As filed with the Securities and Exchange Commission on October 4, 2023.

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SHIMMICK CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**1600**	**84-3749368**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification No.)**

530 Technology Drive
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(510) 777-5000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Approximate date of commencement of proposed sale to the public: **As soon as practicable after the effective date of this registration statement.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION DATED , 2023

PRELIMINARY PROSPECTUS

Shares

Common Stock

This is Shimmick Corporation's initial public offering, and prior to this offering, there has been no public market for our common stock. We are offering shares of our common stock and anticipate that the initial public offering price will be between $ and $ per share. We intend to apply for listing of our common stock on The Nasdaq Stock Market LLC ("Nasdaq") under the symbol "SHIM."

We are an "emerging growth company" and a "smaller reporting company" under the federal securities laws and will be subject to reduced public company reporting requirements. See "*Prospectus Summary — Implications of Being an Emerging Growth Company and a Smaller Reporting Company*."

After the completion of this offering, our controlling stockholder (see "*Principal Stockholders*") will continue to control a majority of the voting power of our common stock. As a result, although we do not expect to rely on the "controlled company" exemption, we will be a "controlled company" under the listing standards of Nasdaq and the rules of the Securities and Exchange Commission ("SEC"), and we will qualify for exemptions from certain corporate governance requirements. See "*Management — Controlled Company Exemption*."

Investing in our common stock involves a high degree of risk. Please read "*Risk Factors*" beginning on page 19 of this prospectus for a discussion of some of the risks you should consider before investing.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions (1)	$	$
Proceeds, before expenses, to us	$	$

(1) The underwriters will receive compensation in addition to the underwriting discounts and commissions. See "*Underwriting*."

We have granted the underwriters an option, exercisable within 30 days of the date of this prospectus, to purchase a maximum of additional shares of our common stock from us at the initial public offering price, less the underwriting discounts and commissions, to cover over-allotments of shares, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of our common stock to purchasers against payment on or about , 2023.

Sole Book-Running Manager

Roth Capital Partners

, 2023

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You should rely only on the information contained or incorporated by reference in this prospectus and in any free writing prospectus that we have authorized for use in connection with this offering. Neither we nor the underwriters have authorized any other person to provide you with additional or different information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither we nor the underwriters are making an offer to sell these securities in any jurisdiction where an offer or sale is not permitted. You should assume that the information in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or any sale of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

NON-GAAP FINANCIAL MEASURES

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We also supplement our consolidated financial statements with non-GAAP financial measures in this prospectus, including Adjusted net income (loss) and Adjusted EBITDA. For a discussion of the limitations on these measures and the rationales for using these measures see "*Management's Discussion and Analysis of Financial Condition and Results of Operations — Non-GAAP Financial Measures*."

FISCAL YEAR

We operate on a 52-week or 53-week fiscal year ending on the Friday closest to December 31 each year. Our fiscal year is divided into four quarters of 13 weeks, each beginning on a Saturday and containing one 5-week period along with two 4-week periods. When a 53-week fiscal year occurs, we report the additional week in the fourth fiscal quarter. References to fiscal year 2022 are to our 52-week fiscal year ended December 30, 2022 and references to fiscal year 2021 are to our 52-week fiscal year ended December 31, 2021.

MARKET DATA AND FORECASTS

We are responsible for the disclosures contained in this prospectus. However, unless otherwise indicated, information in this prospectus concerning economic conditions, our industry, our markets and our competitive position is based on information obtained from a variety of sources, including information from independent industry analysts and publications, as well as our own estimates and research.

Our estimates are derived from publicly available information released by third parties, as well as data from our internal research, and are based on such data and our knowledge of our industry, which we believe to be reasonable. None of the independent industry publications discussed in this prospectus were prepared on our behalf.

TRADEMARKS, SERVICE MARKS AND TRADE NAMES

This prospectus includes our trademarks, service marks and trade names, such as "Shimmick Corporation," "SCCI National Holdings, Inc.," "Shimmick," "Shimmick Construction Company" and our "S" logo. While such marks and trade names are not registered, they are protected under certain applicable intellectual property laws and are the property of Shimmick Corporation and Subsidiaries. Solely for convenience, marks and trade names referred to in this prospectus may appear without the ™ symbol, but such references are not intended to indicate, in any way, that we will not assert our rights to the fullest extent under applicable law.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary is not complete and does not contain all of the information that is important to you or that you should consider before investing in our common stock. You should carefully read the entire prospectus, including the risk factors, financial data, and financial statements included herein, before making a decision about whether to invest in our common stock. Unless the context requires otherwise or we specifically indicate otherwise, the information in this prospectus assumes that the underwriters do not exercise their over-allotment option. As used in this prospectus, unless the context otherwise requires or indicates, the terms "Shimmick," "the Company," "our company," "we," "our," "ours," and "us" refer to Shimmick Corporation and Subsidiaries.

Our Company

We are a leading provider of water and other critical infrastructure solutions nationwide. Through our predecessor entities, we have a long history of working on complex water projects, ranging from the world's largest wastewater recycling and purification system in California to the iconic Hoover Dam. According to *Engineering News Record*, in 2022 we were nationally ranked as a top ten builder of dams and reservoirs (#1), water supply (#3), water treatment and desalination plants (#8) and mass transit (#9). We are led by industry veterans, many with over 20 years of experience, and work closely with our customers to deliver complete solutions, including long-term operations and maintenance.

The United Nations has stated that climate change is primarily a water crisis as water becomes more scarce, unpredictable, polluted, or a combination of all three. Climate change, along with other emerging issues like drinking water contamination, requires significant and complex solutions like those we provide. We believe we are entering a period of substantial investment in water solutions, with more than $60 billion already authorized by federal legislation. In addition to organic growth opportunities, the existing water industry is highly fragmented by geography and capability, and we believe there is significant opportunity to both further expand our core infrastructure services and provide new service through acquisitions.

We selectively focus on the following types of infrastructure projects:

- *Water Treatment*: We expand, rehabilitate, upgrade, build and rebuild water and wastewater treatment infrastructure, including desalination plants. We implement complex cleantech treatment technologies including ozonation, biological activated carbon, membrane filtration, reverse osmosis, chemical treatment, and oxidation. We also conduct facility commissioning. Our projects and solutions aim to ensure access to clean and safe drinking water, protect public health, and reduce waterborne diseases. Our work contributes to protecting the environment by removing pollutants and contaminants from wastewater before it is released back into ecosystems. Additionally, water treatment infrastructure supports sustainable water management, which conserves this precious resource for future generations.
- *Water Resources*: We build, expand, and improve water storage and conveyance, dams, levees, flood control systems, pump stations, and coastal protection. We also upgrade and expand dams, levees and locks along our nation's waterways to enable continued emissions-reducing movement of goods. Select projects of ours enable reliable water supply, generate hydroelectric power, and control flooding, ensuring water availability and energy security. Our work contributes to protecting communities from flood damage to safeguard lives, property, and infrastructure.
- *Other Critical Infrastructure*: We build, retrofit, expand, rehabilitate, operate, and maintain our nation's critical infrastructure, including mass transit, bridges, and military infrastructure. We work on projects that we believe are vital for economic growth, social connectivity, and accessibility. We believe our projects enable smooth and efficient movement of people and goods, foster trade, address environmental sustainability, and improve quality of life for individuals and communities.

We were founded in 1990 in California. In 2017, AECOM acquired Shimmick and consolidated us with its existing construction services, which included former legacy construction operations from Morrison Knudsen, Washington Group International, and others. In January 2021, we began operating as an independent company under new private ownership. While our legacy companies have a long history operating in the United States, we have a limited operating history as an independent company. Following our separation from AECOM, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure. We believe our competitive strengths, which are discussed below, position us to execute this strategy and capitalize on market opportunities. However, our limited operating history as an independent company and historical dependence on AECOM subject us to a number of risks, such as an inability to obtain necessary bonding and the need to incur additional operating expenses to create or supplement the corporate infrastructure necessary to operate as an independent company. We are also involved in ongoing disputes with AECOM, which could adversely impact our business. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations — AECOM Sale Transactions*" for a definition and discussion of the AECOM Sale Transactions and "*Risk Factors — Risks Related to our Projects — We have a limited operating history as an independent company and have been historically dependent on our prior owner, AECOM*," "*— Risks Related to Our Business and Industry — We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business*," "*— We may be required to make additional payments to AECOM pursuant to contractual arrangements*" and "*— If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted*" for a discussion of risks related to AECOM.

For the six months ended June 30, 2023 and July 1, 2022, we generated revenue of $319.3 million and $293.6 million, respectively, and net (loss) income attributable to Shimmick Corporation of $(19.6) million and $3.7 million, respectively. Adjusted EBITDA was $(2.9) million and $31.9 million for the six months ended June 30, 2023 and July 1, 2022, respectively. Adjusted net (loss) income was $(12.0) million and $22.7 million for the six months ended June 30, 2023 and July 1, 2022, respectively. For the years ended December 30, 2022 and December 31, 2021, we generated revenue of $664.2 million and $572.7 million, respectively, and net income attributable to Shimmick Corporation of $3.8 million and $45.4 million, respectively. Adjusted EBITDA was $47.0 million and $(193.6) million for the years ended December 30, 2022 and December 31, 2021, respectively. Adjusted net income (loss) was $29.5 million and ($184.3) million for the years ended December 30, 2022 and December 31, 2021, respectively. For reconciliations of Adjusted EBITDA and Adjusted net (loss) income to net (loss) income, in each case the most directly comparable GAAP financial measure, see "*— Summary Selected Consolidated Financial Data*" below.

As of June 30, 2023, we had a backlog of projects in excess of $1 billion, with over half of that amount comprised of water projects. We believe we have the ability to self-perform many of these projects, enabling us to compete for complex projects and differentiating us from many of our competitors. Self-performance also enables us to better control the critical aspects of our projects, reducing the risk of cost and schedule overruns.

Our Customers

Our project revenue and contracts come primarily from public customers such as federal, state, and local governments, including water districts, sanitation districts, irrigation districts, and flood control districts. Government backing provides financial stability and reliability, as public projects are funded by government entities with the authority to collect taxes and allocate funds. Diverse funding sources — grants, appropriations, loans, state and local taxes, and user fees — reduce dependence on a single source and enhance overall market stability.

Throughout our history, we have maintained and cultivated a strong presence in California. In 2022, more than half of our revenue was generated in California, the largest construction market in the United States. The amount of construction put in place for water infrastructure in California was $4.9 billion in 2022, according to S&P Global ("S&P"). Our revenue from water projects in California was less than 10% of the total California water

market, indicating ample opportunity for us to grow our market share in California, where we believe we possess significant competitive advantages.

For example, we have detailed knowledge of the California market and have developed long-standing relationships with significant customers, including the Orange County Sanitation District ("OCSD"), the Orange County Water District ("OCWD"), the Metropolitan Water District of California ("MWD"), the Port of Long Beach, the Port of Los Angeles, the City of San Francisco, the City and County of Los Angeles, and other public agencies across the state. In addition to long-standing relationships with our customers, our decades of industry experience have supplied us with deep knowledge of the local workforce, subcontractors, and suppliers throughout California, which we believe provides us with a distinct pricing advantage and enables us to better manage risk.

We also have a long history of delivering solutions for the federal government, primarily building locks, dams, levees, and flood protection along the nation's inland waterways and coasts. Our federal clients include the Navy and numerous U.S. Army Corps of Engineers ("USACE") districts, including the Louisville District in Kentucky, the Rock Island District in Illinois, and the Nashville District in Tennessee. This work supports efficient transportation, which helps boost trade, reduce congestion on roads, and enhance our nation's economy.

Our Growth Strategy

Following consummation of the AECOM Sale Transactions, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure and grow our business. We are beginning to see the benefits of that transition. Projects that were secured prior to the AECOM Sale Transactions, including large scale projects with higher risk and lower margins, is being worked off and replaced with smaller and mid-sized projects with less risk and higher margins. As a result of our renewed strategic focus on water infrastructure, for the first time in company history, in September 2022, Shimmick was ranked in the top ten for dams and reservoirs, water supply, and water treatment and desalination by *Engineering News Record*.

Our growth strategies are as follows:

Organically Grow the Core Water and Critical Infrastructure Business. We seek to further expand our market share in water and other critical infrastructure to meet the nation's needs for clean water, economic development, disaster mitigation, trade, and resilient infrastructure. We anticipate a prolonged and growing demand for the markets we currently serve, due to, among other things, growing coastal populations, climate change, drought and severe weather events, and increased activity along the inland waterways, where, according to the most recent ASCE Report Card for Inland Waterways, nearly 830 million tons of the nation's goods are transported every year. Accordingly, we aim to increase the share of water projects as a percentage of our overall backlog. We plan to continue focusing on building infrastructure that meets our customer's needs — like water reuse, recycling, and conservation — and capitalize on significant opportunities within our core market of California.

We believe that by carefully positioning ourselves in markets that have meaningful barriers to entry, as discussed below, we can realize meaningful advantages. For example, we target projects requiring highly technical or specialized scopes of work or in our core market of California, where we can leverage our deep knowledge of and relationships with customers, workforces, subcontractors, and suppliers. We believe this provides us with a distinct pricing advantage, as well as better risk management.

Enhance Profitability. With a consistent focus on profitability by our management team and growing demand for critical infrastructure, we believe we can further enhance margins through disciplined project selection and bidding. We believe that the need and funding for projects may exceed the industry's capacity, enabling us to opportunistically target smaller specialized projects with less risk at higher margins.

We maintain a disciplined project evaluation process during which we look at a wide range of factors when determining which projects to bid. Certain criteria are considered at each stage of the pursuit process, which may include project size, location, customer, scope of work, availability of resources, anticipated competition, and project duration, among others. We selectively bid on projects that we believe offer an opportunity to meet our profitability objectives or that offer the opportunity to strategically grow our market share. In addition, we review our bidding opportunities to attempt to minimize concentration of work with any one customer or in tight labor markets.

We also believe that complex projects require companies like ours to have specific technical experience, the ability to obtain surety bonds, a trained workforce, geographic presence in key markets, and specialty equipment. These requirements, among others, present certain barriers to entry, limiting competition and enabling us to maintain selectivity and our desired level of profitability. Additionally, we believe the demand for services like ours is outpacing the industry's ability to supply those services. As illustrated by a few of our recent bids, we were one of just three bidders on the Folsom Dam for USACE, one of two bidders for Control Upgrades at Plant No. 2 for the Orange County Sanitation District, and the sole bidder on the Regional Water Reclamation Facility for the Elsinore Valley Municipal Water District.

Expand Service Offerings for Water and Critical Infrastructure Through Strategic Acquisitions. Upon completion of this offering, we intend to complement our organic growth through strategic acquisitions. We will opportunistically evaluate strategic acquisitions that would enable us to pursue complementary markets or enter new geographies where we do not have an existing footprint. Specifically, we plan to target companies that expand our existing solutions to provide additional capabilities along the water value chain, such as solutions for influent and effluent water conveyance, physical, chemical and/or biological water treatment, water testing, commissioning and operations and maintenance or other services which provide additional recurring revenue opportunities. Our industry includes a number of companies whose growth potential we believe has plateaued absent additional capital infusion or that otherwise may be seeking a liquidity event, which we believe presents opportunities for us to further our growth through strategic acquisitions. We believe the proceeds from this offering, along with existing cash on hand, publicly traded stock and access to the capital markets, will enable us to leverage our established platform and the acquisition experience of our management team to capitalize on future acquisition opportunities and accelerate our growth.

Our Competitive Strengths

With decades of industry experience and a track record of delivering water and other critical infrastructure projects, we believe we are well-positioned to address market trends and meet the growing needs of our current and prospective customers. We believe our long-standing customer relationships, revenue stability, market-leading positions in key markets, effective risk management, presence in key geographies, and a commitment to talent development further contribute to our future success.

Track Record of Water and Other Critical Infrastructure. Through our decades of experience, we have developed efficient processes and controls that allow us to successfully deliver critical infrastructure projects. Our strategy shift to focus on water treatment facilities, dams, locks, and levees, coupled with recent and strong underlying market dynamics, has helped us become a market leader.

Self-Performance of Contracts. We believe we are differentiated from our competitors by our ability to self-perform virtually all aspects of the critical infrastructure projects we build. We believe our ability to self-perform these project scopes makes us more competitive, as we are able to confidently estimate the cost of each job package given our expertise, track record, and expectation that we will self-perform up to 80% of the elements in a typical construction contract. Self-performance offers numerous benefits, both internally and for our customers, including: better cost and quality control, greater control over work sequencing to reduce potential delays,

increased flexibility and responsiveness, and a single point of accountability for our customers, all of which simplify project management. Self-performance also creates additional value by enabling us to capture profit margin that would typically be shared with subcontractors.

Customer and Revenue Stability. In 2022, the vast majority of our revenue was derived from public projects. Our public customers include water districts, sanitation districts, irrigation districts, flood control districts, USACE, cities, counties, and others. Government backing provides financial stability and reliability, since public projects are funded by government entities with the authority to collect taxes and allocate funds. Long-term planning and public interest behind infrastructure projects help ensure consistent funding allocation. Governments also have legal obligations to provide and maintain essential infrastructure, further solidifying the stability of public funding. Diverse funding sources — grants, appropriations, loans, state and local taxes, and user fees — reduce dependence on a single source and enhance overall market stability. Additionally, countercyclical investment, like federal stimulus during economic downturns, contributes to the stability of public funding. We believe this strategy enables us to better manage our business through market cycles.

Framework for Managing Construction Projects and Contract Risk. Our long history in these markets provides us with an understanding of the various risks of infrastructure construction. Following the AECOM Sale Transactions, we enhanced our monitoring and risk management practices applied throughout the entire project lifecycle, including the bid process, pre-construction planning activities, and construction. Our senior management reviews all bid proposals prior to submission, thereby increasing accountability and an understanding of the financial and operating risks and opportunities of our contracts. We maintain a database of prior contract proposals and records from completed projects, such as raw material requirements and costs, labor requirements and costs, and equipment needs, enabling us to rely on our institutional knowledge when estimating project costs in developing new proposals.

Long-Term Relationships with Customers and Partners. Over the past 30 years, we have developed strong relationships with major infrastructure owners including the Orange County Water District, the City of San Diego, Bay Area Rapid Transit, the Ports of Long Beach and Los Angeles, the City of San Francisco, and the City and County of Los Angeles. Elsewhere, we have delivered work for numerous USACE districts, including Louisville, Kentucky, Rock Island, Illinois, Omaha, Nebraska, and Nashville, Tennessee. In fact, most of our revenue in 2022 was generated from repeat customers, leveraging established relationships, familiarity with expectations, and enhanced collaboration for improved outcomes.

Strong Culture and Values with a Commitment to Talent Development. We seek to foster a culture of professional development for each employee. We focus on hiring and retaining highly talented employees with diverse backgrounds and empowering them to create value for our stockholders. We believe our success is dependent on employee understanding of and investment in their role in that value creation. We recruit many of our new employees from a network of approximately two dozen college campuses, where we seek to identify diverse candidates with a desire to develop as construction and engineering professionals and who have key intangible qualities in addition to academic credentials. We believe that our culture, combined with the opportunity to work on complex projects, provides unique opportunities for our employees to grow within our organization. We also encourage our employees to take proactive steps to advance their development and we support our employees in achieving the Professional Engineer designation. Our commitment to career and leadership development is evidenced in our core values, which include Safety, Achievement, Transparency, Empowerment and Responsibility, Authentic Relationships and Mutual Trust and Support. As a guiding principle, we are committed to supporting our employees as they develop their careers.

Experienced Executive Team with Significant Equity Incentive. Many members of our senior leadership team have over 20 years of industry experience and have worked together for over a decade. Additionally, as of June 30, 2023, members of our management team currently held vested and unvested stock options representing

over 15% of our common stock on a fully-diluted basis (or % after giving effect to this offering), which will significantly align their interests with stockholders.

Our Projects

We have historically pursued publicly funded water and other critical infrastructure projects. These projects include water and wastewater treatment, water conveyance (pipes, pump stations, irrigation and drainage channels), water storage (dams, reservoirs, weirs), flood protection (levees, flood walls), and environmental projects (species protection, fish ladders, hatcheries), as well as other critical infrastructure. These projects enhance connectivity, trade and economic growth.

As noted above, we have the ability to self-perform virtually all aspects of the critical infrastructure projects we build. However, at times, we may enter into joint venture arrangements on certain projects where it is necessary or desirable to share expertise, risk and resources. Joint venture partners typically provide independently prepared estimates, shared equipment, and often bring local knowledge and expertise. The services we self-perform versus those we rely upon subcontractors and joint venture partners to perform vary from project to project. Our decision regarding whether to self-perform work required depends on multiple factors, including location, availability of subcontractors, availability of craft, size of project, risk management objectives, scope and cost of self-performing versus subcontracting. For example, we joined with a joint venture partner on one of our current projects for their expertise on structural steel related specifically to retrofitting tainter gates. As of June 30, 2023, we had a backlog of projects of $1.3 billion, approximately $142 million, or 11%, of which are through our joint venture arrangements.

Water Treatment

Our experience in the water treatment space includes a wide range of treatment technologies. For example, for Orange County's Groundwater Replenishment System Expansion, we delivered a three-step advanced process consisting of microfiltration, reverse osmosis and ultraviolet light with hydrogen peroxide to produce water that meets and exceeds state and federal drinking water standards. The new 30 million gallon per day ("MGD") expansion, completed in 2023, created an additional 31,000 acre-feet per year of new water supply and expanded the facility's capacity to provide water for one million people.

Desalination, another treatment process, removes salt and other impurities from seawater or brackish water to produce freshwater and provides a reliable and alternative source of freshwater in regions facing water scarcity. Desalination also supports economic development and population growth in arid coastal areas. Although desalination plants come with unique environmental and regulatory challenges, desalination remains an important part of a larger, multi-billion dollar strategy to address drought and water scarcity in California, according to the California Water Boards Water Supply strategy, published in August 2022. For example, in 2020 the California Department of Water Resources awarded over $82 million in Proposition 1 desalination grants to support 20 projects. One of the projects that has received Proposition 1 funding is the Antioch Desalination Plant. To combat the increase in water salinity, Shimmick is adding a desalination reverse osmosis treatment train to this existing plant in Antioch. This work will enable the plant to continue to provide a drought-resistant water supply, reduce reliance on imported water, enhance water reliability, support agricultural needs, and contribute to the overall water security and sustainability in the San Joaquin Delta System and surrounding areas. Also, in 2018, we expanded the Robert W. Goldsworthy Desalter facility in Los Angeles County. Using reverse osmosis, the facility processes salty, brackish groundwater to create fresh, potable water. We also improved the facility's reverse osmosis capabilities, installing new filter membranes and analysis and monitoring instrumentation.

Water Resources

According to *Engineering News Record*, we were the nation's largest builder of dams and reservoirs and third largest builder of water supply systems in 2022. These critical infrastructure projects control flooding, store and supply water, and improve water quality to meet public demands. We also improve locks along the nation's inland waterways, enabling the efficient and emissions-reducing transportation of goods, supporting commerce, and connecting regions for economic growth and trade.

At the LaGrange Lock and Dam in Illinois, USACE chose us to perform a major rehabilitation of the more than 80-year-old dam along one of the main inland waterways where barges transport nearly 830 million tons of the nation's goods every year, according to the most recent ASCE Report Card for inland waterways. Additionally, we recently completed the Rapid Disaster Infrastructure program, building more than five miles of levees in Missouri to protect the area from flooding. A Shimmick-led joint venture also replaced an aging lock and dam and constructed the new Olmsted Dam on the Ohio River, where according to USACE, more commerce traverses than any other location on the entire U.S. inland waterways. With the Olmsted lock and dam replacement, economic net benefits to the nation are estimated to be more than $640 million annually, according to the same ASCE Report Card.

In California, as part of a joint venture, we recently secured a project for USACE to raise the main dam in Folsom. The project, set for completion in 2027, will enhance flood control by increasing temporary storage capacity of the reservoir by 43,000 acre-feet, reducing flood risk in the greater Sacramento area.

Other Critical Infrastructure

Critical infrastructure refers to the systems, assets, and facilities that are essential for the functioning and well-being of our nation. They are vital for maintaining national security, public health and safety, and economic stability. Disruptions or failures in critical infrastructure can have significant consequences and impact the functioning of society.

Our most recent example of critical infrastructure delivered for the military was the Point Loma Navy Fuel Pier Replacement. This project was necessary to ensure the safe and efficient refueling of naval ships and to meet current operational and safety standards. We demolished and removed the existing pier, installed a new fueling pier, and performed other security improvements to enhance the Navy's ability to maintain its fleet of surface ships, submarines, and other vessels.

Our Market Opportunity

Due to water's essential nature, climate change, coastal population growth, aging infrastructure, regulatory requirements, infrastructure resilience needs, and technological advancements, we anticipate the demand for water infrastructure to continue to grow. Aging infrastructure requires maintenance and upgrades, while regulatory standards, as well as new extreme weather patterns, like droughts, drive the need for conveyance, new facilities and treatment technologies. Additionally, water infrastructure is critical and, in many cases, life-sustaining, and less impacted by economic downturns than other markets like residential or commercial construction. We believe these and other factors contribute to the sustained demand for water infrastructure, for which we have already seen a significant increase in authorized spending.

The Infrastructure Investment and Jobs Act ("IIJA"), passed in November 2021, authorized the spending of $1.2 trillion over five years to expand access to clean drinking water, rebuild the nation's transportation system, and address climate change, among other initiatives. Of the $1.2 trillion in supplemental spending authorized by the IIJA, more than $50 billion will go to the Environmental Protection Agency ("EPA") to strengthen the

nation's drinking water and wastewater systems, representing the single largest investment in water ever by the federal government and representing a significant, multi-year market opportunity for Shimmick.

According to S&P, water and other critical infrastructure spending is forecasted to have a compound annual growth rate ("CAGR") of 5% between 2023 and 2027. Additionally, because projects often take several years to plan and advertise, we believe the bulk of the newly authorized spending is yet to come. According to Dodge Data's 2023 second quarter forecast, just 35% of the IIJA funding has flowed to projects thus far, with the bulk of spending coming in future years.

Management considers the size of our market opportunity to be the total market opportunity for all companies similarly situated to meet the demand for water infrastructure, which includes our current competitors and any future market entrants. We estimate that the total market opportunity for water infrastructure is $60 billion, and given current competitors and future market entrants, we will likely only be able to convert on a portion of that market opportunity. Furthermore, the federal government and our private clients may face challenges implementing the funding allocated to them, which would decrease the size of the total estimated market opportunity.

California

One of California's major economic drivers is water availability. Seventy-five percent of California's water supply comes from watersheds north of Sacramento, while the state's highest demand comes from the south. This requires an extensive network of water conveyance, storage, and other infrastructure to deliver water where it is most needed. As the most populous state in the U.S., California delivers drinking water to around 40 million people through a robust network of water facilities. California maintained more than 420 wastewater treatment plants and processed more than five million acre-feet, or nearly two trillion gallons, of influent and effluent water in 2021.

