

**CO-LENDER AGREEMENT UNDER
THE MAIN STREET LENDING PROGRAM**

STANDARD TERMS AND CONDITIONS

The following are the Standard Terms and Conditions for Co-Lender Agreements under the Main Street Lending Program (the “**Standard Terms**”) published as of June 11, 2020 on the Federal Reserve Bank of Boston’s Website, which shall govern the Transaction described in the Transaction Specific Terms.

1. **DEFINITIONS**

Section 1.01 **General**. Capitalized terms used in this Agreement shall have the respective meanings ascribed thereto in Section 1 of the Standard Terms and as otherwise may be provided in other provisions of this Agreement. Terms defined in the Credit Agreement and not otherwise defined in this Agreement shall have the same meanings in this Agreement as in the Credit Agreement. Except as otherwise expressly set forth herein, each reference herein to “the Agreement,” “this Agreement,” “herein,” “hereunder” or “hereof” shall be deemed a reference to this Agreement. If there is any inconsistency between the Transaction Specific Terms and the provisions of the Standard Terms, the Transaction Specific Terms shall govern and control.

Section 1.02 As used in this Agreement, the following terms shall have the following meanings:

“**Administrative Agent**” means the Person specified as such in the Transaction Summary, but including any replacement Administrative Agent appointed in accordance with the provisions of this Agreement, solely in its capacity as the administrative agent under this Agreement and the other Loan Documents and not, for the avoidance of doubt, in its capacity as a Lender after the Agreement Date or as the seller under the Participation Agreement.

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

“**Agency Standards**” means the customary standards and documentation principles that apply generally to the role of administrative agents and collateral agents in syndicated business loans in the United States; provided, that any disputes with respect to the scope or application of such Agency Standards shall be determined by the Required Lenders acting in good faith, in consultation with the Administrative Agent.

“**Agent Parties**” shall have the meaning given to such term in Section 4.10.

“**Agreement**” means this Co-Lender Agreement under the Main Street Lending Program by and among the Initial Lender, the New Lender, each other Lender from time to time party hereto, the Administrative Agent and each other Loan Party from time to time party hereto, dated as of the Agreement Date, such Agreement consisting of the Standard Terms as modified and supplemented by the Transaction Specific Terms.

“**Agreement Date**” means the date specified as such in the Transaction Summary.

“**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.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.01), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., as amended.

“Borrower” means the Person specified as such in the Transaction Summary.

“Borrower Certifications and Covenants” means borrower certifications and covenants, in substantially the form of the Borrower Certifications and Covenants for the Main Street New Loan Facility, Borrower Certifications and Covenants for the Main Street Priority Loan Facility or Borrower Certifications and Covenants for the Main Street Expanded Loan Facility, as applicable, most recently published on the Federal Reserve Bank of Boston’s Website as of the Participation Date, or any other form approved by MS Facilities LLC, which has been executed by Borrower in respect of the Main Street Term Loans.

“Business Day” means any day that is not (a) a Saturday, (b) a Sunday or (c) any other day on which the Federal Reserve Bank of New York is closed.¹

“Code” means the Internal Revenue Code of 1986.

“Communications” shall have the meaning given to such term in Section 4.10.

“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 analogous thereto.

“Credit Agreement” means the agreement specified as such in the Transaction Summary (including all intercreditor agreements, subordination agreements, waivers and amendments entered into from time to time pursuant thereto or in connection therewith), in each case, as amended, supplemented or otherwise modified from time to time.

“Credit Extension” means all Loans, letters of credit or other credit accommodations made by a Lender to, or on behalf or for the account of, the Borrower.

“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 any event or condition that constitutes an event of default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions, including all common law, relating to pollution or the protection of health, safety or the environment or the release of any materials into the environment, including those related to Hazardous Materials, air emissions, discharges to waste or public systems and health and safety matters.

¹ The Holiday Schedule for the Federal Reserve Bank of New York may be found at www.newyorkfed.org/aboutthefed/holiday_schedule.html.

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

“Event of Default” means any event or condition that constitutes an event of default (or similar or analogous event or condition) under the terms of the Credit Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Credit Agreement pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Credit Agreement (other than pursuant to an assignment request by the Borrower under any provisions of the Credit Agreement regarding the replacement of lenders (if any)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to any provisions in the Credit Agreement with respect to tax gross-up, 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 10.12 and (d) any U.S. federal withholding Taxes imposed under FATCA.

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

“Foreign Lender” means a Lender that is not a U.S. Person.

“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, bonds and similar extensions of credit in the ordinary course of its activities.

“Governmental Assignee” means any Federal Reserve Bank, any vehicle authorized to be established by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank, any entity created by an act of the United States Congress or any a vehicle established or acquired by the United States Department of the Treasury or any other department or agency of the federal government of the United States.

“Governmental Authority” means the government of the United States of America 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.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and other substances or wastes of any nature regulated under or with respect to which liability or standards of conduct are imposed pursuant to any Environmental Law.

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

"Indemnitee" shall have the meaning given to such term in Section 6.02.

"Initial Lender" means the Person specified as such in the Transaction Summary.

