construed in accordance with, and be governed by, the law of the State of New York.

(b) Submission to Jurisdiction. Each party hereto irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto 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 court or, to the fullest extent permitted by Applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in clause (b) above. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

Section 11.14 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO: (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON 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 AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 11.15 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed:

(a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential);

(b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners);

(c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process;

(d) to any other party hereto;

(e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder;

(f) subject to an agreement containing provisions substantially the same as those of this Section, to:

(i) any assignee of or Participant in, or any prospective assignee of or Participant in (including, for purposes hereof, any new lenders invited to join hereunder on an increase in the Loans and Commitments hereunder, whether by exercise of an accordion, by way of amendment or otherwise), any of its rights or obligations under this Agreement; or

(ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower or its obligations, this Agreement or payments hereunder;

(g) on a confidential basis to:

(i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein; or

(ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided for herein;

(h) with the consent of the Borrower;

(i) to the extent such Information: (x) becomes publicly available other than as a result of a breach of this Section 11.15; or (y) becomes available to the Administrative Agent, any Lender, the Issuing Bank or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower; or

(j) for purposes of establishing a "due diligence" defense.

For purposes of this Section, "Information" means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Bank on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided, that, in the case of information received from the Borrower or any of its Subsidiaries after the Closing 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 11.15 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders acknowledges that:

(A) the Information may include material non-public information concerning the Borrower or any Subsidiary, as the case may be;

(B) it has developed compliance procedures regarding the use of material non-public information; and

(C) it will handle such material non-public information in accordance with Applicable Law, including United States federal and state securities laws.

Section 11.16 Usury Savings Clause. Notwithstanding any other provision herein to the contrary, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under Applicable Laws shall *not exceed* the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time *exceeds* the Highest Lawful Rate, the aggregate outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is *less than* the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by Applicable Law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding anything to the contrary in the foregoing, it is the intention of the Lenders and each of the Credit Parties to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the aggregate outstanding amount of the Loans made hereunder or be refunded to each of the applicable Credit Parties. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender *exceeds* the Highest Lawful Rate, such Person may, to the extent permitted by Applicable Laws:

(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 11.17 Electronic Execution; Counterparts.

(a) Electronic Execution. Each of the parties hereto hereby agrees that: (i) the electronic signature of any party to this Agreement or to any other Credit Document shall be as valid as an original "wet" signature of such party thereto, and further, that such signature shall be effective to bind such party to this Agreement or to such other Credit Document, as applicable; and (ii) any electronically signed document (including, without limitation, this Agreement and each other Credit Document) shall be deemed to (A) be "written" or "in writing", (B) have been signed, (C) constitute a record established and maintained in the ordinary course of business, and (D) constitute an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent, and under the same conditions, as other original business records created and maintained in documentary form. None of the parties hereto shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as *not* satisfying the business records exception to the hearsay rule. For purposes of this Section 11.17: (I) "electronic signature" shall mean a manually-signed original signature that is then transmitted by electronic means; (II) "transmitted by electronic means" shall mean sent in the form of a facsimile or sent via the internet as a ".pdf" (portable document format) or other replicating image attached to an e-mail message; and (III) "electronically signed document" shall mean a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

(b) Counterparts. This Agreement and each other Credit Document may be executed by one (1) or more of the parties to this Agreement or such other Credit Document (as the case may be) on any number of separate counterparts, and all of said counterparts shall, taken together, be deemed to constitute one (1) and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement, or any other Credit Document, by facsimile transmission or any other electronic mail in ".pdf" format, shall be as effective as delivery of a manually executed counterpart of this Agreement or such other Credit Document.

Section 11.18 No Advisory of Fiduciary Relationship. 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 Credit Document), each of the Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that:

(a)

(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, are arm's-length commercial transactions between the Credit Parties, on the one hand, and the Administrative Agent, on the other hand;

(ii) the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; and

(iii) each of the Credit Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents;

(b)

(i) the Administrative Agent 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 any Credit Party or any of their Affiliates or any other Person; and

(ii) the Administrative Agent does *not* have any obligation to any Credit Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and

(c) the Administrative Agent and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their Affiliates, and the Administrative Agent does *not* have any obligation to disclose any of such interests to any Credit Party or its Affiliates.

To the fullest extent permitted by Applicable Law, each of the Credit Parties hereby waives and releases, any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.19 Integration; Effectiveness. This Agreement and the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article 5, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto..

Section 11.20 USA PATRIOT Act. Each Lender subject to the Patriot Act hereby notifies each of the Credit Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each of the Credit Parties, which information includes the name and address of each of the Credit Parties and other information that will allow such Lender to identify each of the Credit Parties in accordance with the Patriot Act.

Section 11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Credit Document, to the extent that such liability is unsecured,

may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority, and each party hereto agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any Lender that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable, (i) a reduction, in full or in part, or cancellation of any such liability, (ii) a conversion of all, or a portion, of such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to, or otherwise conferred on, it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document, or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 11.22 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement;

(iii)

(A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84–14);

(B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Revolving Commitments and this Agreement;

(C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84–14; and

(D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (a)(i) above is true with respect to a Lender, or (2) a Lender has provided another representation, warranty and covenant as provided in clause (a)(iv) above, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is *not* a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

Section 11.23 Acknowledgment Regarding any Supported QFCs.

(a) To the extent that the Credit Documents provide support, through a guarantee or otherwise, for any Swap Obligation or any other agreement or instrument that is a QFC (such support, "QFC Credit Support"; and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(b) In the event that a Covered Entity that is a party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the Laws of the United States or a state of the United States. In the event that a Covered Party, or a BHC Act Affiliate of a Covered Party, becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

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[SIGNATURE PAGES INTENTIONALLY OMITTED]

Exhibit 31.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT

I, Ernesto Garateix, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Heritage Insurance Holdings, Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 quarterly 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 quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the end of the period covered by this report; 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 9, 2022

By: /s/ ERNESTO GARATEIX

Ernesto Garateix
Chief Executive Officer
(Principal Executive Officer and Duly Authorized Officer)

Exhibit 31.2

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT

I, Kirk Lusk, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Heritage Insurance Holdings, Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 quarterly 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 quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the end of the period covered by this report; 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 9, 2022

By: /s/ KIRK LUSK

Kirk Lusk
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATIONS PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES–OXLEY ACT OF 2002

In connection the Quarterly Report on Form 10Q of Heritage Insurance Holdings, Inc. (the "Company") for the quarter ended September 30, 2022, as filed with the Securities and Exchange Commission (the "Report"), I, Ernesto Garateix, the Chief Executive Officer of the Company. hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of his knowledge, that:

1. The Report fully complies with the requirements of Section 13(a) or 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.

Date: November 9, 2022

By: /s/ ERNESTO GARATEIX
Ernesto Garateix
Chief Executive Officer (Principal Executive Officer and Duly Authorized Officer)

Exhibit 32.2

CERTIFICATIONS PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES–OXLEY ACT OF 2002

In connection the Quarterly Report on Form 10Q of Heritage Insurance Holdings, Inc. (the "Company") for the quarter ended September 30, 2022, as filed with the Securities and Exchange Commission (the "Report"), I, Kirk Lusk, the Chief Financial Officer of the Company. hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of his knowledge, that:

1. The Report fully complies with the requirements of Section 13(a) or 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.

Date: November 9, 2022

By: /s/ KIRK LUSK
Kirk Lusk
Chief Financial Officer
(Principal Financial Officer)