California's water infrastructure has deteriorated over the last several decades. The EPA 2018 Drinking Water Infrastructure Needs Survey and Assessment determined that the cost of California's water infrastructure needs to be increased to over $51.0 billion. California's needs include an estimated $31.6 billion to improve drinking water transmission, $9.2 billion for water treatment and $7.0 billion for water storage. According to S&P, the size of the California water and transportation infrastructure market, the largest market in which we operate, will be approximately $23 billion in 2024. It is projected to grow nearly 30% faster than the national average, with a CAGR of approximately 7% between 2023 and 2027.

Federal

According to an April 2023 Congressional Resource Service report, the IIJA provided $17.1 billion in direct, emergency appropriations to USACE for construction (68%), operations and maintenance (23%) and Mississippi River and Tributaries (5%). Much of this funding is being allocated directly to the core markets in which we operate, including $2.5 billion to inland waterways and another $5 billion to coastal and inland flood management. The remainder is slated for aquatic ecosystem restoration, pilot programs for flood risk, and other programs.

In addition to the IIJA, the Bipartisan Budget Act, passed in 2018, authorized $15 billion for construction for projects like the Sabine Pass to Galveston Bay Coastal Storm Risk Management Program that will reduce risk from coastal storm surges along the Texas coast. Shimmick is currently pursuing this important project, and if prequalified, will be granted the opportunity to bid task orders under the $7 billion Multiple Award Task Order Contract ("MATOC"). The USACE has already prequalified Shimmick for two other MATOCs this year — the Huntington Land Based Construction MATOC ("Huntington MATOC") and the Nashville Construction MATOC ("Nashville MATOC"). Shimmick is one of two large businesses prequalified on Huntington MATOC

and one of four large businesses prequalified for Nashville MATOC. MATOCs limit competition to a subset of prequalified competitors and offer significant, long-term project and revenue opportunities.

Both the IIJA and the Bipartisan Budget Act are supplemental to the USACE's annual budget, which in recent years has been approximately seven to eight billion dollars annually, historically reflecting modest year-over-year increases. This funding is directly appropriated to USACE for projects outlined in its annual work plans.

Our Industry

Several long-term trends, including the impact of climate change, the deterioration of aging infrastructure, and coastal population growth, have resulted in a renewed focus on infrastructure development and funding in the United States. Droughts and flooding in the west, along with extreme weather along coastal states, have demonstrated the need for expanded water and storm water infrastructure, flooding mitigation and disaster recovery efforts. In addition, our nation's infrastructure, much of it built more than 50 years ago, has deteriorated over the last several decades.

The demand for water infrastructure stems from multiple factors driving the need for reliable water management systems. Growing urbanization and industrialization have amplified water consumption, putting pressure on existing water supply networks. Furthermore, aging infrastructure in many regions requires significant upgrades and modernization to ensure clean water delivery, effective flood control, and efficient navigation.

Critical infrastructure ensures the efficient movement of goods and people, supports economic growth, and enhances connectivity between regions. Major economic drivers for these projects include increasing international trade, urbanization, and population growth. As governments and private entities continue to invest in upgrading and expanding infrastructure to meet these demands, opportunities for innovative solutions and technologies are expected to flourish.

Based on these and other factors, we believe that demand for construction and ongoing maintenance of water and other critical infrastructure projects will continue to increase.

Water Treatment

In the United States, the delivery of drinking water, wastewater treatment, and stormwater services rely on a comprehensive network of treatment plants, pumps, pipes, storage facilities, and other essential components. According to an American Society of Civil Engineers ("ASCE") Report, more than 50,000 drinking water systems distribute 39 billion gallons of drinking water to U.S. homes, industries, and other businesses. These systems are regulated by the EPA and state agencies under the Safe Drinking Water Act. The drinking water systems in the United States have been assessed as poor/at-risk, with a grade of C- by the ASCE.

With over 16,000 publicly owned wastewater treatment systems, centralized plants are expected to handle a larger share of wastewater treatment due to urban growth. These systems are currently operating at an average of 81% of their design capacity, with 15% exceeding capacity. Many systems built in the 1970s under the Clean Water Act are reaching the end of their expected 40 to 50-year lifespan. Nationwide, water pipes average 45 years old, and some components are over a century old, despite an expected lifespan of 50 to 100 years.

Water Resources

According to the America's ASCE Infrastructure Report Card, there are over 91,000 dams with an average age of 57 years across the U.S. Approximately 15,600 dams in the United States are classified as high-hazard structures, with an estimated rehabilitation cost for non-federal dams of nearly $20 billion.

The inland waterway network in the United States is comprised of approximately 12,000 miles of inland navigation channels as well as an additional 11,000 miles of intracoastal waterways owned and operated by the USACE. Most of the locks and dams are well past their 50-year design life. According to the ASCE's 2021 America's Infrastructure Report Card, the USACE backlog of authorized projects that are waiting for appropriations funding, which includes the nation's inland waterway locks and dams, is $6.8 billion. The agency reports a navigation backlog of $2.7 billion annually in unmet maintenance work activities. Estimates show the need to rehabilitate federal dams is approximately $27.6 billion.

Industry Drivers and Trends

We believe our core markets of water and other critical infrastructure are in the midst of a prolonged expansion, driven by several macro-economic and geopolitical trends, including the following:

Climate change and extreme weather events. The U.N. Intergovernmental Panel on Climate Change 2023 report highlighted that climate change has affected water security due to warming, changing precipitation patterns, and greater frequency and intensity of climatic extremes. Sea-level rise, droughts and flooding continue to affect highly populated areas, including coastal populations. As of July 2023, the U.S. National Oceanic and Atmospheric Administration ("NOAA") indicated that more than 70 million people are currently being affected by droughts and 38 states are experiencing moderate droughts or worse. At the same time, other parts of the country are seeing extreme flooding. According to NOAA, there were 40 tropical cyclone and flooding events in the United States from 2013 to 2023, with an aggregate cost of approximately $730.0 billion.

In coastal regions, rising sea levels and storm surges pose risks to low-lying areas. For example, California has a coastal population of more than 25 million people, according to the Office of Coastal Management's 2023 estimate, which is anticipated to be significantly affected by climate change.

Aging infrastructure. Our nation's infrastructure — much of it built more than 50 years ago — has deteriorated over the last several decades and is in need of major upgrades and expansions. In its 2021 America's Infrastructure Report Card, the ASCE graded America's overall infrastructure as a C- with many of our target markets graded in the Ds. The report estimated that the cumulative needed investment in infrastructure in the United States for the 10 years from 2020 to 2029 was in excess of $2.6 trillion. The ASCE report estimated that by 2039, failure to improve our infrastructure could cost over $10.0 trillion in lost U.S. Gross Domestic Product ("GDP").

Additionally, the replacement of old, lead pipes is required to protect public health. The EPA estimates that 9 million lead pipes currently deliver drinking water to homes and businesses across the U.S., putting millions at risk for neurological damage and coronary heart disease. Recognized as a serious public health risk, the IIJA includes $15 billion to replace lead pipes across the United States.

Increasing regulations to safeguard public health and address contaminants. Given the widespread exposure to perfluoroalkyl and polyfluoroalkyl substances ("PFAS") — harmful, long-lasting chemicals that have been found in our nation's water supply — state legislatures and the federal government are acting to mitigate the public health impacts and environmental degradation that these chemicals have caused, according to the National Conference for State Legislatures. The IIJA dedicates $10 billion in funding for communities impacted by emerging contaminants in water, including PFAS. In 2021, the EPA released a PFAS roadmap to prevent unsafe new PFAS chemicals from entering the market and protect public health.

As part of this roadmap, in 2023 the EPA took steps to designate PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). CERCLA establishes liability for owners, operators, generators and others, potentially making entities that handle designated PFAS liable for recovery and remediation costs related to PFAS.

Water conservation and efficiency. According to a 2021 Nasdaq report, contracts for water reuse have surpassed those for desalination. Water recycling offers cost savings, lower energy requirements, and enhanced environmental benefits. In addition to being more economical than desalination, it minimizes the necessity for expanding production capacity and transforms wastewater treatment plants from cost centers into profit centers.

Commitment to Environmental, Social and Governance ("ESG") Initiatives

We seek to deploy operational best practices for winning, executing, and supporting the work we do, much of which is designed to achieve environmental or social goals such as clean water or building infrastructure to withstand extreme weather events or other natural disasters. These best practices, tools, and techniques have been developed for key areas of Shimmick's operations. One of these key areas is Safety, Health, and Environmental ("SH&E"). We seek to achieve SH&E success through a comprehensive, internal program that incorporates SH&E standards and innovative techniques, with the ultimate goal of achieving zero work-related injuries or illnesses and preventing damage to property and the environment. Our SH&E program includes specific guidelines to protect people and the environment and includes environmental compliance maps, environmental impact assessments, environmental management plans, environmental compliance checklists, and a workflow outlining how to manage environmental compliance.

Additionally, we aim to create an inclusive and equitable workplace. For example, in 2021, Shimmick established a mission to empower and support women by providing professional and personal development opportunities. We founded Women at Shimmick, an employee resource group charged with improving the experiences of women at Shimmick, providing programs, events, activities, and other opportunities for professional and personal development for women. The group aims to build awareness of women's experience among the general employee population, recruit and retain more high performing women, and increase the number of women in leadership positions. In the group's first year, survey results indicated improvement in key areas including welcoming, leadership and development opportunities, building awareness among the general employee population, and recognition.

For further information on our ESG disclosures see "*Business — Environmental, Social and Governance (ESG).*" In addition, we are committed to providing transparent disclosures on our human capital management. See "*Business — Human Capital Management.*"

Controlling Stockholder

GOHO, LLC (our "controlling stockholder") holds all of the outstanding shares of our common stock. GOHO, LLC is controlled by Mitchell B. Goldsteen, our Executive Chairman. We expect our controlling stockholder will beneficially own approximately % of our common stock immediately following consummation of this offering (or approximately % if the underwriters exercise their option to purchase additional shares of common stock in full). Therefore, our controlling stockholder will be able to have a significant influence over fundamental and significant corporate matters and transactions. Although we do not expect to rely on the "controlled company" exemption, we will be a "controlled company" under the listing standards of Nasdaq and the rules of the SEC and we will qualify for exemptions from certain corporate governance requirements. See "*Management — Controlled Company Exemption*" and "*Risk Factors — Risks Related to this Offering, the Securities Markets and Ownership of Our Common Stock.*"

Summary Risk Factors

We are subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows and prospects. You

should carefully consider these risks, including the risks discussed in the section entitled "*Risk Factors*," before deciding to invest in our common stock. Risks relating to our business include, among others:

- the nature of our contracts, particularly those that are fixed-price, subjects us to risks associated with cost overruns, operating cost inflation and potential claims for liquidated damages,
- design-build contracts subject us to the risk of design errors and omissions,
- we could incur material costs and losses as a result of claims that our materials do not meet regulatory requirements or contractual specifications,
- force majeure events, such as natural disasters, epidemics, pandemics and terrorists' actions, could negatively impact our business, which may affect our financial condition, results of operations or cash flows,
- our subcontractors may fail to satisfy their obligations to us or other parties, or we may be unable to maintain these relationships, either of which may have a material adverse effect on our business, financial condition, results of operations, profitability, cash flows and growth prospects,
- although the water infrastructure market is relatively less susceptible to fluctuations in the market, economic downturns or reductions in government funding of infrastructure projects could reduce our revenue and profits and have a material adverse effect on our results of operations,
- our limited operating history as an independent company following our separation from AECOM,
- an inability to obtain bonding could limit the aggregate dollar amount of contracts that we are able to pursue,
- disputes with our prior owner, AECOM, and requirements to make future payments to AECOM,
- our dependence on a limited number of customers could adversely affect our business and results of operations,
- our dependence on subcontractors and suppliers of materials could increase our costs and impact our ability to complete contracts on a timely basis or at all, which would adversely affect our profits and cash flows,
- acquisition activity presents certain risks to our business, operations and financial condition, and we may not realize the financial and strategic goals contemplated at the time of a transaction,
- amounts included in our backlog may not result in actual revenue or translate into profits, as our backlog is subject to cancellation and unexpected adjustments,
- our use of the input method of revenue recognition based on costs incurred relative to total expected costs could result in a reduction or reversal of previously recorded revenue and profits,
- pandemics and public health emergencies, such as the COVID-19 pandemic, could materially disrupt our business and negatively impact our results of operations, cash flows and financial condition,
- both we and our customers use certain commodity products that are subject to significant price fluctuations, and these fluctuations may have a material adverse effect on both our and our customers' financial condition, results of operations and cash flows, as well as our customers' investment decisions,
- our failure to comply with the regulations of Occupational Safety and Health Administration ("OSHA") and state and local agencies that oversee transportation and safety compliance could adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects,

- a change in tax laws or regulations of any federal or state jurisdiction in which we operate could increase our tax burden and otherwise adversely affect our business, financial condition, results of operations, and cash flows,
- a failure to fully or promptly recover customer claims could have a material adverse impact on our liquidity and financial results,
- although climate change and increasing regulations often drive demand for water infrastructure, climate change, and related legislative and regulatory responses to climate change, may have a long- term impact on our business,
- deterioration of the United States economy could have a material adverse effect on our business, financial condition and results of operations,
- we have broad discretion as to the use of the net proceeds from this offering and may not use them effectively, and
- raising additional capital by issuing securities may cause dilution to our stockholders.

Implications of Being an Emerging Growth Company and a Smaller Reporting Company

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). For so long as we are an emerging growth company, we will, among other things:

- not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),
- not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A(a) of Securities Exchange Act of 1934, as amended (the "Exchange Act"),
- not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A(b) of the Exchange Act,
- be exempt from any rule adopted by the Public Company Accounting Oversight Board, requiring mandatory audit firm rotation and identification of critical audit matters, and
- be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of Securities Act of 1933, as amended (the "Securities Act"), for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We will continue to qualify as an emerging growth company until the earliest of:

- the last day of our fiscal year following the fifth anniversary of the date of our initial public offering,
- the last day of our fiscal year in which we have annual gross revenue of $1.235 billion or more,

- the date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt, and
- the date on which we are deemed to be a "large accelerated filer," which will occur at such time as we (1) have an aggregate worldwide market value of common equity securities held by non-affiliates of $700.0 million or more as of the last business day of our most recently completed second fiscal quarter, (2) have been required to file annual and quarterly reports under the Exchange Act for a period of at least 12 months and (3) have filed at least one annual report pursuant to the Exchange Act.

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

For risks related to our status as an emerging growth company and a smaller reporting company, including the potential impact of reduced financial reporting and disclaimer requirements see "*Risk Factors — Risks Related to the Offering and Ownership of Our Common Stock — We are an emerging growth company and a smaller reporting company, and because we take advantage of specified reduced disclosure requirements applicable to emerging growth companies and smaller reporting companies, our financial statements may not be comparable to companies that comply with public company effective dates, which may make our common stock less attractive to investors.*"

Corporate Information

Shimmick Corporation, the issuer of the common stock in this offering, was incorporated on October 18, 2019 as a Delaware corporation. On September 12, 2023, we effected a name change from "SCCI National Holdings, Inc." to "Shimmick Corporation". Our business is conducted through Shimmick Construction Company, Inc. and our other operating subsidiaries. Shimmick was founded in 1990 in California and operated as a regional infrastructure construction contractor throughout California for nearly 30 years. In 2017, AECOM acquired us and consolidated us with its existing construction services, which included former, legacy construction operations from Morrison Knudsen, Washington Group International, and others. In January 2021, we consummated the AECOM Sale Transactions and began operating as an independent company under new private ownership.

Our principal executive offices are located at 530 Technology Drive, Suite 300, Irvine, CA 92618, and our telephone number is (510) 777-5000. Our principal website address is *www.shimmick.com*. The information on, or that can be accessed through, our website is not incorporated into this prospectus and is not part of this prospectus. We have included our website address as an inactive textual reference only.

THE OFFERING

Issuer	Shimmick Corporation
Common stock offered by us	shares.
Option to purchase additional shares of common stock	The underwriters have a 30-day option extending from the date of this prospectus to purchase up to an additional shares of common stock from us to cover over-allotments.
Common stock outstanding immediately after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares of common stock in full).
Use of proceeds	We estimate that the net proceeds to us from this offering, after deducting the underwriters' discounts and commissions and our estimated offering expenses, will be approximately $ million. We intend to use the net proceeds from this offering to repay all outstanding borrowings under our Revolving Credit Facility Agreement (as defined below), with the remaining amounts for working capital and other general corporate purposes, including the potential funding of future opportunistic acquisitions. See "*Use of Proceeds.*"
Dividend policy	After the consummation of this offering, we do not anticipate that we will declare or pay regular dividends on our common stock in the foreseeable future, as we generally intend to invest any future earnings in the development and growth of our business.
Risk factors	You should carefully consider all of the information set forth in this prospectus and, in particular, the specific factors set forth under "*Risk Factors*" on page 19, before deciding whether to invest in our common stock.
Principal stockholder and "controlled company" exemption	After the completion of this offering, our controlling stockholder (see "*Principal Stockholders*") will continue to control a majority of the voting power of our common stock. As a result, although we do not expect to rely on the "controlled company" exemption, we will be a "controlled company" under the listing standards of Nasdaq and the rules of the SEC, and we will qualify for exemptions from certain corporate governance requirements.
Listing	We intend to apply for listing of our common stock under the symbol "SHIM."

Except as otherwise indicated, all information in this prospectus:

- excludes shares of common stock issuable upon exercise of options to purchase shares of common stock outstanding at a weighted average exercise price of $ per share;
- excludes shares of common stock reserved for issuance following this offering under our equity plans;

- gives effect to the for stock split of our common stock to be effected prior to the completion of this offering;
- gives effect to amendments to our amended and restated certificate of incorporation and amended and restated by-laws to be adopted prior to the completion of this offering; and
- assumes no exercise of the underwriters' option to purchase additional shares of common stock in this offering.

Summary Selected Consolidated Financial Data

The following table sets forth summary selected consolidated financial information as of the dates and for the periods represented. The financial data as of and for the six months ended June 30, 2023 and July 1, 2022 and the fiscal years ended December 30, 2022 and December 31, 2021 have been derived from our audited financial statements and our unaudited condensed consolidated financial statements included elsewhere in this prospectus. The results of operations for any period are not necessarily indicative of the results to be expected for any future period.

The data presented below should be read in conjunction with, and are qualified in their entirety by reference to, "*Capitalization*," "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and our consolidated financial statements and the related notes included elsewhere in this prospectus. Per share data in the table below does not reflect the for stock split of our common stock to be effected prior to the completion of this offering.

	Six Months Ended		Fiscal Year Ended	
(In thousands, except per share data)	**June 30, 2023**	**July 1, 2022**	**December 30, 2022**	**December 31, 2021**
Revenue	$ 319,297	$ 293,578	$ 664,158	$ 572,666
Cost of revenue	313,532	288,206	640,643	705,470
Gross margin	5,765	5,372	23,515	(132,804)
Selling, general and administrative expenses	32,502	28,929	60,442	77,519
Amortization of intangibles	1,316	1,316	2,632	2,632
Total operating expenses	33,818	30,245	63,074	80,151
Equity in earnings of unconsolidated joint ventures	6,993	38,776	52,471	1,067
Gain on sale of property, plant and equipment	1,680	10	—	—
(Loss) income from operations	(19,380)	13,913	12,912	(211,888)
Bargain purchase gain	—	—	—	233,147
Other (expense) income, net	(264)	(9,551)	(8,731)	453
Net (loss) income before income taxes	(19,644)	4,362	4,181	21,712
Income tax (expense) benefit	—	(1,257)	(1,274)	24,122
Net (loss) income	(19,644)	3,105	2,907	45,834
Net (loss) income attributable to non-controlling interests	(7)	(605)	(853)	431
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	$ 3,760	$ 45,403
Net (loss) income attributable to Shimmick Corporation per common share				
Basic	$ (2.45)	$ 0.46	$ 0.47	$ 5.68
Diluted	$ (2.45)	$ 0.46	$ 0.47	$ 5.68

(In thousands) **Condensed Consolidated and Consolidated Balance Sheet Data**	**June 30, 2023**	**December 30, 2022**	**December 31, 2021**
Cash and cash equivalents	$ 61,295	$ 77,762	$ 73,176
Total current assets	263,279	233,476	255,163
Total assets	443,754	446,799	491,996
Total current liabilities	316,895	340,944	388,662
Total liabilities	410,711	395,204	444,975
Total stockholder's equity	33,043	51,595	47,021

Adjusted net income (loss) and Adjusted EBITDA are non-GAAP financial measures. We believe, however, that Adjusted net income (loss) and Adjusted EBITDA are meaningful to our investors to enhance their understanding of our financial performance. We understand that Adjusted net income (loss) and Adjusted EBITDA are frequently used by securities analysts, investors and other interested parties as a measure of financial performance and to compare our performance with the performance of other companies that report similar metrics. Our calculation of Adjusted net income (loss) and Adjusted EBITDA, however, may not be comparable to similarly titled measures reported by other companies. When assessing our operating performance, investors and others should not consider this data in isolation or as a substitute for Net income attributable to Shimmick Corporation calculated in accordance with GAAP. Further, the results presented by Adjusted net income (loss) and Adjusted EBITDA cannot be achieved without incurring the income and expenses that the measure excludes. As used in this prospectus, (i) Adjusted net income (loss) represents our Net income attributable to Shimmick Corporation adjusted to eliminate the bargain purchase gain, changes in fair value of contingent consideration, IPO and transaction-related costs, stock-based compensation, and legal fees and other costs for a legacy project and (ii) Adjusted EBITDA represents our earnings before interest and other expense (income), income taxes and depreciation and amortization, adjusted to eliminate the bargain purchase gain, changes in fair value of contingent consideration, IPO and transaction-related costs, stock-based compensation, and legal fees and other costs on a legacy project. The following tables reconciles Net (loss) income attributable to Shimmick Corporation to Adjusted net (loss) income and Adjusted EBITDA for each of the periods presented in this table and elsewhere in this prospectus.

	Six Months Ended		Fiscal Year Ended	
(In thousands)	June 30, 2023	July 1, 2022	December 30, 2022	December 31, 2021
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	$ 3,760	$ 45,403
Bargain purchase gain	—	—	—	(233,147)
Changes in fair value of contingent consideration	351	9,500	9,462	(11,600)
IPO and transaction-related costs (1)	1,567	2,039	3,104	4,170
Stock-based compensation	1,051	891	2,295	1,185
Legal fees and other costs for a legacy loss job (2)	4,638	6,603	10,904	9,645
Adjusted net (loss) income	$ (12,030)	$ 22,743	$ 29,525	$ (184,344)

	Six Months Ended		Fiscal Year Ended	
(In thousands)	June 30, 2023	July 1, 2022	December 30, 2022	December 31, 2021
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	$ 3,760	$ 45,403
Depreciation and amortization	8,549	7,851	15,979	14,929
Interest expense (income)	607	52	226	(84)
Income tax expense (benefit)	—	1,257	1,274	(24,122)
Bargain purchase gain	—	—	—	(233,147)
Changes in fair value of contingent consideration	350	9,500	9,462	(11,600)
IPO and transaction-related costs (1)	1,567	2,039	3,104	4,170
Stock-based compensation	1,051	891	2,295	1,185
Legal fees and other costs for a legacy loss job (2)	4,638	6,603	10,904	9,645
Adjusted EBITDA	$ (2,875)	$ 31,903	$ 47,004	$ (193,621)

(1) We recorded $1.6 million in transaction-related costs in the six months ended June 30, 2023. We recorded $3.1 million in transaction-related costs in fiscal year 2022, which included $2.0 million for a contingent legal fee to settle the working capital settlement agreement in January 2022 and $1.0 million in other transaction-related costs. We incurred $4.2 million in transaction-related costs in the fiscal year 2021, of which $3.3 million was related to the AECOM Sale Transactions.

(2) Consists of legal fees and other costs incurred in connection with claims relating to a legacy project.

RISK FACTORS

An investment in our common stock involves risks. You should carefully consider each of the following risks and all of the information set forth in this prospectus before deciding to invest in our common stock. The risks and uncertainties described below are not the only ones we face. If any of the following risks and uncertainties develops into actual events, our business, financial condition, results of operations and cash flows could be materially adversely affected. In that case, the price of our common stock could decline and you may lose all or part of your investment.

Risks Related to Our Projects

If we are unable to accurately estimate the overall risks, requirements or costs when we bid on or negotiate a contract that is ultimately awarded to us, we may achieve a lower than anticipated profit or incur a loss on the contract.

The majority of our revenue and backlog are derived from fixed unit price contracts and lump sum contracts. The nature of our contracts, particularly those that are fixed-price, subjects us to risks associated with cost overruns, operating cost inflation and potential claims for liquidated damages. Fixed unit price contracts require us to provide materials and services at a fixed unit price based on approved quantities irrespective of our actual per unit costs. Lump sum contracts require that the total amount of work be performed for a single price irrespective of our actual per unit costs. We realize a profit on our contracts only if we accurately estimate our costs and then successfully control actual costs and avoid cost overruns, and our revenue exceed actual costs. If our cost estimates for a contract are inaccurate, or if we do not execute the contract within our cost estimates, then cost overruns may cause us to incur losses or cause the contract not to be as profitable as we expected. The final results under these types of contracts could negatively affect our business, financial condition, results of operations and cash flows.

The costs incurred and gross margin realized on our contracts can vary, sometimes substantially, from our original projections due to a variety of factors, including, but not limited to:

- on site conditions that differ from those assumed in the original bid or contract,
- failure to include required materials or work in a bid, or the failure to estimate properly the quantities or costs needed to complete a lump sum contract,
- contract or project modifications creating unanticipated costs not covered by change orders,
- failure by our suppliers, subcontractors, designers, engineers, joint venture partners, or customers to perform their obligations,
- delays in quickly identifying and taking measures to address issues which arise during contract execution,
- changes in availability, proximity and costs of materials, including steel, concrete, aggregates and other construction materials, as well as fuel and lubricants for our equipment,
- claims or demands from third parties for alleged damages arising from the design, construction or use and operation of a project of which our work is part,
- difficulties in obtaining required governmental permits or approvals,
- availability and skill level of workers in the geographic location of a project,
- citations issued by any governmental authority, including OSHA,
- unexpected labor conditions or work stoppages,

- changes in applicable laws and regulations,
- delays caused by weather conditions,
- fraud, theft or other improper activities by our suppliers, subcontractors, designers, engineers, joint venture partners or customers or our own personnel, and
- mechanical problems with our machinery or equipment.