"IRS" means the United States Internal Revenue Service.

"Lender" or **"Lenders"** means the Initial Lender, the New Lender and any other Person that shall have become party hereto pursuant to an Assignment and Assumption, other than any such Person who ceases to be a party hereto pursuant to an Assignment and Assumption, each in their capacity as such hereunder.

"Lender Registration Certifications and Covenants" means lender registration certifications and covenants, in substantially the form of the Main Street Lending Program Lender Registration Certifications and Covenants most recently published on the Federal Reserve Bank of Boston's Website as of the Participation Date, or any other form approved by MS Facilities LLC, which has been executed by Initial Lender.

"Lender Transaction Specific Certifications and Covenants" means lender transaction specific certifications and covenants, in substantially the form of the Lender Transaction Specific Certifications and Covenants for the Main Street New Loan Facility, Lender Transaction Specific Certifications and Covenants for the Main Street Priority Loan Facility or Lender Transaction Specific Certifications and Covenants for the Main Street Expanded Loan Facility, as applicable, most recently published on the Federal Reserve Bank of Boston's Website as of the Participation Date, or any other form approved by MS Facilities LLC, which has been executed by Initial Lender in respect of the Main Street Term Loans.

"Loan Documents" means the Credit Agreement, any notes issued in connection therewith, this Agreement and all guarantees, security agreements, mortgages, deeds of trust, letters of credit, reimbursement agreements, waivers, amendments, modifications, supplements, forbearances, intercreditor agreements, subordination agreements and all other agreements, documents or instruments executed and delivered from time to time in connection any of the foregoing. For the avoidance of doubt, "Loan Documents" does not include the Borrower Certifications and Covenants, the Lender Transaction Specific Certifications and Covenants or the Lender Registration Certifications and Covenants.

"Loan Party" means the Borrower and any other Person guaranteeing or providing security for the obligations of the Borrower under the Loan Documents.

"Loans" means the Main Street Term Loans and any other loans or advances made to the Borrower under any Other Tranche.

"Main Street Term Loans" means the term loans issued under the Main Street Term Loan Tranche.

"Main Street Term Loan Tranche" means the applicable tranche or facility of term loans under the Credit Agreement, as specified in the Transaction Summary, and includes the note(s) (if any) evidencing such term loans issued under the Credit Agreement.

"New Lender" means the Person specified as such in the Transaction Summary.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loans, letters

of credit or other credit accommodations thereunder (including the Main Street Term Loans), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, charges, expenses, fees, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

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

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

“Other Tranche” means, if applicable, each tranche or facility of loans, letters of credit or other credit accommodations under the Credit Agreement, other than the Main Street Term Loan Tranche, and includes the note(s) (if any) evidencing such tranche or facility issued under the Credit Agreement.

“Participant” shall have the meaning given to such term in Section 9.03.

“Participant Register” shall have the meaning given to such term in Section 9.03.

“Participation Agreement” means that certain Participation Agreement under the Main Street Lending Program, by and between the Initial Lender, as seller, and MS Facilities LLC, as buyer, relating to the participation in the Main Street Term Loans.

“Participation Date” means the “Agreement Date” as defined in the Participation Agreement.

“Party” means the Initial Lender, the New Lender and the Administrative Agent, as applicable.

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

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

“Platform” means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“Recipient” means the Administrative Agent or any Lender, as applicable.

“Register” shall have the meaning given to such term in Section 9.02.

“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.

“Removal Effective Date” shall have the meaning given to such term in Section 4.06(b).

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders at such time.

“Resignation Effective Date” shall have the meaning given to such term in Section 4.06(a).

“Servicing Agreement” means that certain Servicing Agreement under the Main Street Lending Program, by and between the Initial Lender, as servicer, and MS Facilities LLC, as the SPV, relating to the servicing of the Main Street Term Loans.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, association or joint venture or other business entity of which a majority of the equity interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time owned or the management of which is controlled, directly, or indirectly through one or more intermediaries, by such Person.

“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.

“Total Credit Exposure” means, as to any Lender at any time, the sum of (a) the aggregate principal amount at such time of such Lender’s outstanding Main Street Term Loans, (b) the aggregate principal amount at such time of such Lender’s outstanding Loans (other than swingline loans and letter of credit obligations (or similar or analogous credit accommodations)) under Other Tranches, (c) the aggregate principal amount at such time of such Lender’s drawn and undrawn commitment to participate in, or any risk participation or funded participation of such Lender in, any then-outstanding swingline loans and letter of credit obligations (or similar or analogous credit accommodations) under Other Tranches and (d) the aggregate amount at such time of such Lender’s other unused commitments under Other Tranches (for purposes of this definition, “unused commitments” shall not include any obligation to make swingline loans or issue letters of credit (or similar or analogous credit accommodations) or make payments thereunder to the extent other Lenders have committed to participate, or have participated, therein).

“Transaction” has the meaning specified therefor in the introductory paragraph to the Transaction Specific Terms.