Many of our contracts with public customers contain provisions that purport to shift some or all of the above risks from the customer to us, even in cases where the customer is partly at fault. Our experience has often been that public customers have been willing to negotiate equitable adjustments in the contract compensation or completion time provisions if unexpected circumstances arise. However, public customers may seek to impose contractual risk-shifting provisions more aggressively or there could be statutory and other legal prohibitions that prevent or limit contract changes or equitable adjustments, which could increase risks and adversely affect our business, financial condition, results of operations and cash flows.

We have a limited operating history as an independent company and have been historically dependent on our prior owner, AECOM.

We operated as a division of AECOM until our separation in January 2021. Accordingly, our business historically relied upon AECOM's corporate infrastructure for services to support our business functions and relationships with third-party providers. Since separating from AECOM, we have worked to create and/or supplement the corporate infrastructure necessary to operate as an independent company, and have incurred related costs and expenses. That said, we have expended, and expect to continue to expend, significant efforts and costs to (i) replace or otherwise upgrade our systems, including our information technology (IT) and enterprise resource planning systems, (ii) implement additional financial, IT, and management controls, (iii) implement reporting systems and procedures, (iv) hire additional management, IT, accounting, finance, legal, human resources, and other administrative staff and third-party service providers, (v) establish employee benefit programs, (vi) create a board of directors and corporate governance programs, (vii) carry out audit, tax and legal functions, and (viii) establish banking and credit facility arrangements. Any interruption in these services could have a material adverse effect on our business, financial condition, results of operations, profitability, cash flows and growth products. We may also be unable to obtain necessary bonding as we historically were dependent on AECOM to provide the requisite credit support. See *"Risks Related to our Business and Industry — An inability to obtain bonding could limit the aggregate dollar amount of contracts that we are able to pursue."*

Our customers may be adversely affected by market conditions and economic downturns, which could impair their ability to pay for our services.

Economic downturns could reduce capital expenditures in the industries we serve, which could result in decreased demand for our services. The demand for our services has been, and will likely continue to be, cyclical in nature and vulnerable to general downturns in the U.S. economy. During economic downturns, our customers may not have the ability to fund capital expenditures for infrastructure, or may have difficulty obtaining financing for planned projects. In addition, uncertain or adverse economic conditions that create volatility in the credit and equity markets may reduce the availability of debt or equity financing for our customers, causing them to reduce capital spending. This has resulted, and in the future could result, in cancellations of projects or deferral of projects to a later date. Such cancellations or deferrals could materially and adversely affect our results of operations, cash flows and liquidity. These conditions could also make it difficult to estimate our customers' demand for our services and add uncertainty to the determination of our backlog. In addition, our customers are negatively affected by economic downturns that decrease the need for their services or the profitability of their services. During an economic downturn, our customers also may not have the ability or desire to continue to fund capital expenditures for infrastructure or may outsource less work. A decrease in related project work could negatively impact demand for the services we provide and could materially adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

Many of our customers are regulated by federal, state and local government agencies, and the addition of new regulations or changes to existing regulations may adversely impact the demand and profitability of our services.

Many of our customers are regulated by federal, state and local government agencies. These agencies could change the way in which they interpret the application of current regulations and/or may impose additional regulations. Interpretative changes or new regulations having an adverse effect on our customers and the profitability of the services they provide could reduce demand for our services, which could adversely affect our results of operations, cash flows and liquidity. Any future restrictions or regulations that might be adopted could lead to operational delays, increased operating costs for our customers, reduced capital spending and/or delays or cancellations of future infrastructure projects, which could materially and adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

Our business depends on our ability to qualify as an eligible bidder under federal, state or local government contract criteria and to compete successfully against other qualified bidders in order to obtain federal, state or local government contracts.

Federal, state and local government agencies conduct rigorous competitive processes for awarding many contracts. Some contracts include multiple award task order contracts in which several contractors are selected as eligible bidders for future work. We will potentially face strong competition and pricing pressures for any additional contract awards from other government agencies, and we may be required to qualify or continue to qualify under various multiple award task order contract criteria. Our inability to qualify as an eligible bidder under federal, state or local government contract criteria could preclude us from competing for certain other government contract awards. In addition, our inability to qualify as an eligible bidder, or to compete successfully when bidding for certain federal, state or local government contracts and to win those contracts, could materially adversely affect our business, operations, revenue and profits.

Government contracts generally are subject to a variety of governmental regulations, requirements and statutes, the violation or alleged violation of which could have a material adverse effect on our business.

A majority of our total revenue is derived from contracts funded by federal, state and local government agencies and authorities. Government contracts are subject to specific procurement regulations, contract provisions and a variety of socioeconomic requirements relating to their formation, administration, performance and accounting and often include express or implied certifications of compliance. Further, government contracts include the right to modify, delay, curtail, renegotiate or terminate contracts and subcontracts at the government's convenience any time prior to their completion. Claims for civil or criminal fraud may be brought for violations of regulations, requirements or statutes. We may also be subject to qui tam (whistle blower) litigation brought by private individuals on behalf of the government under the False Claims Act, which could include claims for up to treble damages. Further, if we fail to comply with any of the regulations, requirements or statutes or if we have a substantial number of accumulated OSHA, Mine Safety and Health Administration or other workplace safety violations, our existing government contracts could be terminated and we could be suspended from government contracting or subcontracting, including federally funded projects at the state level. Should one or more of these events occur, it could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Government contractors are subject to suspension or debarment from government contracting.

Our substantial dependence on government contracts exposes us to a variety of risks that differ from those associated with contracts with private owners. Various statutes to which our operations are subject, including the Davis-Bacon Act (which regulates wages and benefits), the Walsh-Healy Act (which prescribes a minimum wage and regulates overtime and working conditions), Executive Order 11246 (which establishes equal employment opportunity and affirmative action requirements) and the Drug-Free Workplace Act, provide for mandatory suspension and/or debarment of contractors in certain circumstances involving statutory violations. In addition, our

federal government and certain state and local agency contracts are subject to, among other regulations, regulations issued under the Federal Acquisition Regulations ("FAR"). These regulations can limit the recovery of certain specified indirect costs on contracts and subject us to ongoing multiple audits by government agencies such as the Defense Contract Audit Agency ("DCAA"). Audits by the DCAA and other agencies consist of reviews of our overhead rates, operating systems and cost proposals to ensure that we have accounted for such costs in accordance with the Cost Accounting Standards of the FAR ("CAS"). If the DCAA determines that we have not accounted for such costs consistent with CAS, the DCAA may disallow these costs. There can be no assurance that audits by the DCAA or other governmental agencies will not result in material cost disallowances in the future, which could adversely impact our business, financial condition, results of operations and cash flows.

Further, FAR and various state statutes provide for discretionary suspension and/or debarment in certain circumstances that might call into question a contractor's willingness or ability to act responsibly, including as a result of being convicted of, or being found civilly liable for, fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract. The scope and duration of any suspension or debarment may vary depending upon the facts and the statutory or regulatory grounds for debarment and could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our success depends on attracting and retaining qualified personnel, joint venture partners, advisors and subcontractors in a competitive environment.

The success of our business is dependent on our ability to attract, develop and retain qualified personnel, joint venture partners, advisors and subcontractors. Changes in general or local economic conditions and the resulting impact on the labor market and on our joint venture partners may make it difficult to attract or retain qualified individuals in the geographic areas where we perform our work. If we are unable to provide competitive compensation packages, high-quality training programs and attractive work environments or to establish and maintain successful partnerships, our ability to profitably execute our work could be adversely impacted.

We rely heavily on immigrant labor. We have taken steps that we believe are sufficient and appropriate to ensure compliance with immigration laws. However, we cannot provide assurance that we have identified, or will identify in the future, all illegal immigrants who work for us. Our failure to identify illegal immigrants who work for us may result in fines or other penalties being imposed upon us, which could have a material adverse effect on our operations, results of operations and financial condition.

Our failure to meet the schedule or performance requirements of our contracts could adversely affect us.

In most cases, our contracts require completion by a scheduled acceptance date. Failure to meet any such schedule could result in additional costs, penalties or liquidated damages being assessed against us, and these could exceed projected profit margins on the contract. Performance problems on existing and future contracts could cause actual results of operations to differ materially from those anticipated by us and could cause us to suffer damage to our reputation within the industry and among our customers.

Adverse weather conditions may cause delays, which could slow completion of our contracts and negatively affect our revenue and cash flows.

Because all of our construction projects are built outdoors, work on our contracts is subject to unpredictable weather conditions. While weather has historically had a minimal impact on our operation due to the concentration of our work in California, where the climate is generally temperate, weather could have an increasingly frequent or severe effect on our operations if general climatic changes occur or if we expand into other geographic regions that tend to experience more extreme weather conditions. Lengthy periods of wet or cold winter weather could interrupt construction, and this could lead to under-utilization of crews and equipment, resulting in less efficient rates of overhead recovery. Extreme heat could prevent us from performing certain types of operations. Changes in weather conditions could cause delays and otherwise significantly affect our

project costs. While revenue might be recovered following a period of bad weather, it would generally be impossible to recover the cost of inefficiencies, and significant periods of bad weather typically would reduce profitability of affected contracts both in the current period and during the future life of affected contracts. Such reductions in contract profitability would negatively affect our results of operations.

We may be unable to identify and contract with qualified Disadvantaged Business Enterprise ("DBE") contractors to perform as subcontractors.

Certain of our government agency projects contain minimum DBE participation clauses. If we subsequently fail to complete these projects with the minimum DBE participation, we may be held responsible for breach of contract, which may include restrictions on our ability to bid on future projects as well as monetary damages. To the extent we are responsible for monetary damages, the total costs of the project could exceed our original estimates, we could experience reduced profits or a loss for that project and there could be a material adverse impact to our business, financial condition, results of operations and cash flows.

Design-build contracts subject us to the risk of design errors and omissions.

Design-build is increasingly being used as a method of project delivery as it provides the customer with a single point of responsibility for both design and construction. We normally subcontract design responsibility to architectural and engineering firms. In the event of a design error or omission by a subcontractor or by us causing damages, there is risk that we, the subcontractor or the respective professional liability insurance or errors and omissions insurance would not be able to absorb the liability. Any liabilities resulting from an asserted design defect with respect to our construction projects may have a material adverse effect on our financial condition, results of operations and cash flows.

If we are unable to attract and retain qualified managers and skilled employees or if we were to lose the benefit of the experience, efforts and abilities of one or more certain key personnel, we will be unable to operate efficiently, which could reduce our revenue, profitability and liquidity.

Our business is labor intensive, and some of our operations experience a high rate of employee turnover. In addition, given the nature of the highly specialized work we perform, many of our employees are trained in, and possess, specialized technical skills that are necessary to operate our business and maintain productivity and profitability. At times of low unemployment rates in the areas we serve, it can be difficult for us to find qualified and affordable personnel. We may be unable to hire and retain a sufficiently skilled labor force necessary to support our operating requirements and growth strategy. Our labor and training expenses may increase as a result of a shortage in the supply of skilled personnel. We may not be able to pass these expenses on to our customers, which could adversely affect our profitability. Labor shortages, increased labor or training costs, or the loss of key personnel could materially adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

Additionally, our business is managed by a number of key executive and operational officers and is dependent upon retaining and recruiting qualified management. Our continuing success depends on the performance of our management team. We cannot guarantee the continued employment of any of our key executives and operational officers who may choose to leave our company for any number of reasons, such as other business opportunities, differing views on our strategic direction or other reasons. We rely on the experience, efforts and abilities of these individuals, each of whom would be difficult to replace. We intend to enter into employment agreements with our key executives prior to the completion of this offering, however, the employment agreements will not guarantee their continued service to us.

Our failure to adequately collect for extra or change order work or recover on claims brought by us against customers or other project participants for additional contract costs could have a negative impact on our liquidity and future operations.

In certain circumstances, we seek to collect or assert claims against customers, engineers, consultants, subcontractors or others involved in a project for additional costs exceeding the contract price or for amounts not included in the original contract price. These situations may occur due to changes in the initial project scope. Our contracts often require us to perform extra or change order work as directed by the customer even if the customer has not agreed in advance on the scope or price of the extra work to be performed. This process may result in disputes over whether the work performed is beyond the scope of the work included in the original project plans and specifications or, if the customer agrees that the work performed qualifies as extra work, the price that the customer is willing to pay for the extra work. These situations also may occur due to other matters, such as delays, which may result in additional costs. Our attempts to collect for additional costs generally are subject to protracted negotiations. Often, these claims can be the subject of lengthy arbitration or litigation proceedings, and it is difficult to accurately predict when and the terms upon which these claims will be fully resolved. These matters ultimately may not be settled to our satisfaction. When these types of events occur, we use working capital in projects to promptly and fully cover cost overruns pending the resolution of the relevant claims. This period of time may be lengthy for project changes, even when the customer agrees to pay for the extra work, as a result of the customer's approval process. A failure to recover in these types of situations promptly and fully could have a negative impact on our liquidity and results of operations. In addition, while customers and subcontractors may be obligated to indemnify us against certain liabilities, such third parties may refuse or be unable to pay us.

To the extent that actual recoveries with respect to change orders or amounts subject to contract disputes or claims are less than the estimates used in our financial statements, the amount of any shortfall will reduce our future revenue and profits, and this could have a material adverse effect on our reported working capital and results of operations. In addition, any delay caused by the extra work may adversely impact the timely scheduling of other project work and our ability to meet specified contract milestone dates.

Our operations are subject to hazards that may cause personal injury or property damage. Failure to maintain safe work sites could subject us to liabilities and possible losses, which may not be covered by insurance.

Construction and maintenance sites, plants and quarries are potentially dangerous workplaces subject to the usual hazards associated with providing construction and related services, and our employees and others are often put in close proximity with mechanized equipment, moving vehicles, chemical and manufacturing processes and highly regulated materials. Operating hazards can cause personal injury and loss of life, damage to or destruction of property, plant and equipment and environmental damage.

On many sites, we are responsible for safety and, accordingly, must implement safety procedures. If we fail to implement these procedures or if the procedures we implement are ineffective, we may suffer the loss of or injury to our employees or others, as well as expose ourselves to possible litigation. Despite having invested significant resources in safety programs and being recognized as an industry leader, a serious accident may nonetheless occur on one of our worksites. As a result, our failure to maintain adequate safety standards could result in reduced profitability or the loss of projects or customers and could have a material adverse impact on our business, financial condition, results of operations, and cash flows.

We maintain general liability and excess liability insurance, workers' compensation insurance, auto insurance and other types of insurance all in amounts consistent with our risk of loss and industry practice, but this insurance may not be adequate to cover all losses or liabilities that we may incur in our operations. Insurance liabilities are difficult to assess and quantify due to unknown factors, including the severity of an injury, the determination of our liability in proportion to other parties, the number of incidents not reported and the effectiveness of our safety program. If we were to experience insurance claims or costs above our estimates, we might be required to use working capital to satisfy these claims rather than to maintain or expand our operations.

To the extent that we experience a material increase in the frequency or severity of accidents or workers' compensation and health claims, or unfavorable developments on existing claims, our results of operations and financial condition could be materially and adversely affected.

We could incur material costs and losses as a result of claims that our materials do not meet regulatory requirements or contractual specifications.

We provide our customers with materials designed to comply with building codes or other regulatory requirements, as well as any applicable contractual specifications. If our materials do not satisfy these requirements and specifications, material claims may arise against us, our reputation could be damaged and, if any such claims are for an uninsured, non-indemnified or product-related matter, then resolution of such claim against us could have a material adverse effect on our financial condition, results of operations or liquidity.

We may incur higher costs to lease, acquire and maintain equipment necessary for our operations, and the market value of our owned equipment may decline.

A significant portion of our projects are built with our own construction equipment rather than leased or rented equipment. To the extent that we are unable to buy construction equipment necessary for our needs, either due to a lack of available funding or equipment shortages in the marketplace, we may be forced to rent equipment on a short-term basis, which could increase the costs of performing our contracts.

The equipment that we own or lease requires continuous maintenance, for which we maintain our own repair facilities. If we are unable to continue to maintain the equipment in our fleet, we may be forced to obtain third-party repair services, which could increase our costs. In addition, the market value of our equipment may unexpectedly decline at a faster rate than anticipated.

Force majeure events, such as natural disasters, epidemics, pandemics and terrorists' actions, could negatively impact our business, which may affect our financial condition, results of operations or cash flows.

Force majeure or extraordinary events beyond the control of the contracting parties, such as natural and man-made disasters, epidemics, pandemics and terrorists' actions, could negatively impact the economies in which we operate. We often negotiate contract language where we are allowed certain relief from force majeure events in private customer contracts and review and attempt to mitigate force majeure events in both public and private customer contracts. We remain obligated to perform our services after most extraordinary events subject to relief that may be available pursuant to a force majeure clause. If we are not able to react quickly to force majeure events, our operations may be affected significantly, which would have a negative impact on our business, financial condition, results of operations and cash flows.

We may choose, or be required, to pay our subcontractors even if our customers do not pay, or delay paying us for the related services.

We use subcontractors to perform portions of our services. In some cases, we pay our subcontractors before our customers pay us for the related services. We could experience a material decrease in profitability and liquidity if we choose, or are required, to pay our subcontractors for work performed for customers that fail to pay, or delay paying us, for the related work.

Our subcontractors may fail to satisfy their obligations to us or other parties, or we may be unable to maintain these relationships, either of which may have a material adverse effect on our business, financial condition, results of operations, profitability, cash flows and growth prospects.

We depend on subcontractors to perform work on some of our projects. There is a risk that we may have disputes with subcontractors arising from, among other things, the quality and timeliness of the work they perform,

customer concerns about our subcontractors, or our failure to extend existing work orders or issue new work orders under a subcontracting arrangement. If any of our subcontractors fails to deliver the agreed-upon supplies and/or perform the agreed-upon services on a timely basis, then our ability to fulfill our obligations as a prime contractor may be jeopardized. In addition, the absence of qualified subcontractors with whom we have satisfactory relationships could adversely affect our ability to perform under some of our contracts or the quality of the services we provide. Any of these factors could have a material adverse effect on our results of operations, cash flows and liquidity.

We also rely on suppliers to obtain the necessary materials for certain projects, and on equipment manufacturers and lessors to provide us with the equipment we require to conduct our operations. Although we are not dependent on any single supplier or equipment manufacturer or lessor, any substantial limitation on the availability of required suppliers or equipment could negatively affect our operations. Market and economic conditions could contribute to a lack of available suppliers or equipment. If we cannot acquire sufficient materials or equipment, it could materially and adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

Risks Related to Our Business and Industry

Our business has been affected by numerous economic factors, including inflation, volatile financial markets, supply chain disruptions and shortages of materials and labor.

Economic conditions, including inflation, supply chain disruptions and labor and materials shortages, have negatively impacted us, and may continue to do so in the future. Following the onset of the COVID-19 pandemic and with the ongoing conflict between Ukraine and Russia in Europe, there has been a high degree of volatility in commodity and energy markets that affects our customers' businesses. In addition, inflationary factors, such as increases in the labor costs, material costs, and overhead costs, may also adversely affect our financial condition and results of operations. Inflation in the United States has reached multi-decade highs and has been increasing since 2021. In some cases, we have had to bid more competitively than before to win work, which has compressed margins given the higher inflation. Additionally, in March 2023, the FDIC took control and was appointed receiver of Silicon Valley Bank and New York Signature Bank. While we do not have any direct exposure to these banks, if other banks and financial institutions enter receivership or become insolvent in the future in response to financial conditions affecting the banking system and financial markets, our operations may be negatively impacted, including any inability on our part, or on our customers' parts, to access cash, cash equivalents or investments. Inflation, increases in interest rates and energy costs, bank failures, and other economic factors may have the effect of further increasing economic uncertainty and heightening the risks caused by volatility in financial markets, which may result in economic downturn or recession.

Although the water infrastructure market is relatively less susceptible to fluctuations in the market, economic downturns or reductions in government funding of infrastructure projects could reduce our revenue and profits and have a material adverse effect on our results of operations.

Our business is highly dependent on the amount and timing of infrastructure work funded by various governmental entities, which, in turn, depends on the overall condition of the economy, the need for new or replacement infrastructure, the priorities placed on various projects funded by governmental entities and federal, state or local government spending levels. Spending on infrastructure could decline for numerous reasons, including decreased revenue received by state and local governments for spending on such projects, including federal funding. The most recent recession caused a nationwide decline in home sales and an increase in foreclosures, which correspondingly resulted in decreases in property taxes and some other local taxes, which are among the sources of funding for water and other critical infrastructure construction. State spending on infrastructure can be adversely affected by decreases or delays in, or uncertainties regarding, federal funding, which could adversely affect us.

See "*Business — Our Industry*" beginning on page 85 for a more detailed discussion of our markets and their funding sources.

We generate a significant portion of our revenue in California and adverse changes to the economy and business environment in the state has had an adverse effect on, and could continue to adversely affect, our operations, which could lead to lower revenue and reduced profitability.

Because of our geographic concentration in California, we are susceptible to fluctuations in our business caused by adverse economic or other conditions in the state, including natural or other disasters. A stagnant or depressed economy in California has in the past adversely affected, and could continue to adversely effect, our business and results of operations as well as the availability of state and local government funding.

As a result of the current importance of our California operations and anticipated continued growth from these operations, our revenue over the next several years is expected to be largely dependent on economic and regulatory conditions in California. If California experiences an economic downturn, or if the regulatory environment changes in a way that adversely affects our ability to do business or limits our competitive advantages, our profitability and growth prospects may be materially adversely affected. Similarly, due to our geographic concentration in California, a natural disaster or major event that disrupts these markets or the related workforce could have an immediate and material adverse impact on our operations and profitability.

We work in a highly competitive marketplace.

In the past, a majority of the contracts on which we bid were awarded through a competitive bid process, with awards generally being made to the lowest bidder, but sometimes recognizing other factors, such as shorter contract schedules or prior experience with the customer. For our design-build and other alternative methods of delivering projects, reputation, marketing efforts, quality of design and minimizing public inconvenience are also significant factors considered in awarding contracts, in addition to cost. Within our markets, we compete with many international, national, regional and local construction firms. Some of these competitors have achieved greater market penetration than we have in the markets in which we compete, and some may have greater financial and other resources than we do. In addition, there are a number of international and national companies in our industry that are larger than we are and that, if they so desire, could establish a presence in our markets and compete with us for contracts.

The cancellation of significant contracts or our disqualification from bidding for new contracts could reduce our revenue and profits and have a material adverse effect on our results of operations.

Contracts that we enter into with governmental entities can usually be canceled at any time by them with payment only for the work already completed. In addition, we could be prohibited from bidding on certain governmental contracts if we fail to maintain qualifications required by those entities. A cancellation of an unfinished contract or our debarment from the bidding process could cause our equipment and work crews to be idled for a significant period of time until other comparable work becomes available, which could have a material adverse effect on our business and results of operations.

An inability to obtain bonding could limit the aggregate dollar amount of contracts that we are able to pursue.

As is customary in the construction business, we are required to provide surety bonds to our customers to secure our performance under construction contracts. Our ability to obtain surety bonds primarily depends upon our capitalization, working capital, past performance, management expertise and reputation, as well as certain external factors, including the overall capacity of the surety market. Surety companies consider such factors in relationship to the amount of our backlog and their underwriting standards, which may change from time to time. Events that adversely affect the insurance and bonding markets generally may result in bonding becoming more difficult to obtain in the future, or being available only at a significantly greater cost. If we could no longer obtain adequate bonding or if the cost of bonding materially increased, it would limit the amount that we can bid on new contracts, limit the competitiveness of our bids, and could have a material adverse effect on our future revenue and business prospects.

For projects that existed prior to consummation of the AECOM Sale Transactions ("legacy projects"), our ability to obtain bonding may also be impacted by AECOM, who is the credit support provider for the surety bonds in place for all our legacy projects. See "*— If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted*."

We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business.

We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business. The Purchase Agreement entered into in connection with the AECOM Sale Transactions provided for, among other things, the sharing with AECOM of a portion of our ultimate recoveries in respect of claims related to our work on certain legacy projects. With respect to one of these legacy project claims, we have obtained recovery, and AECOM has asserted that it is entitled to 80% of such amounts. The total amount AECOM is seeking to recover (and therefore the maximum amount we believe we could be liable for) is $40 million. We are disputing AECOM's claim to such proceeds on the grounds that it fails to take into account the millions of dollars in losses that we had to fund following the closing of the AECOM Sale Transactions in respect of this project, the absence of which would have impaired our ability to obtain any recovery on such claim. We have also asserted counterclaims on behalf of SCC Group, LLC ("SCC Group") alleging fraud by AECOM due to, among other things, material misrepresentations and omissions to SCC Group regarding the total value of the claim, the status of the project, and the amount of losses that would need to be funded in order to recover on account of such claim. These disputes remain ongoing and, if the parties cannot reach a resolution, it may result in a trial to determine whether and to what extent any portion of our recovery on the subject claim must be remitted to AECOM. Currently, the case is not expected to be adjudicated until 2025. While the ultimate outcomes of these disputes are uncertain, we do not believe that it will result in a material liability owed to AECOM. However, the outcomes of these disputes remain highly uncertain, and there can be no assurance that the court will agree with our position, or that we will not be liable for payment to Seller of the full amount asserted. For additional information regarding the AECOM Sale Transactions, see "*Management's Discussion and Analysis of Financial Condition and Results of Operations — AECOM Sale Transactions*."

We may be required to make additional payments to AECOM pursuant to contractual arrangements.

We may be required to make additional payments to our prior owner, AECOM, which could adversely impact our business. Pursuant to the Purchase Agreement entered into in connection with the AECOM Sale Transactions, we are required to make payments to the Seller Entities under certain circumstances. Potential payments to the Seller Entities set forth in the Purchase Agreement include potential payments for retained claim reimbursements from legacy projects, the payment of a portion of actual income tax benefits realized (i.e., in cash or through an actual reduction in liability for tax) as a result of AECOM's election under Treasury Regulations Section 1.1502-36(d)(6) and a one-time additional cash payment if either of the Earnout Thresholds are achieved. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations — AECOM Sale Transactions*."

In addition to the disputes regarding claim sharing described in "*— We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business*," for which we could be required to make additional payments to AECOM, we are also pursuing claims relating to our work on another legacy project that was ongoing at closing of the AECOM Sale Transactions. To the extent we recover any amounts in respect of this claim, AECOM may be entitled to a percentage of the proceeds we receive, subject to a specified cap which takes into account, among other things, the amount of additional losses we are required to fund in order to realize maximum recovery in respect of this claim. As such payments are based on the outcome of future events, the amount of additional payments owed to AECOM (if any) is uncertain. If we are required to make such additional payments to AECOM under the Purchase Agreement, such payments could limit our cash flows or impair our ability to conduct business and pursue business strategies, which could have a material adverse effect on our results of operations, cash flows, or financial condition. Our ability, together with our subsidiaries, to make these additional payments may be affected by events beyond our and their control. Failure to comply with the

requirement for additional payments could result in an event of default under the Purchase Agreement, which, if not cured or waived could trigger cross-acceleration or cross-default provisions in other agreements.

With respect to the retained claim reimbursement described in the immediately preceding paragraph, the maximum exposure we could have to AECOM is unknown as it is dependent on a number of factors (including total losses funded and total claim recoveries), which will not be able to be determined until completion of the project which is ongoing. Based on our current loss position on this project, we do not expect to owe any money on this claim. To the extent we do owe money to AECOM on account of this claim, it will be satisfied from our ultimate realized recoveries from this project.

In addition to the above, in connection with the settlement of a dispute regarding the amount of the closing net working capital adjustment under the Purchase Agreement, we agreed to pay AECOM up to 10% of the amounts recoverable on account of a claim related a legacy project, up to maximum of $9.5 million. Accordingly, we maintain the full remaining amount, or $9.1 million, included in contingent consideration as of June 30, 2023. However, the amount ultimately payable to AECOM will depend on the amount actually recovered by us on account of the claim, which may be less than the amount accrued as of June 30, 2023. There is no guarantee we will be successful in recovering any amounts under the claim, in which case no amounts would be payable to AECOM relating to this matter.

None of the proceeds from the offering are expected to be used to make any payments that may be determined to be owed to AECOM.

If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted.

AECOM has provided corporate guarantees and other contractual obligations for our benefit. Specifically, AECOM has provided an irrevocable, limited and conditional guaranty to us in respect of receivables and claims relating to one project. If the final amounts collected by us in respect of this project (other than as a result of a voluntary settlement for which we do not obtain AECOM approval) is less than the applicable guaranteed amount, AECOM is contractually obligated to pay us the amount by which the specific guaranty amount for the project exceeds the total amounts collected by us in respect of the project. If we are required to seek payment from AECOM, and it does not fulfill its contractual obligation, our business could be materially and adversely impacted.

In addition, as our prior owner, AECOM is the credit support provider for the surety bonds in place for all our bonded projects that were ongoing as of the closing of the AECOM Sale Transactions. In the event AECOM were to experience financial distress and/or the bonding companies otherwise determined that the creditworthiness of AECOM was not sufficient, the underlying sureties could require that we provide additional credit support in the form of guarantees, letters of credit, collateral, or otherwise which could materially and adversely impact our business.

Similarly, if the applicable agreements relating to any of the foregoing AECOM-bonded projects require that the amount of the bond with respect to such project be increased, we will need to request that AECOM provide such an increase. In the event AECOM refuses to cooperate, the lack of required bonding could result in a default by us under the underlying project agreement as well as a right of the counterparty to terminate the underlying project agreement, any of which could materially and adversely impact our business.

Timing of the award and performance of new contracts could have an adverse effect on our results of operations and cash flows.

Historically, a substantial portion of our revenue and earnings is generated from large-scale project awards. The timing of project awards is unpredictable and outside of our control. Awards, including expansions of existing projects, often involve complex and lengthy negotiations and competitive bidding processes. These processes can be impacted by a wide variety of factors including a customer’s decision to not proceed with the development of a project, governmental approvals, financing contingencies, commodity prices, environmental conditions and overall market and economic

conditions. We may not win contracts that we have bid upon due to price, a customer's perception of our ability to perform and/or perceived technology advantages held by others. Many of our competitors may be more inclined to take greater or unusual risks or terms and conditions in a contract that we might not deem acceptable. Because a significant portion of our revenue is generated from large projects, our results of operations can fluctuate quarterly and annually depending on whether and when large project awards occur and the commencement and progress of work under large contracts already awarded. As a result, we are subject to the risk of losing new awards to competitors or the risk that revenue may not be derived from awarded projects as quickly as anticipated.

The uncertainty of the timing of contract awards may also present difficulties in matching the size of our equipment fleet and work crews with contract needs. In some cases, we may maintain and bear the cost of more equipment and ready work crews than are currently required, in anticipation of future needs for existing contracts or expected future contracts. If a contract is delayed or an expected contract award is not received, we would incur costs that could have a material adverse effect on our anticipated profit.

In addition, the timing of the revenue, earnings and cash flows from our contracts can be delayed by a number of factors, including adverse weather conditions, such as prolonged or intense periods of rain, snow, storms or flooding, delays in receiving material and equipment from suppliers and services from subcontractors, labor shortages and changes in the scope of work to be performed. Such delays, if they occur, could have adverse effects on our results of operations for current and future periods until the affected contracts are completed.

Our participation in construction joint ventures exposes us to liability and/or harm to our reputation for failures of our partners.

As part of our business, we are a party to joint ventures, pursuant to which we typically jointly bid on and execute particular projects with other companies in the construction industry. Success on these joint projects depends upon managing the risks discussed in the various risks described in these "*Risk Factors*" and on whether our joint venture partners satisfy their contractual obligations.

We and our joint venture partners are generally jointly and severally liable for all liabilities and obligations of our joint ventures. If a joint venture partner fails to perform or is financially unable to bear its portion of required capital contributions or other obligations, including liabilities stemming from lawsuits, we could be required to make additional investments, provide additional services or pay more than our proportionate share of a liability to make up for our partner's shortfall. Furthermore, if we are unable to adequately address our partner's performance issues, the customer may terminate the project, which could result in legal liability to us, harm to our reputation and reduction to our profit on a project.

In connection with acquisitions, certain counterparties to joint ventures, which may include our historical direct competitors, may not desire to continue such arrangements with us and may terminate the joint ventures or not enter into new arrangements. Any termination of a joint venture could cause us to reduce our backlog and could materially and adversely affect our business, results of operations and financial condition.

Our dependence on a limited number of customers could adversely affect our business and results of operations.

Due to the size and nature of our construction contracts, one or a few customers have in the past and may in the future represent a substantial portion of our consolidated revenue and gross margin in any one year or over a period of several consecutive years. Similarly, our backlog frequently reflects multiple contracts for certain customers, therefore, one customer may comprise a significant percentage of backlog at a certain point in time. The loss of business from any one of such customers could have a material adverse effect on our business or results of operations. Also, a default or delay in payment on a significant scale by a customer could materially adversely affect our business, results of operations, cash flows and financial condition.

Strikes or work stoppages could have a negative impact on our operations and results.

We are party to collective bargaining agreements covering a majority of our craft workforce. Although all such collective bargaining agreements prohibit strikes and work stoppages, we cannot be certain that strikes or work stoppages will not occur despite the terms of these agreements. Strikes or work stoppages could adversely affect our relationships with our customers and cause us to lose business. Additionally, as current agreements expire, the labor unions may not be able to negotiate extensions or replacements on terms favorable to their members, or at all, or avoid strikes, lockouts or other labor actions from time to time that may affect their members.

Therefore, it cannot be assured that new agreements will be reached with employee labor unions as existing contracts expire, or on desirable terms. Any action against us relating to the union workforce we employ could have a material adverse effect on our business, financial condition, results of operations, profitability, cash flows and growth prospects. Overall, although strikes, work stoppages and other labor disputes have not had a significant impact on our operations or results in the past, such labor actions, or an inability to renew the collective bargaining agreements, could have a significant impact on our operations and results if they occur in the future.

Our dependence on subcontractors and suppliers of materials could increase our costs and impair our ability to complete contracts on a timely basis or at all, which would adversely affect our profits and cash flows.

We rely on third-party subcontractors to perform some of the work on many of our contracts. We also rely on third-party suppliers to provide most of the materials (including aggregates, cement, asphalt, concrete, steel, pipe, oil and fuel) for our contracts.

We generally do not bid on contracts unless we have commitments from suppliers for the materials and subcontractors for certain of the services required to complete the contract and at prices that we have included in our bid (except in some instances for trucking arrangements). Thus, to the extent that we cannot obtain commitments from our suppliers for materials and subcontractors for certain of the services, our ability to bid for contracts may be impaired. In addition, if a supplier or subcontractor is unable to deliver materials or services according to the negotiated terms of a supply/services agreement for any reason, including the deterioration of its financial condition, we may suffer delays and be required to purchase the materials or services from another source at a higher price or incur other unanticipated costs. This may reduce the profit to be realized, or result in a loss, on a contract.

Diesel fuel and other petroleum-based products are utilized to operate the plants and equipment on which we rely to perform our construction contracts. Future increases in the costs of fuel and other petroleum-based products used in our business, particularly if a bid has been submitted for a contract and the costs of such products have been estimated at amounts less than the actual costs thereof, could result in a lower profit, or a loss, on a contract.

An inability to secure sufficient aggregates could have a negative impact on our future results of operations.

We require aggregates (raw materials that are produced from natural sources and extracted from pits and quarries such as gravel, crushed stone and sand) in connection with our business. Strict governmental regulations and the limited number of properties containing useful aggregates have made it increasingly challenging and costly to obtain sufficient aggregates to support our business, both with respect to internal use and third-party sales. If we are unable to obtain aggregates to support our business, then our financial condition, results of operations and cash flows may be adversely affected.

Unavailability of insurance coverage could have a negative effect on our operations and results.

We maintain insurance coverage as part of our overall risk management strategy and pursuant to requirements to maintain specific coverage that are contained in our financing agreements and in most of our construction contracts. Although we have been able to obtain reasonably priced insurance coverage to meet our requirements in the past, there is no assurance that we will be able to do so in the future. For example, catastrophic events can

result in decreased coverage limits, more limited coverage and increased premium costs or deductibles. Our inability to obtain adequate insurance coverage could subject us to increased out-of-pocket expenses in the event of a claim and could have an adverse impact on our ability to procure new work, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Acquisition activity presents certain risks to our business, operations and financial condition, and we may not realize the financial and strategic goals contemplated at the time of a transaction.

We expect that acquisitions will be an important part of our long-term growth strategy. Successful execution following the closing of an acquisition is essential to achieving the anticipated benefits of the transaction. We expect to make acquisitions to expand into new markets and our acquisition strategy depends on our ability to complete and integrate the acquisitions. Mergers and acquisitions are inherently risky, and any mergers and acquisitions that we complete may not be successful. The process of integrating an acquired company's business into our operations is challenging and may result in expected or unexpected operating or compliance challenges, which may require significant expenditures and a significant amount of our management's attention that would otherwise be focused on the ongoing operation of our business. The potential difficulties or risks of integrating an acquired company's business include, among others:

- the effect of the acquisition on our financial and strategic positions and our reputation,
- risk that we fail to successfully implement our business plan for the combined business,
- risk that we are unable to obtain the anticipated benefits of the acquisition, including synergies or economies of scale,
- challenges in reconciling business practices or in integrating activities, logistics or information technology and other systems,
- challenges in reconciling accounting issues, especially if an acquired company utilizes accounting principles different from those we use,
- retention risk with respect to key customers, suppliers and employees and challenges in retaining, assimilating and training new employees,
- potential failure of the due diligence processes to identify significant problems, liabilities or other shortcomings or challenges of an acquired company, which could result in unexpected litigation, regulatory exposure, financial contingencies and known and unknown liabilities, and
- challenges in complying with newly applicable laws and regulations, including obtaining or retaining required approvals, licenses and permits.

Our acquisitions may also result in the expenditure of available cash and amortization of expenses any of which could have a material adverse effect on our results of operations or financial condition. Investments in immature businesses with unproven track records have an especially high degree of risk, with the possibility that we may lose the value of our entire investments or incur additional unexpected liabilities. Large or costly acquisitions or investments may also diminish our capital resources and liquidity or limit our ability to engage in additional transactions for a period of time. All of the foregoing risks may be magnified as the cost, size or complexity of an acquisition or acquired company increases, or where the acquired company's market or business are materially different from ours, or where more than one integration is occurring simultaneously or within a concentrated period of time.

In addition, in the future we may require significant financing to complete an acquisition or investment, whether through bank loans, raising of debt or otherwise. We cannot assure you that such financing options will be available to us on reasonable terms, or at all. If we are not able to obtain such necessary financing, it could have an impact on our ability to consummate a substantial acquisition or investment and execute our growth strategy. Alternatively, we may issue a significant number of shares as consideration for an acquisition, which would have a dilutive effect on our existing stockholders.

Amounts included in our backlog may not result in actual revenue or translate into profits. Our backlog is subject to cancellation and unexpected adjustments and therefore is an uncertain indicator of future results of operations.

Our backlog consists of the remaining unearned revenue on awarded contracts, including our pro-rata share of work to be performed by unconsolidated joint ventures, less the joint venture partners' pro-rata share of work to be performed by consolidated joint ventures. We include in backlog estimates of the amount of consideration to be received, including bonuses, awards, incentive fees, fixed-price awards, claims, unpriced change orders, penalties, minimum customer commitments on cost plus arrangements, liquidated damages and certain time and material arrangements in which the estimated value is firm or can be estimated with a reasonable amount of certainty in both timing and amounts. As construction on our contracts progresses, we increase or decrease backlog to take account of changes in estimated quantities under fixed-price contracts, as well as to reflect changed conditions, change orders and other variations from initially anticipated contract revenue and costs, including completion penalties and bonuses. Substantially all of the contracts in our backlog may be canceled or modified at the election of the customer. As of June 30, 2023, our backlog was more than $1 billion. Most of our contracts are cancelable on short or no advance notice. Reductions in backlog due to cancellation by a customer, or for other reasons, could significantly reduce the revenue that we actually receive from contracts in backlog. In the event of a project cancellation, we may be reimbursed for certain costs, but we typically have no contractual right to the total revenue reflected in our backlog. Backlog amounts are determined based on target price estimates that incorporate historical trends, anticipated seasonal impacts, experience from similar projects and from communications with our customers. These estimates may prove inaccurate, which could cause estimated revenue to be realized in periods later than originally expected, or not at all. In the past, we have occasionally experienced postponements, cancellations and reductions in expected future work due to changes in our customers' spending plans, as well as on construction projects, due to market volatility, regulatory and other factors. There can be no assurance as to our customers' requirements or the accuracy of our estimates. As a result, our backlog as of any particular date is an uncertain indicator of future revenue and earnings. In addition, contracts included in our backlog may not be profitable. If our backlog fails to materialize, our business, financial condition, results of operations, profitability, cash flows and growth prospects could be materially and adversely affected.

The method of recognizing revenue over time using an input method based on costs incurred relative to total expected costs involves significant estimates which may result in material adjustments, which could result in a charge against our earnings.

We recognize contract revenue over time based on costs incurred. Under this method, estimated contract revenue are recognized by applying the percentage of completion of the project for the period based on the ratio of costs incurred to the total estimated costs at completion for the contract. If estimates of costs to complete fixed-price contracts indicate a loss, a provision is made through a contract write-down for the total loss anticipated. Total contract revenue and cost estimates are reviewed and revised at a minimum on a quarterly basis as the work progresses and as change orders are approved. Adjustments based upon the percentage of completion are reflected in contract revenue in the period when these estimates are revised. To the extent that these adjustments result in an increase or a reduction in or an elimination of previously reported contract profit, we recognize a credit or a charge against current earnings, as applicable. Such credits or charges could be material and could cause our results to fluctuate materially from period to period.

Accounting for our contract related revenue and costs, as well as other expenses, require management to make a variety of significant estimates and assumptions. Although we believe we have the experience and processes to enable us to formulate appropriate assumptions and produce reasonably dependable estimates, these assumptions and estimates are subject to the risks inherent in estimates, including unanticipated delays or technical complications. Variances in actual results from related estimates on a large project, or on several smaller projects, could be material. The full amount of an estimated loss on a contract is recognized in the period that our estimates indicate such a loss. Such adjustments and accrued losses could result in reduced profitability from a reversal of previously recorded revenue and profits, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We may be required to make significant future contributions to multiemployer pension plans in which we participate.

We participate in various multiemployer pension plans in the United States under union agreements that generally provide defined benefits to employees covered by collective bargaining agreements. Absent an applicable exemption, a contributor to a U.S. multiemployer plan is liable, upon termination or withdrawal from a plan, for its proportionate share of the plan's underfunded vested liability. Funding requirements for benefit obligations of these multiemployer pension plans are subject to certain regulatory requirements, and we may be required to make cash contributions that may be material to one or more of these plans to satisfy certain underfunded benefit obligations. As of December 30, 2022 and December 31, 2021, we recorded no liability for underfunding of multiemployer pension plans in which we participate, as no events triggering our obligation to make contributions for such underfunding were deemed probable to occur.

Debt agreements governing our current indebtedness contain, and debt agreements governing our future indebtedness may contain, certain covenants and other restrictions that may limit our ability to operate our business. Failure to comply with such covenants and other restrictions, or our inability to service any current indebtedness or future indebtedness, could adversely impact our business.

In March 2023, we entered into a Revolving Credit Facility (the "Revolving Credit Facility") and in September 2023 we entered into a Loan and Security Agreement (the "Loan Agreement"). The terms of our existing debt agreements (including our Revolving Credit Facility, which we intend to repay with a portion of the proceeds from this offering) contain, and any debt agreements governing our future indebtedness may contain, a number of restrictive covenants and other provisions that impose significant operating and financial restrictions on us, including restrictions on our ability, and the ability of our subsidiaries, to take actions that may be in our best interests, including, among others, disposing of assets, entering into change of control transactions, mergers or acquisitions, incurring additional indebtedness, granting liens on our assets, declaring and paying dividends, and agreeing to do any of the foregoing. Our ability to meet financial covenants can be affected by events beyond our control, and we may not be able to continue to meet such covenants. A breach of any of these covenants or other restrictions or the occurrence of other events (including a material adverse effect or the inability to generate cash to service our obligations under our debt agreements) specified in our debt agreements could result in an event of default. Upon the occurrence of an event of default, our lenders could elect to declare all amounts outstanding, if any, to be immediately due and payable and terminate all commitments to extend further credit under our debt agreements. If we were unable to repay those amounts, we could be forced to curtail our operations, reorganize our capital structure (including through bankruptcy proceedings) or liquidate some or all of our assets in a manner that could adversely impact our business and cause holders of our securities to experience a partial or total loss of their investment in us.

We may need to raise additional capital in the future for working capital, capital expenditures and/or acquisitions, and we may not be able to do so on favorable terms or at all, which could impair our ability to operate our business or achieve our growth objectives.

Our ongoing ability to generate cash is important for funding our continuing operations, making acquisitions and servicing our indebtedness. To the extent that existing cash balances and cash flows from operations, together with borrowing capacity under our existing debt agreements, are insufficient to make investments or acquisitions or provide needed working capital, we may require additional financing from other sources. Our ability to obtain such additional financing in the future will depend in part on prevailing market conditions, as well as conditions in our business and our results of operations. Furthermore, if global economic, political or other market conditions adversely affect the financial institutions that provide credit to us, it is possible that our ability to draw upon our existing debt and credit facility may be impacted. If adequate funds are not available, or are not available on acceptable terms, we may not be able to make certain investments, take advantage of acquisitions or other opportunities, or respond to competitive challenges, each of which could have a material adverse impact on our business, financial condition, results of operations and cash flows.

We must manage our liquidity carefully to fund our working capital.

The need for working capital for our business varies due to fluctuations in the following amounts, among other factors:

- receivables;
- contract retentions;
- contract assets;
- contract liabilities;
- the size and status of contract mobilization payments and progress billings; and
- the amounts owed to suppliers and subcontractors.

We may have limited cash on hand and the timing of payments on our contract receivables is difficult to predict. If the timing of payments on our receivables is delayed or the amount of such payments is less than expected, our liquidity and ability to fund working capital could be materially and adversely affected.

Because our industry is capital-intensive and we have significant fixed and semi-fixed costs, our profitability is sensitive to changes in volume.

The property, plant and equipment needed to produce our products and provide our services can be very expensive. We must spend a substantial amount of capital to purchase and maintain such assets. Although we believe our current cash balance, along with our projected internal cash flows and available financing sources, will provide sufficient cash to support our currently anticipated operating and capital needs, if we are unable to generate sufficient cash to purchase and maintain the property, plant and equipment necessary to operate our business, or if the timing of payments on our receivables is delayed, we may be required to reduce or delay planned capital expenditures or to incur additional indebtedness. In addition, due to the level of fixed and semi- fixed costs associated with our business, volume decreases could have a material adverse effect on our financial condition, results of operations or liquidity.

We rely on information technology systems to conduct our business, and disruption, failure or security breaches of these systems could adversely affect our business and results of operations.

We rely on information technology (“IT”) systems in order to achieve our business objectives. We also rely upon industry accepted security measures and technology to securely maintain confidential information maintained on our IT systems. However, our portfolio of hardware and software products, solutions and services and our enterprise IT systems may be vulnerable to damage or disruption caused by circumstances beyond our control such as catastrophic events, power outages, natural disasters, computer system or network failures, computer viruses, cyber-attacks or other malicious software programs. The failure or disruption of our IT systems to perform as anticipated for any reason could disrupt our business and result in decreased performance, significant remediation costs, transaction errors, loss of data, processing inefficiencies, downtime, litigation and the loss of suppliers or customers. A significant disruption or failure could have a material adverse effect on our business operations, financial performance and financial condition.

We have implemented processes for systems under our control intended to mitigate risks, however, we can provide no guarantee that those risk mitigation measures will be effective. While we have historically been successful in defending against cybersecurity attacks and breaches, given the frequency of cybersecurity attacks and resulting breaches reported by other businesses and governments, it is likely we will experience one or more breaches of some extent in the future. We have incurred and may in the future incur significant costs in order to implement, maintain and/or update security systems we feel are necessary to protect our information systems, or we may miscalculate the level of investment necessary to protect our systems adequately. Since the techniques

used to obtain unauthorized access or to sabotage systems change frequently and are often not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures.

Our business also requires us to share confidential information with suppliers and other third parties. Although we take steps to secure confidential information that is provided to third parties, such measures may not always be effective and data breaches, losses or other unauthorized access to or releases of confidential information may occur and could materially adversely affect our reputation, financial condition and results of operations and could result in liability or penalties under data privacy laws.

To the extent that any system failure, accident or security breach results in material disruptions or interruptions to our operations or the theft, loss or disclosure of, or damage to our data or confidential information, including our intellectual property, our reputation, business, results of operations and/or financial condition could be materially adversely affected.

Cybersecurity attacks on or breaches of our information technology environment could result in business interruptions, remediation costs and/or legal claims.

To protect confidential customer, vendor, financial and employee information, we employ information security measures that secure our information systems from cybersecurity attacks or breaches. Even with these measures, we may be subject to unauthorized access of digital data with the intent to misappropriate information, corrupt data or cause operational disruptions. If a failure of our safeguarding measures were to occur, or if software or third-party vendors that support our information technology environment are compromised, it could have a negative impact to our business and result in business interruptions, remediation costs and/or legal claims, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our business is seasonal and is affected by adverse weather conditions and the spending patterns of our customers, exposing us to variable quarterly results.

Some of our customers reduce their expenditures and work order requests towards the end of the fiscal year. Adverse weather conditions, particularly during the fall and winter seasons, can also affect our ability to perform outdoor services in certain regions. As a result, we generally experience reduced revenue in the first quarter of each fiscal year. Natural catastrophes such as hurricanes or other severe weather could also have a negative effect on the economy overall and on our ability to perform outdoor services in affected regions or utilize equipment and crews stationed in those regions, which could negatively affect our results of operations, cash flows and liquidity.

Pandemics and public health emergencies could materially disrupt our business and negatively impact our results of operations, cash flows and financial condition.

Pandemics and public health emergencies, such as the COVID-19 pandemic, may impact our results of operations, cash flows and financial condition in ways that are uncertain, unpredictable and outside of our control. The extent of the impact of such an event depends on the severity and duration of the public health emergency or pandemic, as well as the nature and duration of federal, state and local laws, orders, rules, emergency temporary standards, regulations and mandates, together with protocols and contractual requirements implemented by our customers, that may be enacted or newly enforced in response. Additionally, our ability to perform our work during such an event may be dependent on the governmental or societal responses to these circumstances in the markets in which we operate. A pandemic or public health emergency is likely to heighten and exacerbate the risks described herein. We experienced many of these risks in connection with the COVID-19 pandemic. Any resurgence of infection rates or the spread of new variants or viruses could trigger a return of many of the risks and circumstances we experienced in connection with the COVID-19 pandemic, which could adversely affect our revenue, results of operations, and cash flows.

We have recorded intangible assets that could become impaired and adversely affect our results of operations. Assessing whether impairment has occurred requires us to make significant judgments and assumptions about the future, which are inherently subject to risks and uncertainties, and if actual events turn out to be materially less favorable than the judgments we make and the assumptions we use, we may be required to record impairment charges in the future.

As of December 30, 2022 and December 31, 2021, our intangible assets recorded consisted of trademarks and customer contracts. We assess these assets for impairment annually, or more often if required. Our assessments involve a number of estimates and assumptions that are inherently subjective, require significant judgment and involve highly uncertain matters that are subject to change. The use of different assumptions or estimates could materially affect the determination as to whether or not an impairment has occurred. In addition, if future events are less favorable than what we assumed or estimated in our impairment analysis, we may be required to record an impairment charge, which could have a material adverse impact on our consolidated financial statements.

Both we and our customers use certain commodity products that are subject to significant price fluctuations. These fluctuations may have a material adverse effect on both our and our customers' financial condition, results of operations and cash flows. Fluctuations in commodity prices may also affect our customers' investment decisions and therefore subject us to risks of cancellation, delays in existing work, or changes in the timing and funding of new awards.

We are exposed to various commodity price risks, including, but not limited to, cement, steel, liquid asphalt, lumber, diesel fuel, natural gas and propane arising from transactions that are entered into in the normal course of business. We use petroleum based products, such as fuels, lubricants and liquid asphalt, to power or lubricate our equipment, operate our plants and as a significant ingredient in the asphaltic concrete we manufacture for sale to third parties and use in our asphalt paving construction projects. Although we are partially protected by asphalt or fuel price escalation clauses in some of our contracts, many contracts provide no such protection. We also use steel and other commodities in our construction projects that can be subject to significant price fluctuations. In order to manage or reduce commodity price risk, we monitor the costs of these commodities at the time of bid and price them into our contracts accordingly. Additionally, some of our contracts may include commodity price escalation clauses which partially protect us from increasing prices. Significant price fluctuations could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Commodity prices can also affect our customers in a number of ways. For example, for those customers that produce commodity products such as concrete, steel products, lumber and oil and gas, fluctuations in price can have a direct effect on their profitability and cash flows and, therefore, their willingness to continue to invest or make new capital investments. To the extent commodity prices decline or fluctuate and our customers defer new investments or cancel or delay existing projects, the demand for our services decreases, which may have a material adverse impact on our business, financial condition, results of operations and cash flows.

Rising inflation and/or interest rates could have an adverse effect on our business, financial condition and results of operations.

Economic factors, including inflation and fluctuations in interest rates, could have a negative impact on our business. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Risks Related to Legal and Governmental Regulation

Environmental laws and regulations and any changes to, or liabilities arising under, such laws and regulations could have a material adverse effect on our financial condition, results of operations and liquidity.