“Transaction Specific Terms” means the specific terms and elections governing the Transaction that are set forth in the Transaction Summary and Sections A through C of this Agreement.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

2. **EFFECTIVENESS.**

Section 2.01 Effectiveness. Each of the Parties acknowledges and agrees that the New Lender may execute and deliver this Agreement on a date later than the date each of the other

Parties executes and delivers this Agreement and may complete the applicable uncompleted information in the Transaction Summary (including the Agreement Date, identification of the New Lender and wire and notice instructions for the New Lender) upon such later date. The terms and provisions of this Agreement shall become effective only on such later Agreement Date.

3. **ADMINISTRATION OF THE LOANS; PAYMENTS; APPLICATION OF PAYMENTS.**

Section 3.01 Administrative Agent; Lenders.

(a) *New Lender Joinder.* Effective as of the Agreement Date, the Parties hereby agree that the New Lender is hereby joined as a lender, bank, lending party or other similar party under the Credit Agreement with all the rights and obligations of a lender, bank, lending party or other similar party, as applicable, thereunder, in each case other than with respect to any Other Tranche, if applicable. Effective as of the Agreement Date, the New Lender agrees to be bound by all of the provisions of the Credit Agreement applicable to lenders, banks, lending parties or other similar parties thereunder generally with the same effect as if it were an original signatory to the Credit Agreement, in each case other than with respect to any Other Tranche, if applicable. The Borrower and each other Loan Party hereby agrees to treat the New Lender as a direct owner of the relevant portion of the Main Street Term Loans in accordance with the terms of this Agreement.

(b) *Deemed Modifications to Loan Documents.* Effective as of the Agreement Date, each reference to the Initial Lender (including as “lender”, “bank”, “lending party” or similar role thereunder) in any Loan Document (other than this Agreement) shall:

(i) to the extent required by the express provisions of this Agreement, be deemed to be references to the Administrative Agent;

(ii) to the extent required by the Agency Standards, so long as not conflicting with the express provisions of this Agreement, be deemed to be references to the Administrative Agent; and

(iii) otherwise, be deemed to be a reference to each Lender, the applicable Lender or the Lenders collectively, as the context may require.

(c) *LIBOR Replacement.* Effective as of the Agreement Date, each reference to the Initial Lender (including as “lender”, “bank”, “lending party” or similar role thereunder) in any provision in any Loan Document (other than this Agreement) that permits such Initial Lender, in its discretion, to select an alternate rate of interest and a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the London interbank offered rate shall be deemed to allow the Administrative Agent to make such selection (with the consent of, or together with, the Borrower, if required pursuant to any Loan Document) provided that the Administrative Agent has not received, by 5:00 p.m. (New York time) on the fifth (5th) Business Day after the notice of such replacement is provided to Lenders, written notice of objection to such selections from Lenders comprising the Required Lenders.

(d) *Guarantees and Security.* Effective as of the Agreement Date:

(i) each guarantee supporting the Obligations made in favor of the Initial Lender shall be deemed to have been made in favor of the Administrative Agent, for the ratable benefit of the Lenders, and each reference to the Initial Lender in any such guarantee shall instead be deemed to be a reference to the Administrative Agent, acting for the ratable benefit of the Lenders; and

(ii) each security agreement, pledge, control agreement and other security document granting, purporting to grant or otherwise relating to liens granted over the

collateral made in favor of the Initial Lender to secure the Obligations shall be deemed to have been made in favor of the Administrative Agent, for the ratable benefit of the Lenders, and each applicable Loan Party hereby grants a security interest in such collateral to the Administrative Agent, for the ratable benefit of the Lenders, and each reference to the Initial Lender in any such security agreement, pledge, control agreement and other security document shall instead be deemed to be a reference to the Administrative Agent, acting for the ratable benefit of the Lenders.

(e) *Promissory Notes.* Effective as of the Agreement Date, all promissory notes made in favor of the Initial Lender evidencing the Loans shall be deemed to have been made in favor of the Administrative Agent, for the ratable benefit of the Lenders, and each reference to the Initial Lender in any such promissory note shall instead be deemed to be a reference to the Administrative Agent, acting for the ratable benefit of the Lenders. The Administrative Agent will hold any such promissory note for the ratable benefit of the Lenders. Following the Agreement Date, at the request of any Lender or the Administrative Agent, the Borrower shall promptly replace any such promissory note made in favor of the Administrative Agent for the ratable benefit of the Lenders, with promissory notes made in favor of each applicable Lender, evidencing the Loans made or acquired by such Lender. To the extent of any discrepancy between the indication on any such promissory note of the owner of a Loan and the Register, the entries in the Register shall be conclusive absent manifest error.

(f) *Notices; Information.* The Administrative Agent shall provide all material notices and information received from a Loan Party in connection with this Agreement, the Credit Agreement or any other Loan Document promptly (and, in any event, within two (2) Business Days) to the Lenders at the respective addresses specified for such Lender in the Transaction Specific Terms or, as applicable, any replacement address provided by any Lender to the Administrative Agent.