Our operations are subject to stringent and complex federal, state and local laws and regulations governing the discharge of materials into the environment or otherwise relating to environmental protection and public health

and safety. These laws and regulations impose numerous obligations applicable to our operations, including requirements to obtain a permit or other approval before conducting regulated activities, restrictions on the types, quantities and concentration of materials that can be released into the environment, limitations on activities on certain lands lying within wilderness, wetlands and other protected areas, and assessments of substantial liabilities for pollution resulting from our operations. For example, a number of governmental bodies have finalized, proposed or are contemplating legislative and regulatory actions to reduce emissions of greenhouse gases, such as monitoring, reporting and emissions control requirements for certain large sources of greenhouse gases and greenhouse gas cap-and-trade programs. Because we emit greenhouse gases through the combustion of fossil fuels as part of our operations, any such laws and regulations applicable to jurisdictions in which we operate could require us to incur costs to reduce greenhouse gas emissions associated with our operations.

We have in the past been, and may in the future be, required to remediate contaminated properties currently or formerly owned or operated by us or third-party facilities that receive waste generated by our operations, regardless of whether such contamination resulted from our own actions or those of others and whether such actions complied with applicable laws at the time they were taken. In connection with certain acquisitions, we could assume, or be required to provide indemnification against, environmental liabilities that could expose us to material losses. Furthermore, the existence of contamination at properties that we own, lease or operate could result in increased operational costs or restrictions on our ability to use those properties as intended, including for mining purposes.

Numerous government authorities, such as the EPA and analogous state agencies, have the power to enforce compliance with these laws and the permits issued under them. Such enforcement actions often involve difficult and costly compliance measures or corrective actions. Certain environmental laws impose strict liability (i.e., no showing of “fault” is required) or joint and several liability for costs required to remediate and restore sites where hazardous substances, hydrocarbons or solid wastes have been stored or released. Failure to comply with these laws and regulations may result in the assessment of sanctions, including administrative, civil or criminal penalties, compensatory damages, the imposition of investigatory or remedial obligations, and the issuance of orders limiting or prohibiting some or all of our operations. In addition, we may experience delays in obtaining, or be unable to obtain, required permits, which may delay or interrupt our operations and limit our growth and revenue.

In certain instances, citizen groups also have the ability to bring legal proceedings against us if we are not in compliance with environmental laws, or to challenge our ability to receive environmental permits that we need to operate. In addition, claims for damages to persons or property, including natural resources, may result from the environmental, health and safety impacts of our operations. Our insurance may not cover all environmental risks and costs or may not provide sufficient coverage if an environmental claim is made against us. Moreover, public interest in the protection of the environment has increased dramatically in recent years. The trend of more expansive and stringent environmental legislation and regulations applied to our industry could continue, resulting in increased costs of doing business and, consequently, affecting profitability.

Our failure to comply with immigration laws could result in significant liabilities, harm our reputation with our customers and disrupt our operations.

Although we take steps to verify the employment eligibility status of all our employees, some of our employees may, without our knowledge, be unauthorized workers. Unauthorized workers are subject to deportation and may subject us to fines or penalties and, if any of our workers are found to be unauthorized, we could experience adverse publicity that could make it more difficult to hire and retain qualified employees. Termination of a significant number of unauthorized employees may disrupt our operations, cause temporary increases in our labor costs as we train new employees and result in additional adverse publicity. We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration laws. If we fail to comply with these laws, our operations may be disrupted, and we may be subject to fines or, in extreme cases, criminal sanctions. In addition, many of our

customer contracts specifically require compliance with immigration laws, and, in some cases, our customers audit compliance with these laws. Further, several of our customers require that we ensure that our subcontractors comply with these laws with respect to the workers that perform services for them. Failure to comply with these laws or to ensure compliance by our subcontractors could damage our reputation and may cause our customers to cancel contracts with us or to not award future business to us. These factors could adversely affect our financial condition, results of operations and cash flows.

Our failure to comply with the regulations of OSHA and state and local agencies that oversee safety compliance could adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

The Occupational Safety and Health Act of 1970, as amended, establishes certain employer responsibilities, including maintenance of a workplace free of recognized hazards likely to cause death or serious injury, compliance with standards promulgated by OSHA and various recordkeeping, disclosure and procedural requirements. Various standards, including standards for notices of hazards and safety in excavation and demolition work, may apply to our operations. We have incurred, and will continue to incur, capital and operating expenditures and other costs in the ordinary course of business in complying with OSHA and other state and local laws and regulations, and could incur penalties and fines in the future, including, in extreme cases, criminal sanctions.

While we have invested, and will continue to invest, substantial resources in occupational health and safety programs, our industry involves a high degree of operational risk, and there can be no assurance that we will avoid significant liability. Although we have taken what we believe to be appropriate precautions, employees may suffer additional injuries in the future. Serious accidents of this nature may subject us to substantial penalties, civil litigation or criminal prosecution. Personal injury claims for damages, including for bodily injury or loss of life, could result in substantial costs and liabilities, which could materially and adversely affect our financial condition, results of operations or cash flows. In addition, if our safety record were to deteriorate, or if we suffered substantial penalties, adverse publicity or criminal prosecution for violation of health and safety regulations, customers could cancel existing contracts and not award future business to us, which could materially adversely affect our business, financial condition, results of operations, profitability, cash flows and growth prospects.

A change in tax laws or regulations of any federal or state jurisdiction in which we operate could increase our tax burden and otherwise adversely affect our business, financial condition, results of operations and cash flows.

We continue to assess the impact of various U.S. federal, state and international legislative proposals that could result in a material increase to our U.S. federal, state and/or international taxes. We cannot predict whether any specific legislation will be enacted or the terms of any such legislation. However, if such proposals were to be enacted, or if modifications were to be made to certain existing regulations, the consequences could have a material adverse impact on us, including increasing our tax burden, increasing our cost of tax compliance or otherwise adversely affecting our business, financial condition, results of operations and cash flows.

General Risk Factors

From time to time, we are involved in litigation proceedings, potential liability claims and contract disputes which may reduce our profits.

We may be subject to a variety of legal proceedings, liability claims or contract disputes. We engage in engineering and construction activities where design, construction or systems failures can result in substantial injury or damage. In addition, the nature of our business results in customers, subcontractors and suppliers occasionally presenting claims against us for recovery of costs they incurred in excess of what they expected to

incur, or for which they believe they are not contractually liable. We have been and may in the future be named as a defendant in legal proceedings where parties may make a claim for damages or other remedies with respect to our projects or other matters. In proceedings when it is determined that we have liability, we may not be covered by insurance or, if covered, the dollar amount of these liabilities may exceed our policy limits. In addition, even where insurance is maintained for such exposure, the policies have deductibles resulting in our assuming exposure for a layer of coverage with respect to any such claims. Any liability not covered by our insurance, in excess of our insurance limits or, if covered by insurance but subject to a high deductible, could result in a significant loss for us, and reduce our cash available for operations. In other legal proceedings, liability claims or contract disputes, we may be covered by indemnification agreements which may at times be difficult to enforce. Even if enforceable, it may be difficult to recover under these agreements if the indemnitor does not have the ability to financially support the indemnity. Litigation and regulatory proceedings are subject to inherent uncertainties, and unfavorable rulings could occur. If we were to receive an unfavorable ruling in a matter or fail to fully or promptly recover on any claims (including customer claims), our business and results of operations could be materially harmed for reasons such as a material adverse impact on our liquidity and financial results. In addition, litigation and other proceedings may take up management's time and attention and take away from the time they are able to devote to other matters.

Although climate change and increasing regulations often drive demand for water infrastructure, climate change, and related legislative and regulatory responses to climate change, may have a long-term impact on our business.

Although we believe that we may benefit from initiatives seeking to address the effects of climate change, and we seek to mitigate our business risks associated with climate change by establishing robust environmental programs and partnering with organizations who are also focused on mitigating their own climate related risks, we recognize that there are inherent climate related risks wherever business is conducted. Access to clean water and reliable energy in the communities where we conduct our business is a priority and is not guaranteed. Any of these locations may be vulnerable to the adverse effects of climate change. For example, California, where we conduct a significant amount of business, has historically experienced, and is projected to continue to experience, climate-related events including drought and water scarcity, warmer temperatures, wildfires and air quality impacts and power shut-offs associated with wildfire prevention. Climate-related events, including the increasing frequency of extreme weather events and their impact on critical infrastructure in the U.S. and elsewhere, have the potential to disrupt our business, our third-party suppliers, and the business of our customers, and may cause us to experience higher attrition, losses and additional costs to maintain or resume operations.

Additionally, in many countries and jurisdictions, including the United States, governmental bodies are enacting new or additional legislation and regulations to reduce or mitigate the potential impacts of climate change. If we, our suppliers, or our customers are required to comply with these laws and regulations, or if we choose to take voluntary steps to reduce or mitigate our impact on climate change, we may experience increased costs for energy, production, transportation, and raw materials, increased capital expenditures, or increased insurance premiums and deductibles, which could adversely impact our operations. Inconsistency of legislation and regulations among jurisdictions may also affect the costs of compliance with such laws and regulations. Any assessment of the potential impact of future climate change legislation, regulations or industry standards is uncertain given the wide scope of potential regulatory change in the United States.

Physical, transition and regulatory risks related to climate change could have a material adverse impact on our business, financial condition and results of operations.

Physical risks related to climate change, such as changing sea levels, temperature fluctuations, severe storms, and energy and technological disruptions, could cause delays and increases in project costs, resulting in variability in our revenue and profitability, as well as potentially adverse impacts to our results of operations and financial condition. In addition, growing public concern about climate change has resulted in the increased focus of local, state, regional, national and international regulatory bodies on greenhouse gas emissions and climate change

issues. Legislation to regulate greenhouse gas emissions has periodically been introduced in the Congress and in the legislatures of various states in which we operate, and there has been a wide-ranging policy debate, both in the United States and internationally, regarding the regulation of greenhouse gas emissions. Such policy changes, including any enactment of increasingly stringent emissions or other environmental regulations, could increase the costs of projects for us and for our customers and, in some cases, delay or even prevent a project from going forward, thereby potentially reducing demand for our services. Consequently, this could have a material adverse effect on our business, financial condition and results of operations.

Deterioration of the United States economy could have a material adverse effect on our business, financial condition and results of operations.

To the extent that Congress is unable to lower United States debt substantially, a decrease in federal spending could result, which could negatively impact the ability of government agencies to fund existing or new infrastructure projects. In addition, such actions could have a material adverse effect on the financial markets and economic conditions in the United States as well as throughout the world, which may limit our ability and the ability of our customers to obtain financing and/or could impair our ability to execute our acquisition strategy. Deterioration in general economic activity and infrastructure spending or Congress' deficit reduction measures could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.

In addition to the increased cost we have incurred, and expect to continue to incur as an independent company following our separation from AECOM in January 2021, as a public company whose shares are listed on Nasdaq, we will incur additional accounting, legal and other expenses that we did not incur as a private company, including costs associated with our public company reporting requirements under the Exchange Act. We also anticipate that we will incur costs associated with corporate governance requirements, including requirements under Section 404 and other provisions of the Sarbanes-Oxley Act, as well as rules implemented by the SEC, the listing requirements of Nasdaq and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, introduce new costs, such as investor relations, stock exchange listing fees, stockholder reporting and directors and officers liability insurance, and will make some activities more time-consuming and costly. Furthermore, compliance with these rules will require a substantial investment of management's time, and this investment may result in a diversion of management's time and attention from revenue-generating activities. We are currently evaluating and monitoring developments with respect to these rules, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs, which are likely to be material.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, creating additional legal and financial compliance costs and requiring additional investment of management's time. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and additional costs necessitated by ongoing revisions to disclosure and governance practices. In addition, if our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

Risks Related to this Offering, the Securities Markets and Ownership of Our Common Stock

Our controlling stockholder will be able to exert substantial influence.

Following this offering, our controlling stockholder will beneficially own approximately % of our outstanding shares of common stock (% if the underwriters exercise their over-allotment option in full). As

a result, they could exert substantial influence over the outcome of any corporate matter submitted to our stockholders for approval, including the election of directors and any transaction that might cause a change in control, such as a merger or acquisition. Any stockholder in favor of a matter that is opposed by our controlling stockholder and members of our management would have to obtain a significant number of votes to overrule their votes. See "*Principal Stockholders*."

Because we will be a "controlled company" under the listing standards of Nasdaq and the rules of the SEC, our stockholders may not have certain corporate governance protections that are available to stockholders of companies that are not controlled companies.

Following the completion of this offering, our controlling stockholder will continue to control a majority of the voting power of our outstanding common stock. As a result, although we do not expect to rely on the "controlled company" exemption, we will be a "controlled company" under the listing standards of Nasdaq and SEC rules, and we will qualify for exemptions from certain corporate governance requirements. Specifically, we will not be required to comply with certain provisions requiring that (i) a majority of our directors be independent, (ii) the compensation of our executives be determined by independent directors or (iii) nominees for election to our board of directors be selected by independent directors. If we elect to take advantage of some or all of these exemptions, our stockholders may not have the protections that these rules are intended to provide. Although we do not currently expect to rely on any of the "controlled company" exemptions, we may do so in the future. Our status as a "controlled company" could cause our common stock to be less attractive to certain investors or otherwise reduce the trading price of our common stock.

Prior to this offering, there has been no public market for our common stock, and we cannot assure you that a market for our common stock will develop or that the market price of shares of our common stock will not decline following the offering.

We cannot assure you that a trading market will develop for our common stock after this offering or, if one develops, that such trading market can be sustained. We intend to apply to have our common stock listed on Nasdaq, but we cannot assure you that our application will be approved. In addition, we cannot predict the prices at which our common stock will trade. The initial public offering price for our common stock will be determined through our negotiations with the underwriters based on numerous factors, including the information set forth in this prospectus, our prospects and the prospects of our industry, an assessment of our management, our prospects for future earnings, the general condition of the securities markets, the recent market prices of, and demand for, publicly traded common stock of generally comparable companies and other factors deemed relevant by the underwriters and us. Neither we nor the underwriters can assure you that the initial public offering price will bear any relationship to the market price at which our common stock may trade after our initial public offering. Shares of companies offered in an initial public offering often trade at a discount to the initial offering price due to underwriting discounts and commissions and related offering expenses.

We have broad discretion as to the use of the net proceeds from this offering and may not use them effectively.

We cannot specify with certainty the particular uses to which we will put the net proceeds from this offering. Our management will have broad discretion in the application of the net proceeds, and we may use these proceeds in ways with which you may disagree or for purposes other than those contemplated at the time of the offering. The failure by our management to apply these funds effectively could have a material adverse effect on our business, financial condition and results of operation. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value. See "*Use of Proceeds*."

The market price of our common stock may fluctuate significantly.

The market price and liquidity of the market for shares of our common stock that will prevail in the market after this offering may be higher or lower than the price you pay and may be significantly affected by numerous

factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include:

- significant volatility in the market price and trading volume of securities of companies in our sector, which is not necessarily related to the operating performance of these companies,
- delays between our capital investments and the generation of revenue from those investments,
- changes in the mix of projects in which we are engaged during any period,
- announcements of new contracts or service offerings by us or our competitors,
- market reaction to any acquisitions, joint ventures or strategic investments announced by us or our competitors,
- changes in regulatory policies or tax guidelines,
- changes or perceived changes in earnings or variations in results of operations,
- any shortfall in revenue or net income or any increase in losses from levels expected by investors or securities analysts, and
- general economic trends and other external factors.

Investors in this offering will experience immediate dilution upon the closing of the offering.

If you purchase shares of our common stock in this offering, you will experience immediate dilution of $ per share because the price that you pay will be greater than the pro forma net asset value per share of the common stock you acquire. This dilution is in large part due to the fact that our earlier investors paid substantially less than the initial public offering price when they purchased their shares. You may experience additional dilution if we issue shares of our common stock under the SCCI National Holdings, Inc. 2021 Stock Plan adopted in May 2021 (our "2021 Stock Plan"), the Shimmick Corporation 2023 Equity Incentive Plan (the "2023 Omnibus Incentive Plan") we expect to adopt in connection with this offering or any other equity incentive plan, or we otherwise issue additional shares of our common stock at a price below the initial public offering price. For more information, see "*Dilution*" beginning on page 54.

If equity research analysts do not publish research or reports about our business, or if they issue unfavorable commentary or downgrade our shares, the price of our shares could decline.

The trading market for our shares will rely in part on the research and reports that equity research analysts publish about us and our business. We do not have control over these analysts, and we do not have commitments from them to write research reports about us. The price of our shares could decline if one or more equity research analysts downgrades our shares, issues other unfavorable commentary, or ceases publishing reports about us or our business.

Future sales of our shares could reduce the market price of our shares.

The price of our shares could decline if there are substantial sales of our common stock, particularly by our directors, our executive officers or their affiliates, or when there is a large number of shares of our common stock available for sale. The perception in the public market that our stockholders might sell our shares could also depress the market price of our shares. Our existing stockholder prior to this offering and members of our management team are subject to lock-up agreements with the underwriters that restrict their ability to transfer their shares for at least 180 days after the date of this prospectus. Consequently, upon expiration of the lock-up agreements, additional shares will be eligible for sale in the public market (or shares) if the underwriters exercise their over-allotment option in full). The market price of our shares may drop significantly when the restrictions on resale lapse and these stockholders are able to sell their shares into the market. If this

occurs or continues, it could impair our ability to raise additional capital through the sale of securities should we desire to do so. See "*Shares Eligible for Future Sale*" beginning on page 117.

Raising additional capital by issuing equity or equity-linked securities may cause dilution to our stockholders.

We may need or desire to raise substantial additional capital in the future. Our future capital requirements will depend on many factors, including, among others:

- the capital requirements for current and potential projects,
- the extent to which we invest in additional or replacement equipment,
- the extent to which we acquire businesses or enter into joint ventures or other strategic relationships, and
- the costs of financing unanticipated working capital requirements and responding to competitive pressures.

If we raise additional funds by issuing equity or equity-linked securities, we will reduce the percentage ownership of our then-existing stockholders, and the holders of those newly-issued equity or equity linked securities may have rights, preferences, or privileges senior to those possessed by our then-existing stockholders. Moreover, the existence of a substantial number of additional shares of common stock or other equity or equity-linked securities available for sale in the public market as a result of any such future capital raises could depress the market price of our common stock and impair our ability to conduct subsequent capital raises through the sale of further equity or equity-linked securities. We cannot predict the effect that future sales of our common stock or other equity or equity-linked securities would have on the market price of our common stock.

We do not anticipate paying any cash dividends in the foreseeable future after this offering. Therefore, if our share price does not appreciate, our investors may not experience gains and could potentially lose on their investment in our shares.

After this offering, we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend upon results of operations, financial condition, contractual restrictions, including any indebtedness we may incur, restrictions imposed by applicable law and other factors our board of directors deems relevant. As a result, capital appreciation, if any, of our shares will be investors' sole source of gain for the foreseeable future.

Provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable and may lead to entrenchment of management.

Our amended and restated certificate of incorporation and amended and restated bylaws proposed to be in effect upon consummation of this offering will contain provisions that could significantly reduce the value of our shares to a potential acquirer or delay or prevent changes in control or changes in our management without the consent of our board of directors. The provisions in our charter documents will include the following:

- the ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquiror,
- the required approval of at least $66^{2}/_{3}\%$ of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our amended and restated certificate of incorporation regarding the election and removal of directors,

- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders, and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of us.

In addition, these provisions would apply even if we were to receive an offer that some stockholders may consider beneficial.

We are also subject to the anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law ("DGCL"). Under Section 203, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other exceptions, our board of directors has approved the transaction. See "*Description of Capital Stock*".

Our amended and restated charter documents will provide that the Court of Chancery of the State of Delaware (or if such court does not have jurisdiction, another state or the federal courts (as appropriate) located within the State of Delaware) will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees, or stockholders.

Our amended and restated charter documents will provide that unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or if such court does not have jurisdiction, another state or the federal courts (as appropriate) located within the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf, (ii) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, or other employee, or stockholder of ours to us or our stockholders, (iii) action asserting a claim against us or any current or former director or officer of ours arising pursuant to any provision of the DGCL, or our amended and restated certificate of incorporation or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) action asserting a claim governed by the internal affairs doctrine of the State of Delaware. Our amended and restated certificate of incorporation further will provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the federal securities laws of the United States, including any claims under the Securities Act and the Exchange Act. However, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce a duty or liability created by the Securities Act or the rules and regulations thereunder and accordingly, we cannot be certain that a court would enforce such provision. See "*Description of Capital Stock — Exclusive Forum.*"

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated charter documents, except our stockholders will not be deemed to have waived (and cannot waive) compliance with the federal securities laws and the rules and regulations thereunder. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our current or former directors, officers, other employees, or stockholders which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition.

If, after this offering, we are unable to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act as it applies to an emerging growth company that is listed on an exchange for the first time, or if we are unable to maintain effective internal controls over financial reporting, investors may lose confidence in the accuracy of our financial statements and our share price may suffer.

After the completion of this offering, we will become subject to Section 404(a) of the Sarbanes-Oxley Act, which requires a company that is subject to the reporting requirements of the U.S. securities laws to conduct a comprehensive evaluation of its internal controls over financial reporting. To comply with this statute, we will be required to document and test our internal control procedures, and our management will be required to assess and report on the effectiveness of our internal controls over financial reporting. Although we will be required to disclose significant changes made in our internal controls and procedures on a quarterly basis, we will not be required to make our first report on the effectiveness of our internal control over financial reporting until the year following our first annual report required to be filed with the SEC.

We will need to prepare for initial compliance with Section 404(a) of the Sarbanes-Oxley Act by testing, assessing and, as necessary, strengthening our system of internal controls. Even after our initial assessment and report, we will need to test, assess and, as necessary, strengthen our internal controls on an annual basis. Furthermore, as our business continues to grow, our internal controls will become more complex and will require significantly more resources and attention to ensure that our internal controls remain effective overall. This process is complicated and time-consuming, and may divert management's attention from revenue-generating activities. For so long as we continue to qualify as an emerging growth company or smaller reporting company, we will not be required to comply with Section 404(b) of the Sarbanes-Oxley Act, which requires a registered independent accounting firm to attest to and report on management's assessment of its internal control over financial reporting. If we become subject to Section 404(b) of the Sarbanes-Oxley Act, we will incur additional expense in order to obtain the required attestation report.

Over the course of testing our internal controls, our management may identify material weaknesses, which may not be remediated in a timely manner to meet the deadline imposed by the Sarbanes-Oxley Act. A material weakness is a deficiency, or combination of deficiencies, in internal controls over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

In the course of preparing the financial statements that are included in this prospectus, our management has determined that we have material weaknesses in our internal control over financial reporting, which relates to the lack of a sufficient number of trained resources with assigned responsibilities and accountability for the design and operation of internal controls over financial reporting, lack of formal and effective controls over certain financial statement account balances, and lack of formal and effective controls over the Committee of Sponsoring Organizations ("COSO") principles including control environment, risk assessment, control activities, information and communications and monitoring which resulted in material adjustments in the preparation of our condensed consolidated financial statements as of and for the six months ended June 30, 2023 and the consolidated financial statements for the fiscal years ended December 30, 2022 and December 31, 2021. In order to remediate these material weaknesses, we have hired and continue to seek out additional accounting and finance staff members with public company reporting experience, to augment our current staff and to improve the effectiveness of our closing and financial reporting processes. We are currently implementing key controls over financial reporting and COSO principles. While we have implemented a plan to remediate these material weaknesses, the steps we have taken to date, and that we are continuing to implement, may not be sufficient to remediate these material weaknesses or to avoid the identification of other material weaknesses in the future. If we fail to remediate the material weaknesses identified above in a timely manner or if we identify future deficiencies in our internal control over financial reporting, we may be unable to accurately report our financial results, or report them within the timeframes required by the SEC. We also could become subject to sanctions or investigations by the SEC or other regulatory authorities. In addition, if we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, when required,

investors may lose confidence in the accuracy and completeness of our financial reports, we may face restricted access to the capital markets and our stock price may be adversely affected.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

Our disclosure controls and procedures are intended to be designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. These inherent limitations include the realities that there are judgments in decision-making, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements or insufficient disclosures due to error or fraud may occur and not be detected.

We are an emerging growth company and a smaller reporting company, and because we take advantage of specified reduced disclosure requirements applicable to emerging growth companies and smaller reporting companies, our financial statements may not be comparable to companies that comply with public company effective dates, which may make our common stock less attractive to investors.

We are an emerging growth company, as defined in the JOBS Act, and may remain an emerging growth company until the last day of the fiscal year following the fifth anniversary of the completion of this offering. However, if certain events occur prior to the end of such five-year period, including if we become a "large accelerated filer," as defined under the Exchange Act, our annual gross revenue exceeds $1.235 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company. For so long as we remain an emerging growth company, we are permitted and intend to rely on exemptions from certain disclosure requirements that are applicable to other public companies that are not emerging growth companies. These exemptions include:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" disclosure in connection with registered securities offerings;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley);
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation, identification of critical audit matters or a supplement to the auditor's report providing additional information about the audit and the financial statements, unless the U.S. Securities and Exchange Commission (SEC) determines the new rules are necessary for protecting the public;
- reduced disclosure obligations regarding executive compensation; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of these accounting standards until they would otherwise apply to private companies. We have irrevocably elected to avail ourselves of this exemption and, therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not emerging growth

companies. We intend to rely on other exemptions provided by the JOBS Act, including without limitation, not being required to comply with the auditor attestation requirements of Section 404(b) of Sarbanes-Oxley. Our financial statements may, therefore, not be comparable to those of companies that comply with such accounting standards and auditor attestation requirements. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be reduced or more volatile.

We are also a smaller reporting company as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Our management has no prior experience operating a public company and therefore may have difficulty in successfully and profitably operating our business, or complying with regulatory requirements.

Prior to the closing of this offering, our management had no experience operating a public company. As a result, we cannot assure you that we will be able to successfully operate as a public company, execute our business strategies as a public company, or comply with regulatory requirements applicable to public companies.

CAUTIONARY STATEMENT CONCERNING FORWARD LOOKING STATEMENTS

This prospectus contains forward-looking statements that reflect our current views with respect to, among other things, our operations and financial performance. Forward-looking statements include all statements that are not historical facts. These forward-looking statements are included throughout this prospectus, including in the sections entitled “Summary Prospectus,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and “Business” and relate to matters such as our industry, business strategy, goals, and expectations concerning our market position, future operations, margins, profitability, capital expenditures, liquidity and capital resources, and other financial and operating information. Our forward looking statements are generally accompanied by words such as “may,” “will,” “expect,” “intend,” “estimate,” “project,” “predict,” “believe,” “anticipate,” “assume,” “continue,” “could,” “estimate,” “intend,” “potential,” “plan,” “future,” “seek,” “foreseeable,” “goal,” the negative versions of these words or other similar words and phrases to identify forward-looking statements in this prospectus.

The forward looking statements in this prospectus speak only as of the date of this prospectus and we caution you not to unduly rely on them. Our management has based these forward-looking statements on its current expectations and assumptions about future events and these forward-looking statements are not guarantees of future performance. The forward-looking statements are subject to various risks, uncertainties, assumptions, or changes in circumstances that are difficult to predict or quantify. Our expectations, beliefs, and projections are expressed in good faith, and we believe there is a reasonable basis for them. However, there can be no assurance that management’s expectations, beliefs, and projections will result or be achieved. Actual results may differ materially from these expectations due to changes in global, regional, or local economic business, competitive, market, regulatory, and other factors, many of which are beyond our control. We believe these factors include, but are not limited to, those described under “Risk Factors” and the following:

- our ability to accurately estimate risks, requirements or costs when we bid on or negotiate a contract,
- the impact of our fixed-price contracts,
- qualifying as an eligible bidder for contracts,
- the availability of qualified personnel, joint venture partners and subcontractors,
- inability to attract and retain qualified managers and skilled employees and the impact of loss of key management,
- higher costs to lease, acquire and maintain equipment necessary for our operations and decline in market value of owned equipment,
- subcontractors failing to satisfy their obligations to us or other parties or any inability to maintain subcontractor relationships,
- marketplace competition,
- our limited operating history as an independent company following our separation from AECOM,
- our inability to obtain bonding,
- disputes with our prior owner, AECOM, and requirements to make future payments to AECOM,
- AECOM defaulting on its contractual obligations to us or under agreements in which we are a beneficiary,
- our limited number of customers,
- dependence on subcontractors and suppliers of materials,
- any inability to secure sufficient aggregates,
- inability to complete a merger or acquisition or to integrate an acquired company’s business,
- adjustments in our contract backlog,

- accounting for our revenue and costs involves significant estimates, as does our use of the input method of revenue recognition based on costs incurred relative to total expected costs,
- any failure to comply with covenants under any current indebtedness, and future indebtedness we may incur,
- the adequacy of sources of liquidity,
- cybersecurity attacks against, disruptions, failures or security breaches of, our information technology systems,
- seasonality of our business,
- pandemics and health emergencies,
- commodity products price fluctuations and rising inflation and/or interest rates,
- liabilities under environmental laws, compliance with immigration laws, and other regulatory matters, including changes in regulations and laws,
- climate change, and
- deterioration of the U.S. economy.

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this prospectus. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, our actual results may vary in material respects from those projected in these forward-looking statements.

Any forward-looking statement made by us in this prospectus speaks only as of the date of this prospectus and are expressly qualified in their entirety by the cautionary statements included in this prospectus. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, investments, or other strategic transactions we may make. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities laws.

USE OF PROCEEDS

We estimate that our net proceeds from the sale of shares of our common stock in this offering will be approximately $ million (or $ million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discounts and commissions and our estimated offering expenses of approximately $ million (or approximately $ million if the underwriters exercise their over-allotment option in full). This estimate assumes a public offering price of $ per share, which is the mid-point of the offering price range indicated on the cover of this prospectus.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share of common stock, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of common stock offered by us would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the assumed initial public offering price of $ per share of common stock remains the same, and after deducting estimated underwriting discounts and commissions.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our common stock and facilitate our future access to the capital markets. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds we receive from this offering. However, we currently intend to use the net proceeds of this offering to repay all outstanding borrowings under our Revolving Credit Facility, with the remaining amounts for working capital and other general corporate purposes, including the potential funding of future opportunistic acquisitions. Currently, no specific acquisition targets have been identified and we do not have agreements or commitments to enter into any acquisitions. In the event that any net proceeds are not immediately applied, we may temporarily hold them as cash, deposit them in banks or invest them in cash equivalents or securities.

As of June 30, 2023, there was $30.0 million of borrowings outstanding under our Revolving Credit Facility. The Revolving Credit Facility bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%, and matures on March 27, 2028. The proceeds from the Revolving Credit Facility were used for general corporate purposes.

For additional information, please read “*Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources*.”

DIVIDENDS AND DIVIDEND POLICY

We currently intend to retain all available funds and future earnings, if any, to fund the development and expansion of our business, and we do not anticipate paying any additional cash dividends in the foreseeable future. Any future determination regarding the declaration and payment of dividends, if any, will be at the discretion of our board of directors and will depend on then-existing conditions, including our financial condition, results of operations, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth the cash and cash equivalents and capitalization as of June 30, 2023 (i) on an actual basis and (ii) on a pro forma basis to give effect to (a) the filing and effectiveness of our proposed amended and restated certificate of incorporation, including to increase our authorized share capital, (b) the for stock split of our common stock and (c) the sale by us of shares of our common stock in this offering at an assumed initial public offering price of $ per share (which is the midpoint of the price range set forth on the cover page of this prospectus) after deducting estimated underwriting discounts and commissions and offering expenses paid by us and the application of the net proceeds from this offering to us as described under "*Use of Proceeds*," in each case, as if such event had occurred on June 30, 2023.

You should read this information together with our consolidated financial statements and related notes appearing elsewhere in this prospectus and the sections titled "*Prospectus Summary — Summary Selected Consolidated Financial Data*" and "*Management's Discussion and Analysis of Financial Condition and Results of Operations*." The following amounts are in thousands, except per share data.

	As of June 30, 2023	
	Actual	Pro Forma
Cash and cash equivalents	$ 61,295	
Long-term debt, net	$ 29,668	
Stockholders' equity:		
Preferred stock, par value $0.01 per share: no shares authorized or issued and outstanding as of June 30, 2023, actual, shares authorized, no shares issued and outstanding on a pro forma basis	—	
Common stock, par value $0.01 per share: 10,000,000 shares, authorized, 8,000,000 shares issued and outstanding as of June 30, 2023, actual, shares authorized, shares issued and outstanding on a pro forma basis	80	
Additional paid-in capital	4,531	
Retained earnings	29,446	
Non-controlling interests	(1,014)	
Total stockholders' equity	33,043	
Total capitalization	$ 62,711	

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, respectively, the amount of cash and cash equivalents, additional paid-in capital, total stockholders' equity and total capitalization by $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering.

An increase or decrease of 1,000,000 in the number of shares we are offering would increase or decrease, respectively, the amount of cash and cash equivalents, stockholders' equity and total capitalization by approximately $ million, assuming the assumed initial public offering price per share remains the same, and after deducting underwriting discounts and commissions. The pro forma information is illustrative only, and we will adjust this information based on the actual initial public offering price and other terms of this offering determined at pricing.

DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock immediately after the closing of this offering.

Our net tangible book value of our common stock as of June 30, 2023 was $ million, or $ per share, based on the number of shares of our common stock outstanding as of June 30, 2023. Net tangible book value per share represents our total tangible assets less our total liabilities, divided by the number of outstanding shares of common stock.

After giving effect to the receipt of the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma net tangible book value as of June 30, 2023, would have been $ million, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share to our existing stockholder and an immediate dilution of $ per share to investors purchasing common stock in this offering.

We calculate dilution per share to new investors by subtracting the pro forma net tangible book value per share from the initial public offering price paid by the new investor. The following table illustrates the dilution to new investors on a per share basis:

Assumed initial public offering price per share		$
Net tangible book value per share as of June 30, 2023	$	
Increase in net tangible book value per share attributable to new investors in this offering		
Pro forma net tangible book value per share after this offering		
Dilution in net tangible book value per share to new investors in this offering		$

Each $1.00 increase (decrease) in the assumed initial public offering price of $ would increase (decrease) our pro forma net tangible book value per share after this offering by $ per share and the dilution to new investors by $ per share, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of common stock offered by us would increase (decrease) the pro forma net tangible book value by $ per share and the dilution to new investors by $ per share, assuming the assumed initial public offering price remains the same and after deducting underwriting discounts and commissions.

If the underwriters' option to purchase additional shares to cover over-allotments is exercised in full, the pro forma net tangible book value per share after giving effect to this offering would be $ per share, representing an immediate increase to existing stockholder of $ per share, and immediate dilution to new investors in this offering of $ per share.

The foregoing discussion and tables assume no exercise of stock options to purchase shares of our common stock issuable upon the exercise of stock options outstanding as of , 2023, at a weighted average exercise price of $ per share. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities or any options are exercised, new investors will experience further dilution.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's Discussion and Analysis of Financial Condition and Results of Operations is intended to assist in understanding and assessing the trends and significant changes in our results of operations and financial condition. Historical results may not be indicative of future performance. The statements in this discussion regarding industry outlook, our expectations regarding our future performance, liquidity and capital resources and all other non-historical statements in this discussion are forward looking statements and are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward looking statements as a result of various factors, including those discussed below and elsewhere in this prospectus, particularly in "Risk Factors" or in other sections of this prospectus. This discussion should be read in conjunction with "Prospectus Summary — Summary Selected Consolidated Financial Data" and our unaudited condensed consolidated and audited consolidated financial statements and the notes thereto included elsewhere in this prospectus.

In this discussion, we use certain non-GAAP financial measures. Explanation of these non-GAAP financial measures and reconciliation to the most directly comparable GAAP financial measures are included in this Management's Discussion and Analysis of Financial Condition and Results of Operations as well as "Prospectus Summary — Summary Selected Consolidated Financial Data." Investors should not consider non-GAAP financial measures in isolation or as substitutes for financial information presented in compliance with GAAP.

Overview

We are a leading provider of water and other critical infrastructure solutions nationwide. Through our predecessor entities we have a long history of working on complex water projects, ranging from the world's largest wastewater recycling and purification system in California to the iconic Hoover Dam. According to *Engineering News Record*, in 2022 we were nationally ranked as a top ten builder of dams and reservoirs (#1), water supply (#3), water treatment and desalination plants (#8) and mass transit (#9). We are led by industry veterans, many with over 20 years of experience, and work closely with our customers to deliver complete solutions, including long-term operations and maintenance.

While our legacy companies have a long history operating in the United States, we have a limited operating history as an independent company. Following our separation from AECOM, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure. We believe our competitive strengths, which are discussed below, position us to execute this strategy and capitalize on market opportunities. However, our limited operating history as an independent company and historical dependence on AECOM and subject us to a number of risks, such as an inability to obtain necessary bonding and the need to incur additional operating expenses to create or supplement the corporate infrastructure necessary to operating as an independent company. We are also involved in ongoing disputes with AECOM, which could adversely impact our business. See "*— AECOM Sale Transactions*" and "*Risk Factors — Risks Related to our Projects — We have a limited operating history as an independent company and have been historically dependent on our prior owner, AECOM, "— Risks Related to Our Business and Industry — We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business," "— We may be required to make additional payments to AECOM pursuant to contractual arrangements*" and "*— If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted*" for additional information.

For the six months ended June 30, 2023 and July 1, 2022, we generated revenue of $319.3 million and $293.6 million, respectively, and net (loss) income attributable to Shimmick Corporation of $(19.6) million and $3.7 million, respectively. Adjusted EBITDA, was $(2.9) million and $31.9 million for the six months ended June 30, 2023 and July 1, 2022, respectively. Adjusted net (loss) attributable to Shimmick Corporation income was $(12.0) million and $22.7 million for the six months ended June 30, 2023 and July 1, 2022, respectively. For

the years ended December 30, 2022 and December 31, 2021, we generated revenue of $664.2 million and $572.7 million, respectively, and net income attributable to Shimmick Corporation of $3.8 million and $45.4 million, respectively. Adjusted EBITDA was $47.0 million and $(193.6) million for the years ended December 30, 2022 and December 31, 2021, respectively. Adjusted net income (loss) was $29.5 million and ($184.3) million for the years ended December 30, 2022 and December 31, 2021, respectively. For reconciliations of Adjusted EBITDA and Adjusted net (loss) income to net income, in each case the most directly comparable GAAP financial measure, see "— *Results of Operations*" below.

We operate on a 52-week or 53-week fiscal year ending on the Friday closest to December 31 each year. Our fiscal year is divided into four quarters of 13 weeks, each beginning on a Saturday and containing one 5-week period followed by two 4-week periods. When a 53-week fiscal year occurs, we report the additional week in the fourth fiscal quarter. Accordingly, the six month periods ended June 30, 2023 and July 1, 2022 each consisted of 26 weeks. References to fiscal year 2022 are to our 52-week fiscal year ended December 30, 2022 and references to fiscal year 2021 are to our 52-week fiscal year ended December 31, 2021.

AECOM Sale Transactions

Overview

On December 9, 2020, AECOM and URS Holdings, Inc., an affiliate of AECOM (the "Seller" and, together with AECOM, the "Seller Entities"), entered into a purchase and sale agreement (the "Purchase Agreement") with SCC Group, a special purpose entity formed for the purpose of entering into and consummating the transactions contemplated by the Purchase Agreement (the "AECOM Sale Transactions"). Under the Purchase Agreement, SCC Group agreed to purchase and acquire 100% of the stock of the Company and certain other assets related to our business and our subsidiaries to the extent owned by Seller Entities or their affiliates. On January 2, 2021, the parties closed the AECOM Sale Transactions.

On November 19, 2021, SCC Group was merged with SCCI National Holdings, Inc., with SCCI National Holdings, Inc. becoming the surviving entity. In the intervening period between January 2, 2021 and November 19, 2021, SCC Group's assets and liabilities consisted of its investment in SCCI National Holdings, Inc., as well as rights to receive any net working capital settlement and any obligation to pay contingent consideration related to its January 2, 2021 acquisition of SCCI National Holdings, Inc. The November 19, 2021 merger of SCC Group with SCCI National Holdings, Inc. was accounted for as a combination of entities under common control. Accordingly, results of the operations of the two entities have been combined from the point when they came under common control (i.e., when SCC Group acquired SCCI National Holdings, Inc. on January 2, 2021). The business combination is thus reflected in the consolidated financial statements of the combined company for the year ended December 31, 2021. SCC Group did not have substantive operations, assets or liabilities prior to the merger with SCCI National Holdings, Inc. except those pertaining to its acquisition of the SCCI National Holdings, Inc. business.

Retained Claim Reimbursements

The Purchase Agreement provides that the Seller Entities will retain the right to participate in a portion of the net proceeds of any cash, cash equivalents or other assets received or recovered from any claims relating to certain specified legacy projects that were ongoing at the time of closing. AECOM is entitled to a percentage of proceeds we may receive, subject to a specified cap for each such legacy project.

Earn Out Consideration

As additional consideration, the Seller Entities are entitled to receive a one-time additional cash payment based on the performance of the business for the 36-month period beginning October 3, 2020 and ending September 29, 2023 based on specified aggregate Adjusted EBITDA (as defined in the Purchase Agreement) thresholds set forth in the Purchase Agreement. Any such additional cash payment, if owed, will be required to be made prior to

January 31, 2024. Based on the Adjusted EBITDA (as defined in the Purchase Agreement) of the business to date, we do not anticipate an earnout being achieved.

Shared Tax Benefits

Pursuant to the internal reorganization of its business in early 2020, AECOM agreed to make an election under Treasury Regulations Section 1.1502-36(d)(6) that could result in certain tax benefits to us (in the form of cash or a reduction in liability for taxes). We are obligated to share with AECOM actual tax benefits realized (i.e., in cash or through an actual reduction in liability for tax).

Other Items

We have agreed to indemnify the Seller Entities for any costs or expenses incurred under any outstanding letters of credit, surety bonds, guarantees, advance payment guarantees and other contractual obligations arising from or relating to the assets purchased or the liabilities assumed under the Purchase Agreement. Further, the Seller Entities have provided a conditional guaranty required by any surety bonds and/or a bonding program relating to certain guaranteed obligations and payment obligations with respect to the certain other assets related to our business and our subsidiaries to the extent owned by Seller Entities or their affiliates.

For additional information regarding AECOM, see "*Risk Factors — Risks Related to Our Business and Industry — We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business*," "*— We may be required to make additional payments to AECOM pursuant to contractual arrangements*," "*— If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted*" and "*Business — Transition Services Agreement*."

COVID-19 Impact

The impact of the coronavirus pandemic and measures to prevent its spread caused us to face disruption to operations, supply chain delays, travel and trade restrictions and impacted economic activity in affected regions. For example, some jurisdictions imposed a wide range of restrictions on the physical movement of our employees and vendors to limit the spread of COVID-19 and some nonessential construction and other client projects were temporarily halted as a result. Further, the coronavirus made estimating the future performance of our business and mitigating the adverse financial impact of related developments on our business operations more difficult. See *"Risk Factors—Risks Related to our Business and Industry — Pandemics and public health emergencies could materially disrupt our business and negatively impact our results of operations, cash flows and financial conditions."*

Key Factors Affecting Our Performance and Results of Operations

Weather, natural disasters and emergencies. The results of our business in a given period can be impacted by adverse weather conditions, severe weather events, natural disasters or other emergencies, which include, among other things, heavy or prolonged snowfall or rainfall, hurricanes, tropical storms, tornadoes, floods, blizzards, extreme temperatures, wildfires, post-wildfire floods and debris flows, pandemics and earthquakes. These conditions and events can negatively impact our financial results due to, among other things, the termination, deferral or delay of projects, reduced productivity and exposure to significant liabilities. See "*Risk Factors — Risks Related to Our Projects — Adverse weather conditions may cause delays, which could slow completion of our contracts and negatively affect our revenue and cash flows*" and "*— Force majeure events, such as natural disasters, epidemics, pandemics and terrorists' actions, could negatively impact our business, which may affect our financial condition, results of operations or cash flows*."

Seasonality. Typically, our revenue is lowest in the first quarter of the year because cold, snowy or wet conditions can create challenging working environments that are more costly for our customers or cause delays

on projects. Second quarter revenue is typically higher than those in the first quarter, as some projects begin, but continued cold and wet weather can often impact productivity. Third quarter revenue is typically the highest of the year, as a greater number of projects are underway and operating conditions, including weather, are normally more accommodating. Project geographic location will also dictate how seasonality affects productivity and timing. Also, the holiday season and inclement weather can sometimes cause delays during the fourth quarter, reducing revenue and increasing costs. See *"Risk Factors — Risks Related to Our Business and Industry — Our business is seasonal and is affected by adverse weather conditions and the spending patterns of our customers, exposing us to variable quarterly results."*

Our Ability to Fulfill Backlog Orders. Our backlog consists of the remaining unearned revenue on awarded contracts, including our pro-rata share of work to be performed by unconsolidated joint ventures, less the joint venture partners' pro-rata share of work to be performed by consolidated joint ventures. We include in backlog estimates of the amount of consideration to be received, including bonuses, awards, incentive fees, fixed-price awards, claims, unpriced change orders, penalties, minimum customer commitments on cost plus arrangements, liquidated damages and certain time and material arrangements in which the estimated value is firm or can be estimated with a reasonable amount of certainty in both timing and amounts. As construction on our contracts progresses, we increase or decrease backlog to take account of changes in estimated quantities under fixed-price contracts, as well as to reflect changed conditions, change orders and other variations from initially anticipated contract revenue and costs, including completion penalties and bonuses. Substantially all of the contracts in our backlog may be canceled or modified at the election of the customer. Reductions in backlog due to cancellation by a customer, or for other reasons, could significantly reduce the revenue that we actually receive from contracts in backlog. In the event of a project cancellation, we may be reimbursed for certain costs, but we typically have no contractual right to the total revenues reflected in our backlog. Backlog amounts are determined based on target price estimates that incorporate historical trends, anticipated seasonal impacts, experience from similar projects and from communications with our customers. These estimates may prove inaccurate, which could cause estimated revenue to be realized in periods later than originally expected, or not at all. As a result, our backlog as of any particular date is an uncertain indicator of future revenue and earnings. In addition, contracts included in our backlog may not be profitable. If our backlog fails to materialize, our business, financial condition, results of operations and cash flows could be materially and adversely affected. See "*Risk Factors — Risks Related to Our Projects — Amounts included in our backlog may not result in actual revenue or translate into profits. Our backlog is subject to cancellation and unexpected adjustments and therefore is an uncertain indicator of future results of operations.*"

As of June 30, 2023, we had a backlog of projects of $1.3 billion, approximately $142 million, or 11%, of which are through our joint venture arrangements. We estimate that approximately $1.0 billion will be recognized as revenue over the next twenty four months. None of our backlog is subject to AECOM contractual obligations. Our backlog by customer type, contract type and estimated time periods recognized is presented in the following tables:

	As of June 30, 2023 (in millions)
Backlog by customer type:	
State and local agencies	$ 971
Federal Agencies	164
Private Owners	148
Total backlog	$ 1,284

	As of June 30, 2023 (in millions)
Backlog by contract type:	
Fixed Price	$ 1,138
Cost Plus	146
Total backlog	$ 1,284

	As of June 30, 2023 (in millions)
Estimated backlog recognized:	
0 to 24 months	$ 993
25 to 36 months	127
Beyond 36 months	163
Total backlog	$ 1,284

Our Ability to Obtain New Projects. We selectively bid on projects that we believe offer an opportunity to meet our profitability objectives or that offer the opportunity to enter promising new markets. The potential customers conduct rigorous competitive processes for awarding many contracts. We will potentially face strong competition and pricing pressures for any additional contract awards from other government agencies, and we may be required to qualify or continue to qualify under various multiple award task order contract criteria. See "*Risk Factors — Risks Related to Our Projects — Our business depends on our ability to qualify as an eligible bidder under federal, state or local government contract criteria and to compete successfully against other qualified bidders in order to obtain federal, state or local government contracts*," "*Risk Factors — Risks Related to Our Business and Industry — We work in a highly competitive marketplace*" and "*— Pandemics and public health emergencies could materially disrupt our business and negatively impact our results of operations, cash flows and financial condition.*"

Our Ability to Successfully Expand our Footprint. We review our bidding opportunities to attempt to minimize concentration of work with any one customer, in any one industry, or in tight labor markets. We believe that by carefully positioning ourselves in markets that have meaningful barriers to entry, like those with highly technical or specialized scopes of work, we can continue to be competitive. For example, we target projects with significant, highly-technical work that we can self-perform. We believe this provides us with a distinct pricing advantage, as well as better risk management. In addition, as a result of federal and state-level infrastructure initiatives, we believe that funding for technical construction projects may exceed capacity, enabling us to opportunistically target smaller specialized projects with less risk at higher margins. We may be limited in our ability to expand our footprint by barriers to entry to new markets, competition, and availability of capital and skilled labor.

We primarily compete for new contracts independently, seeking to win and complete new projects directly for our customers. Our customers primarily award contracts using one of two methods: the traditional public "competitive bid" method, in which price is the major determining factor, or through a "best value" proposal, where contracts are awarded based on a combination of technical qualifications, proposed project team, schedule, the ability to obtain surety bonds, past performance on similar projects and price, which we believe creates a barrier to entry. Contracts are principally awarded on a fixed-price basis, and we earn and recognize revenue using an input measure of total costs incurred divided by total costs expected to be incurred. See "*Risk Factors — Risks Related to Our Projects — Our business depends on our ability to qualify as an eligible bidder under federal, state or local government contract criteria and to compete successfully against other qualified bidders in order to obtain federal, state or local government contracts" and "Risk Factors — Risks Related to Our Business and Industry — We work in a highly competitive marketplace.*"

Our Ability to Obtain Approval of Change Orders and Successfully Pursue Claims. We are subject to variation in scope and cost of projects from our original projections. In certain circumstances, we seek to collect or assert claims against customers, engineers, consultants, subcontractors or others involved in a project for additional costs exceeding the contract price or for amounts not included in the original contract price. Our experience has often been that public customers have been willing to negotiate equitable adjustments in the contract compensation or completion time provisions if unexpected circumstances arise. However, this process may result in disputes over whether the work performed is beyond the scope of the work included in the original project plans and specifications or, if the customer agrees that the work performed qualifies as extra work, the price that the customer is willing to pay for the extra work. Public customers may seek to impose contractual risk-shifting provisions more

aggressively or there could be statutory and other legal prohibitions that prevent or limit contract changes or equitable adjustments. See "*Risk Factors — Risks Related to Our Projects — Our failure to adequately collect for extra or change order work or recover on claims brought by us against customers or other project participants for additional contract costs could have a negative impact on our liquidity and future operations*."

Our Ability to Control Project Costs. Our costs primarily consist of payroll, equipment, materials, and other project related expenses. With a consistent focus on profitability by our management team, we leverage information technology and utilize financial systems to improve project execution and control costs. However, if we are unable to accurately estimate the overall risks, requirements or costs when we bid on or negotiate a contract that is ultimately awarded to us, we may achieve a lower than anticipated profit or incur a loss on the contract. Also, our labor and training expenses may increase as a result of a shortage in the supply of skilled personnel. We may not be able to pass these expenses on to our customers, which could adversely affect our profitability. To the extent that we are unable to buy construction equipment necessary for our needs, either due to a lack of available funding or equipment shortages in the marketplace, we may be forced to rent equipment on a short-term basis, which could increase the costs of performing our contracts. If we are unable to continue to maintain the equipment in our fleet, we may be forced to obtain third-party repair services, which could increase our costs. In addition, the market value of our equipment may unexpectedly decline at a faster rate than anticipated. See "*Risk Factors — Risks Related to Our Projects — We may incur higher costs to lease, acquire and maintain equipment necessary for our operations, and the market value of our owned equipment may decline*."

Our Ability to Control Selling General and Administrative Costs. Following our initial public offering, we will incur significant expenses on an ongoing basis that we did not incur as a private company. Those costs include additional director and officer liability insurance expenses, stock exchange listing expenses, as well as third-party and internal resources related to accounting, auditing, Sarbanes-Oxley Act compliance, legal and investor and public relations expenses. These costs will generally be selling, general and administrative expenses. We plan to implement the 2023 Omnibus Incentive Plan to align our equity compensation program with public company plans and practices, which is expected to increase our stock-based compensation expense. See "*Risk Factors — General Risk Factors — We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives*."

How We Assess Performance of Our Business

Revenue

We currently derive our revenue predominantly by providing construction, operations and management services around the United States. We generally recognize revenue over time as performance obligations are satisfied and control over promised goods or services are transferred to our customers.

Gross Margin

Gross margin represents revenue less cost of revenue. Cost of revenue consist of all direct and indirect costs on construction contracts, including raw materials, labor, equipment costs, and subcontractor costs.

Selling, General, and Administrative Expenses

Selling, general and administrative expenses consist primarily of salaries and personnel costs for our administrative, finance and accounting, legal, information systems, human resources and certain managerial employees. Additional expenses include audit, consulting and professional fees, travel, insurance, office space rental costs, property taxes and other corporate and overhead expenses.

Equity in Earnings of Unconsolidated Joint Ventures

Equity in earnings of unconsolidated joint ventures includes our return on investment in unconsolidated joint ventures.