(g) *Further Actions.* Following the Agreement Date, the Administrative Agent hereby agrees to take commercially reasonable efforts to, from time to time, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any security interest granted or any purported to be granted under any Loan Document, amend or otherwise modify any of the Loan Documents, including any control agreements (or similar arrangements) in respect of any deposit accounts, securities accounts or commodity accounts, amend or otherwise modify any financing statements, recorded mortgages or deeds of trust or any other security interest filings and take all such further acts or deeds and provide or modify such certificates, assurances or other instruments in each case solely to the extent reasonably deemed necessary by the Administrative Agent or promptly upon request of the Required Lenders, in order to (i) carry out more effectively the purposes of this Agreement and the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the liens now or hereafter intended to be covered by any of the Loan Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Loan Documents and any of the liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Administrative Agent, for the ratable benefit of the Lenders, the rights granted or intended to be granted to the Administrative Agent, for the ratable benefit of the Lenders, under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party. The Borrower and the Loan Parties hereby consent and agree to any such actions, amendments or modifications and shall promptly, upon request of the Administrative Agent or any Lender, assist the Administrative Agent in effectuating any such actions, amendments or modifications.

Section 3.02 Maintenance of Records. Each Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Borrower to such Lender resulting from each Credit Extension made by such Lender. The Administrative Agent shall maintain the Register in accordance with Section 9. The entries made in the records maintained pursuant to this Section 3.02 shall be prima facie evidence absent manifest error of the existence and amounts of the obligations recorded therein. Any failure of any Lender or the Administrative Agent to maintain such records or make any entry therein or any error therein shall not in any manner affect the obligations of the Borrower under this Agreement, the Credit Agreement and the other Loan Documents. In the event of any conflict

between the records maintained by any Lender and the records maintained by the Administrative Agent in such matters, the records of the Administrative Agent shall control in the absence of manifest error.

Section 3.03 Payments Generally. Except as otherwise expressly provided herein, all payments to be made under the Credit Agreement and the other Loan Documents shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, in immediately available funds not later than the date and time specified therefor in this Agreement, in the Credit Agreement or in the other Loan Documents, as applicable. The Administrative Agent will promptly distribute to each Lender its ratable share (or other applicable share as provided herein or in the Credit Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable lending office specified for such Lender in the Transaction Specific Terms or, as applicable, any replacement applicable lending office provided by any Lender to the Administrative Agent (or otherwise distribute such payment in like funds as received to the Person or Persons entitled thereto as provided herein).

Section 3.04 Application of Payments Following an Event of Default. Following the occurrence and during the continuance of an Event of Default, and notice thereof to the Administrative Agent by the Borrower or the Required Lenders, all payments received on account of the Obligations shall be applied by the Administrative Agent as follows:

(i) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to the Administrative Agent in its capacity as such;

(ii) second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, reimbursement obligations in respect of any letter of credit disbursements, interest and letter of credit fees) payable to the Lenders arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause (ii) payable to them;

(iii) third, to payment of that portion of the Obligations constituting accrued and unpaid charges and interest on the Loans and unreimbursed letter of credit disbursements ratably among the Lenders in proportion to the respective amounts described in this clause (iii) payable to them;

(iv) fourth, to payment of that portion of the Obligations constituting (A) unpaid principal of the Loans and unreimbursed letter of credit disbursements and (B) any required cash collateralization of undrawn letters of credit and other credit support accommodations, ratably among the Lenders in proportion to the respective amounts described in this clause (iv) payable to them;

(v) fifth, to the payment in full of all other Obligations, in each case ratably among the Administrative Agent and the Lenders based upon the respective aggregate amounts of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(vi) finally, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Section 3.05 Remedies. Upon an Event of Default, and at any time thereafter during the continuance of such event, the Administrative Agent shall, at the request of the Required Lenders by notice to the Borrower, take any or all of the following actions, at the same or different times: (a) terminate the commitments, and thereupon the commitments shall terminate immediately, (b) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of

the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (c) require that the Borrower cash collateralize any letter of credit obligations, as provided in the Credit Agreement and (d) foreclose on any collateral and exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents and applicable law.

Section 3.06 Effect of Agreement Date. On the Agreement Date, the Credit Agreement and the other Loan Documents shall be deemed amended by this Agreement. The Parties hereto acknowledge and agree that (a) this Agreement and other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment or reborrowing, or termination of the Obligations under any Loan Documents as in effect prior to the Agreement Date and (b) such Obligations are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement. Each Loan Party hereby reaffirms its duties and obligations under each Loan Document to which it is a party including any lien granted therein (such reaffirmation is solely for the convenience of the parties hereto and is not required by the terms of the Credit Agreement). Each reference to the Credit Agreement in any Loan Document shall be deemed to be a reference to the Credit Agreement as amended and modified by this Agreement.

4. THE ADMINISTRATIVE AGENT.

Section 4.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints the Administrative Agent to act on its behalf as the Administrative Agent under this Agreement, the Credit Agreement and the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, including, to the extent not inconsistent with the express terms of this Agreement, the Agency Standards, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent hereby accepts the role of "Administrative Agent" hereunder and agrees to perform the customary functions of an administrative agent with respect to the Loan Documents, subject to the terms hereof and the Agency Standards. The provisions of this Section 4 are solely for the benefit of the Administrative Agent and the Lenders and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 4.02 Rights as a Lender. The Person serving as the Administrative Agent 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 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 4.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan 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 Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability (unless the Administrative Agent has received an indemnity from the Lenders in writing satisfactory to the Administrative Agent in its sole discretion) or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the 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 for herein), or (ii) in the absence of its own gross negligence, willful misconduct or material breach of this Agreement, in each case, as determined by a court of competent jurisdiction by final and nonappealable 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 or a Lender.