Results of Operations

Six Months Ended June 30, 2023 Compared to the Six Months Ended July 1, 2022

The following table sets forth selected financial data for the six months ended June 30, 2023 compared to the six months ended July 1, 2022:

	Six Months Ended		% of Revenue	
(In thousands, except per share data)	**June 30, 2023**	**July 1, 2022**	**June 30, 2023**	**July 1, 2022**
Revenue	$ 319,297	$ 293,578	100.0%	100.0%
Cost of revenue	313,532	288,206	96.1	98.2
Gross margin	5,765	5,372	1.8	1.8
Selling, general and administrative expenses	32,502	28,929	10.0	9.9
Amortization of intangibles	1,316	1,316	0.4	0.4
Total operating expenses	33,818	30,245	10.6	10.3
Equity in earnings of unconsolidated joint ventures	6,993	38,776	2.2	13.2
Gain on sale of property, plant and equipment	1,680	10	0.5	—
(Loss) income from operations	(19,380)	13,913	(6.1)	4.7
Other expense, net	264	9,551	0.1	3.3
Net (loss) income before income taxes	(19,644)	4,362	(6.2)	1.5
Income tax expense	—	1,257	—	0.4
Net (loss) income	(19,644)	3,105	(6.2)	1.1
Net loss attributable to non-controlling interests	(7)	(605)	—	(0.2)
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	(6.2)%	1.3%
Net (loss) income attributable to Shimmick Corporation per common share				
Basic	$ (2.45)	$ 0.46		
Diluted	$ (2.45)	$ 0.46		

Net (loss) income

Net income decreased by $22.7 million to a $19.6 million net loss for the six months ended June 30, 2023 compared to $3.1 million in net income for the six months ended July 1, 2022, primarily driven by a lower equity in earnings of unconsolidated joint ventures of $31.8 million and an increase in selling, general and administrative expenses of $3.6 million. These decreases were partially offset by a $9.3 million reduction in other expense, net and a higher gross margin of $0.4 million for the six months ended June 30, 2023.

Revenue

Revenue for the six months ended June 30, 2023 increased $25.7 million, or 9%, compared to six months ended July 1, 2022 primarily due to $54.0 million in new activity from eight new projects. Those increases were partially offset by $24.6 million driven by three projects winding down and nearing completion and an agreed upon contract settlement lower than originally estimated.

Cost of revenue

Cost of revenue for the six months ended June 30, 2023 increased $25.3 million, or 9%, compared for the six months ended July 1, 2022 primarily due to a $45.4 million increase in activity from seven new projects and an increased $5.9 million from a new terminal project that experienced losses during the period. Those increases were partially offset by $17.2 million decrease in costs on projects winding down or nearing completion in fiscal year 2022 and $6.4 million decreases in cost due mainly to $4.0 million of additional cost taken on a large bridge project for the six months ended July 1, 2022 that did not occur in the six months ended June 30, 2023.

Selling, general and administrative expenses

Selling, general and administrative expense for the six months ended June 30, 2023 increased by $3.6 million, or 12%, to $32.5 million compared to $28.9 million for the six months ended July 1, 2022, primarily resulting from higher legal, accounting, professional services and transaction costs.

Equity in earnings of unconsolidated joint ventures

Equity in earnings of unconsolidated joint ventures was $7.0 million for the six months ended June 30, 2023, compared to equity in earnings of unconsolidated joint ventures of $38.8 million for the six months ended July 1, 2022. This decrease of $31.8 million compared to the six months ended July 1, 2022 was primarily due to a settlement of a claim for a bridge project during the six months ended July 1, 2022 that did not re-occur in the six months ended June 30, 2023.

Gain on sale of property, plant and equipment

Gain on sale of property, plant and equipment was $1.7 million for the six months ended June 30, 2023, compared to $10,000 for the six months ended July 1, 2022, driven by a one-time gain on sale of an office building for $1.7 million.

Other expense, net

Other expense, net was $0.3 million for the six months ended June 30, 2023, compared to $9.6 million in the six months ended July 1, 2022. Other expense, net in the six months ended June 30, 2023 was primarily related to interest expense. Other expense, net in the six months ended July 1, 2022 was primarily driven by changes in fair value of contingent consideration from the AECOM Sale Transactions.

Income tax expense

Income tax expense was $0 in the six months ended June 30, 2023, compared to $1.3 million in the six months ended July 1, 2022. This decrease is due to the company having taxable income as of July 1, 2022, for which utilization of NOL carryforwards is generally limited to 80% of taxable income, with the remaining 20% creating current tax expense. No taxable income is anticipated for 2023, thus no income tax expense was recorded.

Fiscal Year Ended December 30, 2022 Compared to Fiscal Year Ended December 31, 2021

The following table sets forth selected financial data for the fiscal years ended December 30, 2022 and December 31, 2021:

(In thousands, except per share data)	Fiscal Year Ended December 30, 2022	Fiscal Year Ended December 31, 2021	% of Revenue Fiscal Year Ended December 30, 2022	% of Revenue Fiscal Year Ended December 31, 2021
Revenue	$ 664,158	$ 572,666	100.0%	100.0%
Cost of revenue	640,643	705,470	96.5	123.2
Gross margin	23,515	(132,804)	3.5	(23.2)
Selling, general and administrative expenses	60,442	77,519	9.1	13.5
Amortization of intangibles	2,632	2,632	0.4	0.5
Total operating expenses	63,074	80,151	9.5	14.0
Equity in earnings of unconsolidated joint ventures	52,471	1,067	7.9	0.2
Income (loss) from operations	12,912	(211,888)	1.9	(37.0)
Bargain purchase gain	—	233,147	—	40.7
Other (expense) income, net	(8,731)	453	(1.3)	0.1
Net income before income taxes	4,181	21,712	0.6	3.8
Income tax (expense) benefit	(1,274)	24,122	(0.2)	4.2
Net income	2,907	45,834	0.4	8.0
Net (loss) income attributable to non-controlling interests	(853)	431	(0.1)	0.1
Net income attributable to Shimmick Corporation	$ 3,760	$ 45,403	0.6%	7.9%
Net income attributable to Shimmick Corporation per common share				
Basic	$ 0.47	$ 5.68		
Diluted	$ 0.47	$ 5.68		

Net income

Net income decreased by $42.9 million to $2.9 million for the fiscal year ended December 30, 2022 compared to $45.8 million for the fiscal year ended December 31, 2021, primarily as a result of the $233.1 million bargain purchase gain recognized in connection with AECOM Sale Transactions in fiscal year 2021, along with an income tax benefit of $24.1 million. The large one-time gains related to the AECOM Sale Transactions were partially offset by higher gross margin of $156.3 million and higher equity in earnings of unconsolidated joint ventures of $51.4 million in fiscal year 2022.

Revenue

Revenue was $664.2 million for the fiscal year ended December 30, 2022 compared to $572.7 million for the fiscal year ended December 31, 2021. Revenue increased by $91.5 million, or 16%, compared to the fiscal year ended December 31, 2021. Revenue increased primarily due to $48 million from two new foundation projects, $19 million from two new dam projects, a $9 million new infrastructure pier upgrade, $11 million in customer directed work at a light rail project, $82 million in ramp up of three projects, and $67 million for a lock replacement which became a loss job in fiscal year 2021. Those increases were partially offset by three projects winding down and nearing completion during fiscal year 2022 reducing revenue by $117 million and one fixed-

price project that had increased estimation of total cost at completion ("EAC") cost during fiscal year 2022 resulting in a $15 million decrease in revenue.

Cost of revenue

Cost of revenues for the fiscal year ended December 30, 2022 decreased by $64.8 million, or 9%, to $640.6 million compared to $705.5 million for the fiscal year ended December 31, 2021. Cost of revenue decreased primarily due to $75 million decrease in the costs on a lock replacement project compared to prior year, which became a loss job resulting from COVID-19 related delays and the impact of higher expenses during fiscal year 2021 and a $121 million decrease in costs on projects winding down or nearing completion in fiscal year 2022 and $31 million of decreases in cost due to higher costs on three jobs in the prior year, partially offset by a $163 million increase in fiscal year 2022, which was primarily due to new projects and ramp up of existing projects.

Selling, general and administrative expenses

Selling, general and administrative expense for the fiscal year ended December 30, 2022 decreased by $17.1 million, or 22%, to $60.4 million compared to $77.5 million for the fiscal year ended December 31, 2021, primarily resulting from higher one-time legal, accounting, professional services and transaction costs in 2021 related to the AECOM Sale Transactions.

Equity in earnings of unconsolidated joint ventures

Equity in earnings of unconsolidated joint ventures was $52.5 million for the fiscal year ended December 30, 2022, compared to equity in earnings of unconsolidated joint ventures of $1.1 million for the fiscal year ended December 31, 2021. Equity in earnings from unconsolidated joint venture arrangements for the fiscal year ended December 30, 2022 increased $51.4 million, compared to the fiscal year ended December 31, 2021, primarily due to a settlement of a claim for a bridge project that had losses in the prior year from increased EAC cost.

Bargain purchase gain

Bargain purchase gain of $233.1 million recorded in fiscal year ended December 31, 2021 was a one-time gain from the AECOM Sale Transactions with no comparable transaction in fiscal year ended December 30, 2022.

Other (expense) income, net

Other expense was $8.7 million for the fiscal year ended December 30, 2022, compared to other income of $0.5 million in fiscal year 2021. Other expenses in fiscal year 2022 primarily related to the changes in fair value of contingent consideration. Other income in fiscal year 2021 was primarily driven by changes in fair value of contingent consideration partially offset by a non-recurring expense that was incurred in connection with the resolution of a dispute.

Income tax (expense) benefit

Income tax expense was $1.3 million in fiscal year ended December 30, 2022, compared to income tax benefit of $24.1 million for the fiscal year ended December 31, 2021. This is primarily due to:

- $36.1 million decrease resulting from the change in valuation allowance for deferred tax assets for the fiscal year ended December 30, 2022. The valuation allowance reflects our assessment of the likelihood of realizing the benefits of our deferred taxes in future periods;
- $3 million decrease resulting from the $16 million decrease in net income before income taxes after consideration of net (loss) income attributable to non-controlling interests; partially offset by
- $61 million increase resulting from the book recognition of the non-recurring bargain purchase gain in fiscal year ended December 31, 2021, which is non-taxable; and

- $4 million increase resulting from the change in book amount recognized for changes in fair value of contingent consideration, which is non-deductible for tax.

Non-GAAP Financial Measures

We report our financial results in accordance with GAAP. However, management believes that certain non-GAAP financial measures provide investors with additional useful information in evaluating our performance. Therefore, to supplement our condensed consolidated and consolidated financial statements, we provide investors with certain non-GAAP financial measures, including Adjusted net income (loss) and Adjusted EBITDA.

Adjusted Net (Loss) Income

Adjusted net (loss) income represents (loss) income attributable to Shimmick Corporation adjusted to eliminate the bargain purchase gain, changes in fair value of contingent consideration, IPO and transaction-related costs, stock-based compensation, and legal fees and other costs for a legacy project.

We have included Adjusted net (loss) income in this prospectus because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short and long-term operational plans. In particular, we believe that the exclusion of the income and expenses eliminated in calculating Adjusted net (loss) income can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that Adjusted net (loss) income provides useful information to investors and others in understanding and evaluating our results of operations.

Our use of Adjusted net (loss) income as an analytical tool has limitations, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

- Adjusted (loss) income does not reflect changes in, or cash requirements for, our working capital needs,
- Adjusted (loss) income does not reflect the potentially dilutive impact of stock-based compensation, and
- other companies, including companies in our industry, might calculate Adjusted net income (loss) or similarly titled measures differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider Adjusted net (loss) income alongside other GAAP- based financial performance measures, including (loss) income attributable to Shimmick Corporation.

Adjusted EBITDA

Adjusted EBITDA represents our earnings before interest and other expense (income), income taxes and depreciation and amortization expense, adjusted to eliminate the bargain purchase gain, changes in fair value of contingent consideration, IPO and transaction-related costs, stock-based compensation, and legal fees and other costs for a legacy project.

We have included Adjusted EBITDA in this prospectus because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short and long-term operational plans. In particular, we believe that the exclusion of the income and expenses eliminated in calculating Adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our results of operations.

Our use of Adjusted EBITDA as an analytical tool has limitations, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized might have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements,
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs,
- Adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation,
- Adjusted EBITDA does not reflect interest or tax payments that would reduce the cash available to us, and
- other companies, including companies in our industry, might calculate Adjusted EBITDA or similarly titled measures differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider Adjusted EBITDA alongside Net (loss) income attributable to Shimmick Corporation, which is the most directly comparable GAAP measure. See reconciliation below:

	Six Months Ended		Fiscal Year Ended	
(In thousands)	June 30, 2023	July 1, 2022	December 30, 2022	December 31, 2021
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	$ 3,760	$ 45,403
Bargain purchase gain	—	—	—	(233,147)
Changes in fair value of contingent consideration	350	9,500	9,462	(11,600)
IPO and transaction-related costs [1]	1,567	2,039	3,104	4,170
Stock-based compensation	1,051	891	2,295	1,185
Legal fees and other costs for a legacy loss job [2]	4,638	4,133	10,904	9,645
Adjusted net (loss) income	$ (12,030)	$ 20,273	$ 29,525	$ (184,344)

	Six Months Ended		Fiscal Year Ended	
(In thousands)	June 30, 2023	July 1, 2022	December 30, 2022	December 31, 2021
Net loss income attributable to Shimmick Corporation	$ (19,637)	$ 3,710	$ 3,760	$ 45,403
Depreciation and amortization	8,549	7,851	15,979	14,929
Interest expense (income)	607	52	226	(84)
Income tax expense (benefit)	—	1,257	1,274	(24,122)
Bargain purchase gain	—	—	—	(233,147)
Changes in fair value of contingent consideration	351	9,500	9,462	(11,600)
IPO and transaction-related costs [1]	1,567	2,039	3,104	4,170
Stock-based compensation	1,051	891	2,295	1,185
Legal fees and other costs for a legacy loss job [2]	4,638	4,133	10,904	9,645
Adjusted EBITDA	$ (2,875)	$ 29,433	$ 47,004	$ (193,621)

(1) We recorded $1.6 million in transaction-related costs in the six months ended June 30, 2023. We recorded $3.1 million in transaction-related costs in fiscal year 2022, which included $2.0 million for a contingent legal fee to settle the working capital settlement agreement in January 2022 and $1.0 million in other transaction-related costs. We incurred $4.2 million in transaction-related costs in the fiscal year 2021, of which $3.3 million was related to the AECOM Sale Transactions.

(2) Consists of legal fees and other costs incurred in connection with claims relating to a legacy project.

Liquidity and Capital Resources

Capital Requirements and Sources of Liquidity

During the six months ended June 30, 2023, our capital expenditures were approximately $3.2 million compared to $5.3 million for the six months ended July 1, 2022. During the fiscal years ended December 30, 2022 and December 31, 2021, our capital expenditures were approximately $10.4 million and $2.9 million, respectively. Historically, we have had significant cash requirements in order to organically expand our business to undertake new construction projects. Our cash requirements include costs related to increased expenditures for equipment, facilities and information systems, purchase of materials and production of materials and cash to fund our organic expansion into new markets, including through joint ventures. Our working capital needs are driven by the seasonality and growth of our business, with our cash requirements greater in periods of growth. Additional cash requirements resulting from our growth include the costs of additional personnel, enhancing our information systems and, in the future, our integration of any acquisitions and our compliance with laws and rules applicable to being a public company.

We have historically relied upon cash available through operating activities, in addition to credit facilities and existing cash balances, to finance our working capital requirements and to support our growth. We regularly monitor potential capital sources, including equity and debt financing, in an effort to meet our planned expenditures and liquidity requirements. Our future success will be highly dependent on our ability to access outside sources of capital.

As is customary in the construction business, we are required to provide surety bonds to secure our performance under construction contracts. Our ability to obtain surety bonds primarily depends upon our capitalization, working capital, past performance, management expertise and reputation and certain external factors, including the overall capacity of the surety market. Surety companies consider such factors in relationship to the amount of our backlog and their underwriting standards, which may change from time to time. We have pledged proceeds and other rights under our construction contracts to our bond surety company. Events that affect the insurance and bonding markets may result in bonding becoming more difficult to obtain in the future, or being available only at a significantly greater cost. To date, we have not encountered difficulties or material cost increases in obtaining new surety bonds, and we believe our strong cash position supports our ability to fulfill our surety bond requirements.

We believe that our operating, investing and financing cash flows are sufficient to fund our operations for at least the next twelve months. However, future cash flows are subject to a number of variables, and significant additional expenditures will be required to conduct our operations. There can be no assurance that operations and other capital resources will provide cash in sufficient amounts to maintain planned or future levels of expenditures. In the event we make one or more acquisitions and the amount of capital required is greater than the amount we have available for acquisitions at that time, we could be required to reduce the expected level of expenditures and/or seek additional capital. If we seek additional capital, we may do so through joint ventures, asset sales, offerings of debt or equity securities or other means. We cannot guarantee that this additional capital will be available on acceptable terms or at all. If we are unable to obtain the funds we need, we may not be able to complete acquisitions that may be favorable to us or finance the expenditures necessary to conduct our operations.

Total debt outstanding is presented on the condensed consolidated balance sheets as follows:

(In thousands)	**June 30, 2023**	**December 30, 2022**
Revolving Credit Facility	$ 30,000	$ —
Total debt	30,000	—
Unamortized debt issuance costs	(332)	—
Long-term debt, net	$ 29,668	$ —

Loan and Security Agreement

On September 13, 2023, we entered into a Loan and Security Agreement ("Loan Agreement") with Hudson Bridge Capital, which provides a maximum commitment of $75.0 million and bears interest at an annual rate of 13.0%. Further, the Loan Agreement is subject to a closing fee of 1.50% on proceeds of the Loan. The Loan Agreement matures 36 months from the date of the first draw and repayment of principal does not commence until after the first twelve months of servicing the loan. The Company has not drawn any funds as of September 14, 2023.

Revolving Credit Facility

On March 27, 2023, we entered into the Revolving Credit Facility with MidCap Financial Services, LLC, which originally provided a total commitment of $30.0 million. The Revolving Credit Facility was subsequently amended on June 30, 2023. As amended, the Revolving Credit Facility provides for a total commitment of $35.3 million and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%. Further, the Revolving Credit Facility is subject to an annual collateral management fee of 0.50% and an annual unused line fee of 0.50%. Key financial covenants under the Revolving Credit Facility include maintaining a leverage ratio that does not exceed 1.75 to 1.0 and a minimum cash balance of $25.0 million. The Revolving Credit Facility matures on March 27, 2028. The Company is not aware of any instances of noncompliance with the key financial covenants as of September 14, 2023.

Revolving Line of Credit

We had a $25.0 million Revolving Line of Credit with BMO Harris Bank, N.A., under which the Company had no outstanding borrowings as of June 30, 2023 or December 30, 2022. Borrowings under the Revolving Line of Credit bear interest at a rate based on SOFR or a combination of rates (prime rate, federal fund rate, and SOFR) at the Company's election, with an added margin depending on the Company's leverage ratio. The unused balance of the Revolving Line of Credit bears a commitment fee of between 0.25% and 0.40% per year, depending on the Company's leverage ratio. Key financial covenants under the Revolving Line of Credit include maintaining a leverage ratio that does not exceed 2.0 to 1.0 and a minimum cash balance of $35.0 million. The Revolving Line of Credit terminated on March 27, 2023 upon the Company entering into the Revolving Credit Facility. The Company is not aware of any instances of noncompliance with the key financial covenants as of December 30, 2022.

Cash Flows Analysis

The following table sets forth our cash flows for the periods indicated:

	Six Months Ended		Fiscal Year Ended	
(In thousands)	**June 30, 2023**	**July 1, 2022**	**December 30, 2022**	**December 31, 2021**
Net cash used in operating activities	$ (60,672)	$ (18,466)	$ (3,084)	$ (53,975)
Net cash provided by investing activities	12,647	14,347	4,197	136,172
Net cash provided by (used in) financing activities	29,045	(150)	(931)	(294)
Net (decrease) increase in cash, cash equivalents and restricted cash	(18,980)	(4,269)	182	81,903
Cash, cash equivalents and restricted cash, beginning of period	82,085	81,903	81,903	—
Cash, cash equivalents and restricted cash, end of period	$ 63,105	$ 77,634	$ 82,085	$ 81,903

Operating Activities

Our net cash used in operating activities of $60.7 million during six months ended June 30, 2023 was higher than the $18.5 million in net cash used in operating activities during the six months ended July 1, 2022.

This change of $42.2 million was due primarily to:

- $22.7 million decrease in net income and $3.5 million increase in non-cash adjustments primarily due to a decrease in changes in fair value of contingent consideration of $9.2 million partially offset by lower equity in earnings and return on investment in unconsolidated joint ventures, net of $13.4 million and $0.9 million net increase in other non-cash adjustments;
- $41.2 million decrease in changes in accounts receivable due to decreased collections;
- $32.7 million decrease in changes in construction accruals due to costs of new projects; partially offset by
- $17.3 million increase in changes in billing on uncompleted contracts in excess of costs and estimated earnings due to construction progress on contracts with prepayments;
- $18.3 million increase in accounts payable; and
- $16.7 million increase in prepaid and other current assets due to reduction in short term deposits.

Our net cash used in operating activities of $3.1 million during fiscal year 2022 was comparatively lower than the $54.0 million in net cash used in operating activities during fiscal year 2021.

This change of $50.8 million was due primarily to:

- $42.9 million decrease in net income and $262.6 million increase in non-cash adjustments primarily due to a $233.1 million non-cash bargain purchase gain recorded in fiscal year 2021 compared to no gain recorded in fiscal year 2022 and a $33.5 million increase in return on investment in unconsolidated joint ventures, partially offset by a $4.1 million net decrease in other non-cash adjustments;
- $82.4 million increase in changes in accounts receivable due to decreased collections;
- $60.6 million increase in changes in construction accruals due to costs of new projects; partially offset by
- $136.3 million decrease in changes in billing on uncompleted contracts in excess of costs and estimated earnings due to construction progress on contracts with prepayments;
- $112.9 million decrease in changes in forward loss reserve due to costs incurred that were reserved for in prior year as work continued to complete the project; and
- $75.3 million decrease in changes in costs and estimated earnings in excess of billings on uncompleted contracts due to progress towards future milestones.

Investing Activities

For the six months ended June 30, 2023, net cash provided by investing activities was $12.6 million, which primarily consisted of cash proceeds from an advance on the sale of non-core business contracts of $20.0 million, proceeds from sale of property, plant and equipment of $4.9 million, and return of investment in unconsolidated joint ventures of $4.3 million, partially offset by unconsolidated joint venture equity contributions of $13.3 million and purchases of property, plant and equipment of $3.2 million. For the six months ended July 1, 2022, net cash provided by investing activities was $14.3 million, which primarily consisted of a net working capital settlement in association with the AECOM Sale Transactions of $32.0 million partially offset by unconsolidated joint venture equity contributions of $13.3 million and purchases of property, plant and equipment of $5.3 million.

For the fiscal year ended December 30, 2022, net cash provided by investing activities was $4.2 million which primarily consisted of proceeds from the net working capital settlement in association with the AECOM Sale Transactions of $32.0 million, partially offset by purchases of property, plant and equipment of $10.4 million and

unconsolidated joint venture equity contributions of $19.7 million. For the fiscal year ended December 31, 2021, net cash provided by investing activities was $136.2 million, which primarily consisted of cash acquired in the AECOM Sale Transactions of $160.4 million, partially offset by unconsolidated joint venture equity contributions of $23.0 million.

Financing Activities

For the six months ended June 30, 2023, net cash provided by financing activities was $29.0 million, which primarily consisted of proceeds from the Revolving Credit Facility borrowings of $30.0 million. For the six months ended July 1, 2022, net cash used in financing activities was $0.2 million, which consisted solely of payments on our finance lease obligation.

For the fiscal year ended December 30, 2022, net cash used in financing activities was $0.9 million, which consisted of payments on our finance lease obligation of $0.3 million and distributions to non-controlling interests of $0.7 million. For the fiscal year ended December 31, 2021, net cash used in financing activities was $0.3 million, which consisted solely of payments on our finance lease obligation.

Letters of Credit

We obtain standby letters of credit required by our insurance carriers. As of June 30, 2023, December 30, 2022 and December 31, 2021, the total amount of standby letters of credit outstanding were $ 14.1 million, $8.2 million and $5.0 million, respectively.

Contractual Obligations

Contractual obligations of the Company consisted of liabilities associated with remaining lease payments for the six months ending December 29, 2023 through the fiscal years ending through December 31, 2027 of approximately $6.2 million, $9.6 million, $7.6 million, $3.1 million and $1.8 million, respectively, and approximately $2.5 million in the aggregate thereafter based on balances outstanding as of June 30, 2023.

Off-Balance Sheet Arrangements

In our joint ventures, the liability of each partner is usually joint and several. This means that each joint venture partner may become liable for the entire risk of performance guarantees provided by each partner to the customer. Typically each joint venture partner indemnifies the other partners for any liabilities incurred in excess of the liabilities the other party is obligated to bear under the respective joint venture agreement. We are unable to estimate the maximum potential amount of future payments that we could be required to make under outstanding performance guarantees related to joint venture projects due to a number of factors, including but not limited to, the nature and extent of any contractual defaults by our joint venture partners, resource availability, potential performance delays caused by the defaults, the location of the projects, and the terms of the related contracts.

Critical Accounting Estimates

The discussion of our financial condition and results of operations is based upon our condensed consolidated and consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. We evaluate our estimates and assumptions on an ongoing basis. The results of our analysis form the basis for making assumptions about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, and the impact of such differences may be material to our condensed consolidated and consolidated financial statements.

Revenue Recognition

The Company recognizes revenue from signed contracts with customers, change orders (approved and unapproved) and claims on those contracts that we conclude to be enforceable under the terms of the signed contracts. Many of the Company's contracts have one clearly identifiable performance obligation. However, some contracts provide the customer an integrated service that includes two or more of services associated with construction, operations and management. The determination of the number of performance obligations in a contract requires significant judgment and could change the timing of the amount of revenue recorded for a given period.

Determination of the contract price is dependent upon a number of factors, including the accuracy of a variety of estimates made at the balance sheet date, such as estimated costs at completion. Additionally, the Company is required to make estimates for the amount of consideration to be received, including variable compensation such as bonuses, awards, incentive fees, claims, unapproved change orders, unpriced change orders, penalties, and liquidated damages. The Company's estimates of variable consideration and determination of whether to include such amounts in the contract price are based largely on the Company's assessment of legal enforceability, anticipated performance, and any other information (historical and forecasted) that is reasonably available to the Company. Management continuously monitors factors that may affect the quality of its estimates, and makes adjustments accordingly.

The Company has numerous contracts that are in various stages of completion which require estimates to determine the forecasted costs at completion. Due to the nature of the work left to be performed on many of the Company's contracts, the EAC for fixed-price contracts is complex, subject to many variables and requires significant judgment. Estimates of total cost at completion are made each period and changes in these estimates are accounted for prospectively as cumulative adjustments to revenue recognized in the current period. If estimates of costs to complete fixed-price contracts indicate a loss, a provision is made through a contract write-down for the total loss anticipated in cost of revenue.