(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, the Credit Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, the Credit Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition precedent set forth in the Credit Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 4.04 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. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it with respect to this Agreement or any Loan Document in accordance with the advice of any such counsel, accountants or experts.

Section 4.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder, under the Credit Agreement or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The

Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 4 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-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 nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 4.06 Change of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders 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, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, 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 has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, 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 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 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security and any guarantees until such time as a successor Administrative Agent is appointed) and (ii) 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 directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments 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 and under the other Loan Documents. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Section 4 and Section 6 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.

(d) The Borrower, the other Loan Parties and the Lenders hereby consent to the Administrative Agent, on any date after the Agreement Date, assigning its rights and obligations in its

capacity as “Administrative Agent” hereunder and under the Credit Agreement and the other Loan Documents to an Affiliate of the Administrative Agent, subject to, in each case: (i) the assumption by such Affiliate of the rights and obligations of the Administrative Agent under this Agreement, the Credit Agreement and the other Loan Documents pursuant to an agreement in form and substance acceptable to the Borrower, the Loan Parties and the Required Lenders, each in their reasonable discretion, and (ii) the delivery of any amendments, modifications or other actions, including pursuant to Section 3.01(g), as may be reasonably required by the Required Lenders in order to further the purposes set forth in clauses (i) through (iv) of Section 3.01(g).

Section 4.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender 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 make or acquire the Extensions of Credit and enter into this Agreement. Each Lender 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, the Credit Agreement any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 4.08 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or letter of credit obligation shall then be due and payable as expressed in the Credit Agreement 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 unless requested by the Required Lenders) 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, the letter of credit obligations and all other Obligations that are owing and unpaid by the Loan Parties under the Loan Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 6 allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, 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 6.

Section 4.09 Collateral and Guaranty Matters.

(a) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any lien on any property granted to or held by the Administrative Agent under any Loan Document (x) upon payment in full of all Obligations (other than contingent indemnification obligations), (y) 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 Loan Documents, or (z) subject to Section 7, if approved, authorized or ratified in writing by the Required Lenders; and

(ii) subject to Section 7, to release any guarantor from its obligations under the guaranty if permitted under the Loan Documents, including if a guarantor ceases to be a Subsidiary of the Borrower as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any guarantor from its obligations under its guaranty pursuant to this Section 4.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the collateral, the existence, priority or perfection of the Administrative Agent's lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the collateral.

Section 4.10 Platform. The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the other Lenders by posting the Communications on the Platform. 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 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, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower'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 the Borrower pursuant to any Loan Document or the transactions contemplated therein that is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

5. REPRESENTATIONS AND WARRANTIES.

Section 5.01 Representations and Warranties. Each of the Parties hereto represents and warrants to each of the other Parties hereto that, as of the Agreement Date:

(a) Such Party (i) is duly organized and validly existing under the laws of its jurisdiction of organization or incorporation, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under this Agreement.

(b) Such Party's execution, delivery, and performance of this Agreement have not resulted and will not result in a breach or violation of any provision of (i) such Party's organizational documents, (ii) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to such Party, (iii) any judgment, injunction, decree or determination of any Governmental Authority applicable to such Party or (iv) any contract, indenture, mortgage, loan agreement, note, lease or other agreement, document or instrument to which such Party may be a party, by which such Party may be bound or to which any of the assets of such Party is subject.

(c) This Agreement (i) has been duly and validly authorized, executed and delivered by such Party and (ii) is the legal, valid and binding obligations of such Party, enforceable against such Party in accordance with its terms, except that such enforceability against such Party may be limited by bankruptcy, insolvency, or other similar laws of general applicability affecting the enforcement of creditors' rights generally and by a court's discretion in relation to equitable remedies.

(d) No notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority or other Person, other than those that have already been obtained, is or will be required for such Party to execute, deliver, and perform its obligations under, this Agreement.

6. **EXPENSES; INDEMNITY; DAMAGE WAIVER.**

Section 6.01 Costs and Expenses. The Borrower shall pay (a) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement, the Credit Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (b) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights (i) in connection with this Agreement, the Credit Agreement and the other Loan Documents, including its rights under this Section 6, or (ii) in connection with the Loans and other Extensions of Credit, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or other Extensions of Credit. In addition, the Borrower agrees to pay on demand (A) all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any security document or any other document referred to therein and (ii) all costs, expenses and other charges in respect of title insurance or notary fees procured with respect to the liens created pursuant to any mortgages or any other security documents.

Section 6.02 Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the Credit Agreement or any other Loan 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 other Extension of Credit or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; 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 nonappealable 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 other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder, under the Credit Agreement or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 6.02 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 6.03 Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 6.01 or 6.02 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of the Administrative Agent, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related

Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on the Total Credit Exposure of such Lender at such time as a portion of the Total Credit Exposure of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that 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) in its capacity as such, or against any Related Party of acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 6.03 shall be several and not joint.

Section 6.04 Waiver of Consequential Damages. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Credit Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or other Extension of Credit, or the use of the proceeds thereof. No Indemnitee referred to in Section 6.02 above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement, the Credit Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

Section 6.05 Payments. All amounts due under this Section shall be payable promptly after demand therefor.

Section 6.06 Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

7. WAIVERS; AMENDMENTS.

Section 7.01 No Waiver; Remedies Cumulative. No failure or delay by the Administrative Agent or any Lender in exercising any right, remedy, power or privilege hereunder, under the Credit Agreement or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of the Administrative Agent and the Lenders hereunder, under the Credit Agreement and under the Loan Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have.

Section 7.02 Amendments, Etc. Except as otherwise expressly set forth in this Agreement, or in any provision of the Credit Agreement or any other Loan Document that is substantially similar to the Alternative Reference Rate Committee recommendations regarding more robust fallback language for new originations of LIBOR bilateral business loans or LIBOR syndicated loans (subject to Section 3.01(c) of this Agreement), no amendment or waiver of any provision of this Agreement, the Credit Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing executed by the Borrower or such Loan Party, as applicable, and the Required Lenders, and acknowledged by the Administrative Agent, or by the Borrower or such Loan Party, as applicable, and the Administrative Agent with the consent of the Required Lenders, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) extend, increase or reinstate any commitment of any Lender without the written consent of such Lender;

(b) reduce the principal of, or rate of interest specified on, any Loan, or any fees or other amounts payable hereunder, under the Credit Agreement or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby (provided that only the consent of the Required Lenders shall be necessary (x) to amend the definition of "Default Rate" (or similar or analogous term) or to waive the obligation of the Borrower to pay interest at a default rate or (y) to amend any financial covenant (or any defined term directly or indirectly used therein), even if the effect of such amendment would be to reduce the rate of interest on any Loan or any other Obligation or to reduce any fee payable hereunder, under the Credit Agreement or under the other Loan Documents);

(c) postpone or delay any date scheduled for any payment of principal of, or interest on, any Loan, or any fees or other amounts payable hereunder, under the Credit Agreement or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby;

(d) change any provision hereof or of the Credit Agreement or other Loan Documents in a manner that would alter the pro rata sharing of payments required thereby or the application of proceeds without the written consent of each Lender directly and adversely affected thereby;

(e) release of all or substantially all of the collateral for the Obligations in any transaction or series of transactions or all or substantially all of the value of the guarantees of the Obligations, without the written consent of each Lender;

(f) waive any condition precedent set forth in the Credit Agreement or any other Loan Document without the written consent of each Lender;

(g) amend, modify or waive or consent to any departure from any provision in the Credit Agreement or any other Loan Document, including any mandatory prepayment, relating to Borrower's certifications and covenants in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) or Section 3 (FRA and Regulation A Borrower Eligibility Certifications) of the Borrower Certifications and Covenants, without the written consent of each Lender;

(h) amend, modify or waive or consent to any departure from any provision in any Loan Document requiring the periodic financial reporting by Borrower or any other Loan Party, other than any consent to the temporary delay in (but not the permanent waiver of) delivery of any such periodic financial reporting (i) originally required to be delivered on or before September 30, 2020 or (ii) originally required to be delivered after September 30, 2020 for a period not to exceed ninety (90) days after such original delivery requirement date, without the written consent of each Lender;

(i) expressly subordinate (i) the Loans or other Obligations or (ii) any lien securing the Obligations in or over all or substantially all of the collateral that has been, or is purported to have been, granted (or otherwise created) to or for the benefit of the Lenders under the Loan Documents, without the written consent of each Lender;

(j) impose any greater restriction on the ability of, or any additional consent necessary for, any Lender to assign, participate or pledge its rights or obligations under any Loan Document, without the written consent of each Lender directly and adversely affected thereby;

(k) have an adverse effect on any class of obligations under the Credit Agreement that would be disproportionate to the effect on any other class of obligations under the Credit Agreement, without the written consent of each Lender directly and adversely affected thereby;

(l) amend, modify or waive or consent to any departure from any provisions in the Credit Agreement or any other Loan Document that provides a default or Event of Default upon any

acceleration of any other indebtedness owed by the Borrower to the Initial Lender or an Affiliate of the Initial Lender, without the written consent of each Lender; or

(m) change any provision of this Section or the percentage in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of the Administrative Agent, unless in writing executed by the Administrative Agent, in each case in addition to the Borrower and the Lenders required above.

In addition, notwithstanding anything in this Section to the contrary, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within ten Business Days following receipt of notice thereof.

8. **RIGHT OF SETOFF; SHARING OF PAYMENTS BY LENDERS.**

Section 8.01 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent if either (i) the Credit Agreement is governed by California law and is secured by real property or (ii) is secured by real property collateral located in California or any other jurisdiction having "single-action" or anti-deficiency rules, 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 or any such Affiliate, to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement, the Credit Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement, the Credit Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender 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 8.02 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 its 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:

(a) 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

(b) the provisions of this paragraph shall not be construed to apply to any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower and each other Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower or such Loan Party in the amount of such participation.

9. SUCCESSORS AND ASSIGNS.

Section 9.01 Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement, the Credit Agreement and the other Loan Documents (including all or a portion of its commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(a) 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 the Credit Agreement and this Agreement with respect to the Loans or the commitment assigned.

(b) Required Consents. No consent shall be required for any assignment except:

(i) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender, an Approved Fund or a Governmental Assignee; 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 5 Business Days after having received notice thereof; and

(ii) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Lender, an Affiliate of a Lender, an Approved Fund or a Governmental Assignee.

(c) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that an Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, in a form supplied by the Administrative Agent.

(d) No Assignment to Certain Persons. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(e) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 9.02, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and the Credit Agreement as a Lender and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement and the Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto and to the Credit Agreement) but shall continue to be entitled to the benefits of Section 6 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 Section 9.03.

Section 9.02 Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts (and stated interest) of the Loans owing to each Lender pursuant to the terms hereof and of the Credit Agreement 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.

Section 9.03 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 a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement and the Credit Agreement (including all or a portion of its commitment and/or Loans owing to it); provided that (i) such Lender's obligations under this Agreement and the Credit 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 and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the Credit Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 6.03 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 the Credit Agreement and to approve any amendment, modification or waiver of any provision of this Agreement and the Credit 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 with respect to the matters set forth in Section 7.02(a)-(m) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of any provisions in the Credit Agreement with respect to increased costs, eurodollar breakage indemnity and tax gross-up (subject to the requirements and limitations therein and the requirements under Sections 10.12 and 10.13 (it being understood that the documentation required from a Lender in order to be eligible for a tax gross-up 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 Section 9.01; provided that such Participant (A) agrees to be subject to any provisions of the Credit Agreement regarding the mitigation of such amounts and the replacement of lenders (if any) as if it were an assignee under Section 9.01; and (B) shall not be entitled to receive any greater payment in respect of increased costs of tax gross-up, 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 any replacement of lender provisions in the

Credit Agreement with respect to any Participant claiming such increased costs of tax gross-up. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.01 as though it were a Lender; provided that such Participant agrees to be subject to Section 8.02 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement and the Credit 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.

Section 9.04 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 and the Credit Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; 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.

Section 9.05 Successors and Assigns Generally. All of the terms, covenants and conditions of this Agreement and the Credit Agreement shall be for the benefit of and be binding upon the parties hereto and their permitted successors and permitted assigns.

10. MISCELLANEOUS.

Section 10.01 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 10.02 No Third-Party Beneficiaries. Nothing contained herein is intended or shall be deemed to create or confer any rights upon any third Person not a party hereto, whether as a third-party beneficiary or otherwise, except as expressly provided herein.

Section 10.03 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or

unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.04 Governing Law. This Agreement 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 and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

Section 10.05 Jurisdiction. The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender or any Related Party of the foregoing in any way relating to this Agreement or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation 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, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

Section 10.06 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 LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, 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 LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.07 Counterparts; Integration; Effectiveness; Electronic Signatures. This Agreement 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. This Agreement, the other Loan Documents and the Servicing Agreement, 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. This Agreement shall become effective when it shall have been executed by the Administrative Agent, the Borrower and each Lender and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. The words "executed," signed," "signature," and words of like import as used above and elsewhere in this Agreement or in any other certificate, agreement or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic

Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

Section 10.08 PATRIOT Act. Each Lender subject to the PATRIOT Act hereby notifies the Borrower that, pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the PATRIOT Act.

Section 10.09 Loan Party Joinder. Each Loan Party hereby agrees that, to the extent that any Person becomes a Loan Party (a "New Loan Party"), each other Loan Party will cause such New Loan Party to promptly sign a joinder to this Agreement in form and substance reasonably satisfactory to each other Party hereto.

Section 10.10 Conflicts. The Parties agree that nothing contained in this Agreement shall impair the rights of MS Facilities LLC, the Federal Reserve Bank of Boston, the Board of Governors of the Federal Reserve System, the United States Department of the Treasury or the United States Department of Justice to rely on, enforce or take any action under law, in equity or otherwise with respect to the Participation Agreement, the Lender Registration Certifications and Covenants, the Lender Transaction Specific Certifications and Covenants or the Borrower Certifications and Covenants (including, without limitation, the representations, warranties, covenants and undertakings set forth therein).

Section 10.11 Disclosure. Notwithstanding anything to the contrary contained in this Agreement, in the Credit Agreement or in the other Loan Documents, the Administrative Agent, the Initial Lender and the Borrower each hereby agree that MS Facilities LLC, the managing member of MS Facilities LLC, the Federal Reserve Bank of Boston, the Board of Governors of the Federal Reserve System, the United States Department of the Treasury, a Governmental Assignee or any agency of the federal government associated with such Governmental Assignee may make any disclosures to the extent consented to by the Borrower pursuant to Section 7.D of the Borrower's Certifications and Covenants or by the Initial Lender pursuant to Section 4.B of the Lender Registration Certifications and Covenants, Section 6.D of the Lender Transaction Specific Certifications and Covenants for the Main Street Expanded Loan Facility or the Lender Transaction Specific Certifications and Covenants for the Main Street Priority Loan Facility or Section 5.D of the Lender Transaction Specific Certifications and Covenants for the Main Street New Loan Facility, as applicable.

Section 10.12 Status of Lenders.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 10.12(b)(i), (b)(ii) and (b)(iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the generality of the foregoing,

(i) any Lender that is a U.S. Person shall deliver to the 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), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) 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:

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

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

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

(D) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate, 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 on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained

in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(c) 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.

Section 10.13 Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.03 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 10.13.

Section 10.14 Bankruptcy Code Section 507(a)(2) Waiver. Each Lender covenants and agrees that in any proceeding under the Bankruptcy Code, such Lender shall not file or assert, and hereby waives and disclaims any right to assert, any claim under or pursuant to Section 507(a)(2) of the Bankruptcy Code on account of, arising from or relating to the Loan Documents; provided however, that nothing herein shall impact the rights, if any, of such Lender to assert or file in any proceeding under any Debtor Relief Laws a claim or claims other than those specifically waived and disclaimed in this Section 10.14.

Section 10.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, of the Credit Agreement or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower, the other Loan Parties and their Subsidiaries and the Administrative Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby, by the Credit Agreement or by the other Loan Documents, irrespective of whether the Administrative Agent, or any Lender has advised or is advising the Borrower, any Loan Party or any of their Subsidiaries on other matters, (ii) the arranging and other services regarding this Agreement and the Credit Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower, the other Loan Parties and their Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (iii) the Borrower and each Loan Party have consulted their own legal, accounting, regulatory and tax advisors to the extent that they has deemed appropriate and (iv) the Borrower and the Loan Parties are each capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby, by the Credit Agreement and by the other Loan Documents; and (b) (i) the Administrative Agent and the Lenders each is and has been acting solely as a principal and, except as

expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their Affiliates; (ii) none of the Administrative Agent and the Lenders has any obligation to the Borrower, any Loan Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein, in the Credit Agreement and in the other Loan Documents; and (iii) the Administrative Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their Affiliates, and none of the Administrative Agent and the Lenders has any obligation to disclose any of such interests to the Borrower, any other Loan Party or their Affiliates. To the fullest extent permitted by Law, the Borrower and each Loan Party hereby waives and releases any claims that it may have against any of the Administrative Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.16 Survival. Each party's obligations under Section 10.12 and Section 10.13 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

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FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “Assignor”) and the Assignee identified in item 2 below (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in (i) the Co-Lender Agreement identified below (as amended, the “Co-Lender Agreement”) and (ii) to the extent not defined in the Co-Lender Agreement, the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions, the Co-Lender Agreement and the Credit Agreement, as of the Effective Date (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified in Section 6 below of all of such outstanding rights and obligations of the Assignor under the facility identified in Section 6 below (including any letters of credit, guarantees and swingline loans included in such facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
3. Borrower: _____
4. Administrative Agent: _____, as the administrative agent pursuant to the Co-Lender Agreement
5. Credit Agreement: The [CREDIT AGREEMENT DESCRIPTION], dated as of _____, among Borrower and the Lenders parties thereto

Co-Lender Agreement: The Co-Lender Agreement, dated as of the _____, by and among the Borrower, the Assignor, the Assignee and the Administrative Agent

6. Assigned Interest as of the Effective Date:

FACILITY ASSIGNED	AGGREGATE AMOUNT OF LOANS / COMMITMENT FOR ALL LENDERS IN SUCH FACILITY AS OF THE EFFECTIVE DATE	AMOUNT OF SUCH LOANS / COMMITMENT ASSIGNED AS OF THE EFFECTIVE DATE	PERCENTAGE OF SUCH LOANS / COMMITMENT ASSIGNED AS OF THE EFFECTIVE DATE
[APPLICABLE TRANCHE] ²	\$ _____	\$ _____	_____ %

7. Effective Date: _____, 20__³.

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² Fill in the appropriate terminology for the applicable tranche under the Credit Agreement that is being assigned.

³ Effective Date to be completed by the Administrative Agent upon recordation of this Assignment and Assumption in the Register.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____

Name:

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____

Name:

Title:

[Accepted for recordation:] [Consented to and accepted for recordation:]⁴

[NAME OF ADMINISTRATIVE AGENT], as
Administrative Agent under the Co-Lender Agreement

By: _____

Name:

Title:

[Consented to:

[NAME OF BORROWER], as Borrower

By: _____

Name:

Title:]⁵

⁴ Second option to be used only if Administrative Agent consent is required for the assignment.

⁵ If Borrower consent is required.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement and the Co-Lender Agreement, (ii) it meets all the requirements to be an assignee under the Co-Lender Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and the Co-Lender Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement and the Co-Lender Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements by the Borrower and other obligors, as applicable, delivered pursuant thereto and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest; and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in 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. The words “executed,” “signed,” “signature,” and words of like import as used above and elsewhere in this Assignment and Assumption shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

Archived Version: Not for New York