Change Orders

Contracts are often modified to account for changes in contract specifications and requirements. Most of the Company's contract modifications are for goods or services that are not distinct from existing contracts due to the significant integration provided in the context of the contract and are accounted for as if they were part of the original contract. The effect of a contract modification on the transaction price and the Company's measure of progress for the performance obligation to which it relates are recognized as an adjustment to revenue (either as an increase or decrease) on a cumulative catch-up basis.

Claims Recognition

Sometimes the Company seeks claims for amounts in excess of the contract price for delays, errors in specifications and designs, contract terminations, change orders in dispute or other causes of additional costs incurred. Costs attributable to claims from customers are treated as costs of contract performance as incurred. The transaction price does not include any amounts collected on behalf of third parties, such as sales tax.

Income Taxes

The Company accounts for income taxes under the asset and liability method prescribed by the Accounting Standards Codification Topic 740 — Income Taxes ("ASC 740"). This method requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the condensed consolidated and consolidated financial statements. Under this method, the Company determines deferred tax assets and liabilities on the basis of the differences between the condensed consolidated and consolidated financial statement and tax bases of assets and liabilities by using enacted tax rates in effect for the year in which the differences are expected to reverse.

The Company recognizes deferred tax assets to the extent that its management believes these assets are more likely than not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If the Company determines that it would be able to realize its deferred tax assets in the future in excess of their net recorded amount, it will make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

Emerging Growth Company and Smaller Reporting Company

We are an "emerging growth company," as defined in the JOBS Act. For so long as we are an emerging growth company, we will, among other things:

- not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes- Oxley Act,
- not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A(a) of the Exchange Act,
- not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A(b) of the Exchange Act,
- be exempt from any rule adopted by the Public Company Accounting Oversight Board, requiring mandatory audit firm rotation and identification of critical audit matters,
- be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and
- be subject to reduced obligations with respect to financial data, including presenting only two years of audited financial statements and only two years of selected financial data in this prospectus.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of the Securities Act, for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We are also a smaller reporting company as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than

$100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter. See "*Risk Factors — General Risk Factors — We are on emerging growth company and because we take advantage of specified reduced disclosure requirements applicable to emerging growth companies and smaller reporting companies, our financial statements may not be comparable to companies that comply with public company effective dates, which may make our common stock less attractive to investors.*"

Internal Controls and Procedures

As an emerging growth company and smaller reporting company, we are not currently required to maintain an effective system of internal controls as defined by Section 404(b) of the Sarbanes-Oxley Act. We will be required to comply with the internal control requirements as defined by Section 404(a) of the Sarbanes-Oxley Act for the fiscal year ending December 29, 2023. Only in the event that we are deemed to be a large accelerated filer or an accelerated filer, and no longer qualify as an emerging growth company and smaller reporting company, would we be required to comply with the independent registered public accounting firm attestation requirement on the effectiveness of our system of internal control over financial reporting. Further, for as long as we remain an emerging growth company as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies or smaller reporting company including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirement on the effectiveness of our system of internal control over financial reporting. See "*Risk Factors — General Risk Factors — If, after this offering, we are unable to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act as it applies to an emerging growth company that is listed on an exchange for the first time, or if we are unable to maintain effective internal controls over financial reporting, investors may lose confidence in the accuracy of our financial statements and our share price may suffer.*"

In the course of preparing the condensed consolidated and consolidated financial statements that are included in this prospectus, our management has determined that we have material weaknesses in our internal control over financial reporting, which relate to the lack of a sufficient number of trained resources with assigned responsibilities and accountability for the design and operation of internal controls over financial reporting, lack of formal and effective controls over certain financial statement account balances, and lack of formal and effective controls over the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") principles including control environment, risk assessment, control activities, information and communications and monitoring which resulted in material adjustments in the preparation of our condensed consolidated financial statements as of and for the six months ended June 30, 2023 and July 1, 2022 and consolidated financial statements as of and for the fiscal years ended December 30, 2022 and December 31, 2021.

In order to remediate these material weaknesses, we have hired and continue to seek out additional accounting and finance staff members with public company reporting experience to augment our current staff and to improve the effectiveness of our closing and financial reporting processes and are currently implementing key controls over financial reporting and COSO principles. While we have implemented a plan to remediate these material weaknesses, the steps we have taken to date, and that we are continuing to implement, may not be sufficient to remediate these material weaknesses or to avoid the identification of other material weaknesses in the future.

Notwithstanding the material weaknesses that existed at June 30, 2023 and December 30, 2022, our management has concluded that the condensed consolidated financial statements included elsewhere in this prospectus present fairly, in all material respects, our financial position, results of operations and cash flows in conformity with GAAP.

If we fail to fully remediate these material weaknesses or fail to maintain effective internal controls in the future, it could result in a material misstatement of our condensed consolidated and consolidated financial statements that would not be prevented or detected on a timely basis, which could cause investors to lose confidence in our

financial information or cause our stock price to decline. Our independent registered public accounting firm has not assessed the effectiveness of our internal control over financial reporting and, under the JOBS Act, will not be required to provide an attestation report on the effectiveness of our internal control over financial reporting so long as we qualify as an emerging growth company, which may increase the risk that material weaknesses or significant deficiencies in our internal control over financial reporting go undetected.

Quantitative and Qualitative Disclosures about Market Risk

Not applicable as we are a “smaller reporting company,” as defined in the Exchange Act.

BUSINESS

Our Company

We are a leading provider of water and other critical infrastructure solutions nationwide. Through our predecessor entities, we have a long history of working on complex water projects, ranging from the world's largest wastewater recycling and purification system in California to the iconic Hoover Dam. According to *Engineering News Record*, in 2022 we were nationally ranked as a top ten builder of dams and reservoirs (#1), water supply (#3), water treatment and desalination plants (#8) and mass transit (#9). We are led by industry veterans, many with over 20 years of experience, and work closely with our customers to deliver complete solutions, including long-term operations and maintenance.

The United Nations has stated that climate change is primarily a water crisis as water becomes more scarce, unpredictable, polluted, or a combination of all three. Climate change, along with other emerging issues like drinking water contamination, requires significant and complex solutions like those we provide. We believe we are entering a period of substantial investment in water solutions, with more than $60 billion already authorized by federal legislation. In addition to organic growth opportunities, the existing water industry is highly fragmented by geography and capability, and we believe there is significant opportunity to both further expand our core infrastructure services and provide new services through acquisitions.

We selectively focus on the following types of infrastructure projects:

- *Water Treatment*: We expand, rehabilitate, upgrade, build and rebuild water and wastewater treatment infrastructure, including desalination plants. We implement complex cleantech treatment technologies including ozonation, biological activated carbon, membrane filtration, reverse osmosis, chemical treatment, and oxidation. We also conduct facility commissioning. Our projects and solutions aim to ensure access to clean and safe drinking water, protect public health, and reduce waterborne diseases. Our work contributes to protecting the environment by removing pollutants and contaminants from wastewater before it is released back into ecosystems. Additionally, water treatment infrastructure supports sustainable water management, which conserves this precious resource for future generations.
- *Water Resources*: We build, expand, and improve water storage and conveyance, dams, levees, flood control systems, pump stations, and coastal protection. We also upgrade and expand dams, levees and locks along our nation's waterways to enable continued emissions-reducing movement of goods. Select projects of ours enable reliable water supply, generate hydroelectric power, and control flooding, ensuring water availability and energy security. Our work contributes to protecting communities from flood damage to safeguard lives, property, and infrastructure.
- *Other Critical Infrastructure*: We build, retrofit, expand, rehabilitate, operate, and maintain our nation's critical infrastructure, including mass transit, bridges, and military infrastructure. We work on projects that we believe are vital for economic growth, social connectivity, and accessibility. We believe our projects enable smooth and efficient movement of people and goods, foster trade, address environmental sustainability, and improve quality of life for individuals and communities.

We were founded in 1990 in California. In 2017, AECOM acquired Shimmick and consolidated us with its existing construction services, which included former legacy construction operations from Morrison Knudsen, Washington Group International, and others. In January 2021, we began operating as an independent company under new private ownership. While our legacy companies have a long history operating in the United States, we have a limited operating history as an independent company. Following our separation from AECOM, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure. We believe our competitive strengths, which are discussed below, position us to execute this strategy and capitalize on market opportunities. However, our limited operating history as an independent company and historical dependence on AECOM subject us to a number of risks, such as an inability to obtain necessary bonding and the need to incur additional operating expenses to create or supplement the corporate infrastructure necessary to operate as an independent company. We are also involved in ongoing disputes with AECOM,

which could adversely impact our business. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations — AECOM Sale Transactions*" for a definition and discussion of the AECOM Sale Transactions and "*Risk Factors — Risks Related to our Projects — We have a limited operating history as an independent company and have been historically dependent on our prior owner, AECOM,*" "*— Risks Related to Our Business and Industry — We are involved in ongoing disputes with our prior owner, AECOM, which could adversely impact our business,*" "*— We may be required to make additional payments to AECOM pursuant to contractual arrangements*" and "*— If AECOM defaults on its contractual obligations to us or under agreements in which we are a beneficiary, our business could be materially and adversely impacted*" for a discussion of risks related to AECOM.

For the six months ended June 30, 2023 and July 1, 2022, we generated revenue of $319.3 million and $293.6 million, respectively, and net (loss) income attributable to Shimmick Corporation of $(19.6) million and $3.7 million, respectively. Adjusted EBITDA was $(2.9) million and $31.9 million for the six months ended June 30, 2023 and July 1, 2022, respectively. Adjusted net (loss) income was $(12.0) million and $22.7 million for the six months ended June 30, 2023 and July 1, 2022, respectively. For the years ended December 30, 2022 and December 31, 2021, we generated revenue of $664.2 million and $572.7 million, respectively, and net income attributable to Shimmick Corporation of $3.8 million and $45.4 million, respectively. Adjusted EBITDA was $47.0 million and $(193.6) million for the years ended December 30, 2022 and December 31, 2021, respectively. Adjusted net income (loss) was $29.5 million and ($184.3) million for the years ended December 30, 2022 and December 31, 2021, respectively. For reconciliations of Adjusted EBITDA and Adjusted net (loss) income to net (loss) income, the most directly comparable GAAP financial measure, see "*Prospectus Summary — Summary Selected Consolidated Financial Data*."

As of June 30, 2023, we had a backlog of projects in excess of $1 billion, with over half of that amount comprised of water projects. We believe we have the ability to self-perform many of these projects, enabling us to compete for complex projects and differentiating us from many of our competitors. Self-performance also enables us to better control the critical aspects of our projects, reducing the risk of cost and schedule overruns.

Our Customers

Our project revenue and contracts come primarily from public customers such as federal, state, and local governments, including water districts, sanitation districts, irrigation districts, and flood control districts. Government backing provides financial stability and reliability, as public projects are funded by government entities with the authority to collect taxes and allocate funds. Diverse funding sources — grants, appropriations, loans, state and local taxes, and user fees — reduce dependence on a single source and enhance overall market stability.

Throughout our history, we have maintained and cultivated a strong presence in California. In 2022, more than half of our revenue was generated in California, the largest construction market in the United States. The amount of construction put in place for water infrastructure in California was $4.9 billion in 2022, according to S&P. Our revenue from water projects in California was less than 10% of the total California water market, indicating ample opportunity for us to grow our market share in California, where we believe we possess significant competitive advantages.

For example, we have detailed knowledge of the California market and have developed long-standing relationships with significant customers, including the OCSD, the OCWD, the MWD, the Port of Long Beach, the Port of Los Angeles, the City of San Francisco, the City and County of Los Angeles, and other public agencies across the state. In addition to long-standing relationships with our customers, our decades of industry experience have supplied us with deep knowledge of the local workforce, subcontractors, and suppliers throughout the state, which we believe provides us with a distinct pricing advantage and enables us to better manage risk.

We also have a long history of delivering solutions for the federal government, primarily building locks, dams, levees, and flood protection along the nation's inland waterways and coasts. Our federal clients include the Navy and numerous USACE districts, including the Louisville District in Kentucky, the Rock Island District in Illinois, and the Nashville District in Tennessee. This work supports efficient transportation, which helps boost trade, reduce congestion on roads, and enhance our nation's economy.

Our Growth Strategy

Following consummation of the AECOM Sale Transactions, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure and grow our business. We are beginning to see the benefits of that transition. Projects that were secured prior to the AECOM Sale Transactions, including large scale projects with higher risk and lower margins, is being worked off and replaced with smaller and mid-sized projects with less risk and higher margins. As a result of our renewed strategic focus on water infrastructure, for the first time in company history, in September 2022, Shimmick was ranked in the top ten for dams and reservoirs, water supply, and water treatment and desalination by *Engineering News Record*.

Our growth strategies are as follows:

Organically Grow Core Water and Critical Infrastructure Business. We seek to further expand our market share in water and other critical infrastructure to meet the nation's needs for clean water, economic development, disaster mitigation, trade, and resilience. We anticipate a prolonged and growing demand for the markets we currently serve, due to, among other things, growing coastal populations, climate change, drought and severe weather events, and increased activity along the inland waterways, where, according to the most recent ASCE Report Card for Inland Waterways nearly 830 million tons of the nation's goods are transported every year. Accordingly, we aim to increase the share of water projects as a percentage of our overall backlog. We plan to continue focusing on building infrastructure that meets our customer's needs — like water reuse, recycling, and conservation — and capitalize on significant opportunities within our core market of California.

We believe that by carefully positioning ourselves in markets that have meaningful barriers to entry, as discussed below, we can realize meaningful advantages. For example, we target projects requiring highly technical or specialized scopes of work or in our core market of California, where we can leverage our deep knowledge of and relationships with customers, workforces, subcontractors, and suppliers. We believe this provides us with a distinct pricing advantage, as well as better risk management.

Enhance Profitability. With a consistent focus on profitability by our management team and growing demand for critical infrastructure, we believe we can further enhance margins through disciplined project selection and bidding. We believe that the need and funding for projects may exceed the industry's capacity, enabling us to opportunistically target smaller specialized projects with less risk at higher margins.

We maintain a disciplined project evaluation process during which we look at a wide range of factors when determining which projects to bid. Certain criteria are considered at each stage of the pursuit process, which may include project size, location, customer, scope of work, availability of resources, anticipated competition, and project duration, among others. We selectively bid on projects that we believe offer an opportunity to meet our profitability objectives or that offer the opportunity to strategically grow our market share. In addition, we review our bidding opportunities to attempt to minimize concentration of work with any one customer or in tight labor markets.

We also believe that complex projects require companies like ours to have specific technical experience, the ability to obtain surety bonds, a trained workforce, geographic presence in key markets, and specialty equipment. These requirements, among others, present certain barriers to entry, which limits competition and enables us to maintain selectivity and a desired level of profitability. Additionally, we believe the demand for services like ours is outpacing the industry's ability to supply those services. As illustrated by a few of our recent bids, we were one of just three bidders on the Folsom Dam for USACE, one of two bidders for Control Upgrades at Plant No. 2 for the Orange County Sanitation District, and the sole bidder on the Regional Water Reclamation Facility for the Elsinore Valley Municipal Water District.

Expand Service Offerings for Water and Critical Infrastructure Through Strategic Acquisitions. Upon completion of this offering, we intend to complement our organic growth through strategic acquisitions. We will opportunistically evaluate strategic acquisitions that would enable us to pursue complementary markets or enter

new geographies where we do not have an existing footprint. Specifically, we plan to target companies that expand our existing solutions to provide additional capabilities along the water value chain, such as solutions for influent and effluent water conveyance, physical, chemical and/or biological water treatment, water testing, commissioning and operations and maintenance or other services which provide additional recurring revenue opportunities. Our industry includes a number of companies whose growth potential we believe has plateaued absent additional capital infusion or that otherwise may be seeking a liquidity event, which we believe presents opportunities for us to further our growth through strategic acquisitions. We believe the proceeds from this offering, along with existing cash on hand, publicly traded stock and access to capital markets, will enable us to leverage our established platform and the acquisition experience of our management team positions us well to capitalize on future acquisition opportunities and accelerate our growth.

Our Competitive Strengths

With decades of industry experience and a track record of delivering water and other critical infrastructure projects, we believe we are well-positioned to address market trends and meet the growing needs of our current and prospective customers. We believe our long-standing customer relationships, revenue stability, market-leading positions in key markets, effective risk management, presence in key geographies, and a commitment to talent development further contribute to our future success.

Track Record of Water and Other Critical Infrastructure. Through our decades of experience, we have developed efficient processes and controls that allow us to successfully deliver critical infrastructure projects. Our strategy shift to focus on water treatment facilities, dams, locks, and levees, coupled with recent and strong underlying market dynamics, has helped us become a market leader.

Self-Performance of Contracts. We believe we are differentiated from our competitors by our ability to self-perform virtually all aspects of the critical infrastructure projects we build. We believe our ability to self-perform these project scopes makes us more competitive, as we are able to confidently estimate the cost of each job package given our expertise, track record, and expectation that we will self-perform up to 80% of the elements in a typical construction contract. Self-performance offers numerous benefits, both internally and for our customers, including: better cost and quality control, greater control over work sequencing to reduce potential delays, increased flexibility and responsiveness, and a single point of accountability for our customers, all of which simplify project management. Self-performance also creates additional value by enabling us to capture profit margin that would typically be shared with subcontractors.

Customer and Revenue Stability. In 2022, the vast majority of our revenue was derived from public projects. Our public customers include water districts, sanitation districts, irrigation districts, flood control districts, USACE, cities, counties, and others. Government backing provides financial stability and reliability, since public projects are funded by government entities with the authority to collect taxes and allocate funds. Long-term planning and public interest behind infrastructure projects help ensure consistent funding allocation. Governments also have legal obligations to provide and maintain essential infrastructure, further solidifying the stability of public funding. Diverse funding sources — grants, appropriations, loans, state and local taxes, and user fees — reduce dependence on a single source and enhance overall market stability. Additionally, countercyclical investment, like federal stimulus during economic downturns, contributes to the stability of public funding. We believe this strategy enables us to better manage our business through market cycles.

Framework for Managing Construction Projects and Contract Risk. Our long history in these markets provides us with an understanding of the various risks of infrastructure construction. Following the AECOM Sale Transactions, we enhanced our monitoring and risk management practices applied throughout the entire project lifecycle, including the bid process, pre-construction planning activities, and construction. Our senior management reviews all bid proposals prior to submission, thereby increasing accountability and an understanding of the financial and operating risks and opportunities of our contracts. We maintain a database of prior contract proposals and records from completed projects, such as raw material requirements and costs, labor

requirements and costs, and equipment needs, enabling us to rely on our institutional knowledge when estimating project costs in developing new proposals.

Long-Term Relationships with Customers and Partners. Over the past 30 years, we have developed strong relationships with major infrastructure owners including the OCWD, the City of San Diego, Bay Area Rapid Transit, the Ports of Long Beach and Los Angeles, the City of San Francisco and the City and County of Los Angeles. Elsewhere, we have delivered work for numerous USACE districts, including Louisville, Kentucky, Rock Island, Illinois, Omaha, Nebraska, and Nashville, Tennessee. In fact, most of our revenue in 2022 was generated from repeat customers, leveraging established relationships, familiarity with expectations, and enhanced collaboration for improved outcomes.

Strong Culture and Values with a Commitment to Talent Development. We seek to foster a culture of professional development for each employee. We focus on hiring and retaining highly talented employees with diverse backgrounds and empowering them to create value for our stockholders. We believe our success is dependent on employee understanding of and investment in their role in that value creation. We recruit many of our new employees from a network of approximately two dozen college campuses, where we seek to identify diverse candidates with a desire to develop as construction and engineering professionals and who have key intangible qualities in addition to academic credentials. We believe that our culture, combined with the opportunity to work on complex projects, provides unique opportunities for our employees to grow within our organization. We also encourage our employees to take proactive steps to advance their development and we support our employees in achieving the Professional Engineer designation. Our commitment to career and leadership development is evidenced in our core values, which include Safety, Achievement, Transparency, Empowerment and Responsibility, Authentic Relationships and Mutual Trust and Support. As a guiding principle, we are committed to supporting our employees as they develop their careers.

Experienced Executive Team with Significant Equity Incentive. Many members of our senior leadership team have over 20 years of industry experience and have worked together for over a decade. Additionally, as of June 30, 2023, members of our management team currently held vested and unvested stock options representing over 15% of our common stock on a fully-diluted basis (or % after giving effect to this offering), which will significantly align their interests with stockholders.

Our Projects

We have historically pursued publicly funded water and other critical infrastructure projects. These projects include water and wastewater treatment, water conveyance (pipes, pump stations, irrigation and drainage channels), water storage (dams, reservoirs, weirs), flood protection (levees, flood walls), and environmental projects (species protection, fish ladders, hatcheries), as well as other critical infrastructure. These projects enhance connectivity, trade and economic growth.

As noted above, we have the ability to self-perform virtually all aspects of the critical infrastructure projects we build. However, at times, we may enter into joint venture arrangements on certain projects where it is necessary or desirable to share expertise, risk and resources. Joint venture partners typically provide independently prepared estimates, shared equipment, and often bring local knowledge and expertise. The services we self-perform versus those we rely upon subcontractors and joint venture partners to perform vary from project to project. Our decision regarding whether to self-perform work required depends on multiple factors, including location, availability of subcontractors, availability of craft, size of project, risk management objectives, scope and cost of self-performing versus subcontracting. For example, we joined with a joint venture partner on one of our current projects for their expertise on structural steel related specifically to retrofitting tainter gates. As of June 30, 2023, we had a backlog of projects of $1.3 billion, approximately $142 million, or 11%, of which are through our joint venture arrangements.

Water Treatment

Our experience in the water treatment space includes a wide range of treatment technologies. For example, for Orange County’s Groundwater Replenishment System Expansion, we delivered a three-step advanced process

consisting of microfiltration, reverse osmosis and ultraviolet light with hydrogen peroxide to produce water that meets and exceeds state and federal drinking water standards. The new 30 MGD expansion, completed in 2023, created an additional 31,000 acre-feet per year of new water supply and expanded the facility's capacity to provide water for one million people.

Desalination, another treatment process, removes salt and other impurities from seawater or brackish water to produce freshwater and provides a reliable and alternative source of freshwater in regions facing water scarcity. Desalination also supports economic development and population growth in arid coastal areas. Although desalination plants come with unique environmental and regulatory challenges, desalination remains an important part of a larger, multi-billion dollar strategy to address drought and water scarcity in California, according to the California Water Board Water Supply strategy, published in August 2022. For example, in 2020 the California Department of Water Resources awarded over $82 million in Proposition 1 desalination grants to support 20 projects. One of the projects that has received Proposition 1 funding is the Antioch Desalination Plant. To combat the increase in water salinity, Shimmick is adding a desalination reverse osmosis treatment train to this existing plant in Antioch. This work will enable the plant to continue to provide a drought-resistant water supply, reduce reliance on imported water, enhance water reliability, support agricultural needs, and contribute to the overall water security and sustainability in the San Joaquin Delta System and surrounding areas. Also, in 2018, we expanded the Robert W. Goldsworthy Desalter facility in Los Angeles County. Using reverse osmosis, the facility processes salty, brackish groundwater to create fresh, potable water. We also improved the facility's reverse osmosis capabilities, installing new filter membranes and analysis and monitoring instrumentation.

Water Resources

According to *Engineering News Record*, we were the nation's largest builder of dams and reservoirs and third largest builder of water supply systems in 2022. These critical infrastructure projects control flooding, store and supply water, and improve water quality to meet public demands. We also improve locks along the nation's inland waterways, enabling the efficient and emissions-reducing transportation of goods, supporting commerce, and connecting regions for economic growth and trade.

At the LaGrange Lock and Dam in Illinois, USACE chose us to perform a major rehabilitation of the more than 80-year-old dam along one of the main inland waterways where barges transport nearly 830 million tons of the nation's goods every year, according to the most recent ASCE Report Card for Inland Waterways. Additionally, we recently completed the Rapid Disaster Infrastructure program, building more than five miles of levees in Missouri to protect the area from flooding. A Shimmick-led joint venture also replaced an aging lock and dam and constructed the new Olmsted Dam on the Ohio River, where according to USACE, more commerce traverses than any other location on the entire U.S. inland waterways. With the Olmsted lock and dam replacement, economic net benefits to the nation are estimated to be more than $640 million annually, according to the same ASCE Report Card.

In California, as part of a joint venture, we recently secured a project for USACE to raise the main dam in Folsom. The project, set for completion in 2027, will enhance flood control by increasing temporary storage capacity of the reservoir by 43,000 acre-feet, reducing flood risk in the greater Sacramento area.

Other Critical Infrastructure

Critical infrastructure refers to the systems, assets, and facilities that are essential for the functioning and well-being of our nation. They are vital for maintaining national security, public health and safety, and economic stability. Disruptions or failures in critical infrastructure can have significant consequences and impact the functioning of society.

Our most recent example of critical infrastructure delivered for the military was the Point Loma Navy Fuel Pier Replacement. This project was necessary to ensure the safe and efficient refueling of naval ships and to meet current operational and safety standards. We demolished and removed the existing pier, installed a new fueling pier, and performed other security improvements to enhance the Navy's ability to maintain its fleet of surface ships, submarines, and other vessels.

We have included project details below for projects currently in progress or recently completed. These projects represent a typical cross-section of the common types of projects we deliver in terms of scope, customer type, and geography.

North City Pure Water Treatment Facility (San Diego, CA)

Market Drivers: Drought, water scarcity, water conservation and reuse
Market: Water treatment
Client: City of San Diego
Status: Ongoing

Description: The North City Pure Water Treatment Facility in San Diego utilizes advanced technology to purify recycled water, providing a safe and sustainable water supply. Its benefits include reducing dependence on imported water, ensuring water resilience, and protecting the environment by reducing wastewater discharge. Shimmick is delivering a new state-of-the-art facility to treat recycled water currently used for irrigation from the North City Water Reclamation Plant to purified water standards, making it suitable to use as potable water.

Foster City Levee (Foster City, CA)

Market Drivers: Coastal population, sea-level rise, climate change
Market: Water resources, flood protection
Client: Foster City
Status: Completed

Description: To address sea-level rise projections through the year 2050 and the resulting increase in tidal surges, Shimmick was chosen to build a new levee to protect Foster City's coastal population on the San Francisco Bay. Shimmick constructed more than six miles of flood protection, including new concrete retaining walls, new earth filled embankment, and new sheet pile walls. Shimmick performed all work adjacent the environmentally sensitive bay and marsh environments.

Antioch Desalination Plant (Antioch, CA)

Market drivers: Water quality, climate change
Market: Water treatment, desalination
Client: City of Antioch
Status: Ongoing

Description: The Antioch Desalination Plant in California provides a drought-resistant water supply, reduces reliance on imported water, enhances water reliability, supports agricultural needs, and contributes to the overall water security and sustainability of the region. Here, seasonal irrigation demand allows sea water to travel further inland from the San Francisco Bay into the San Joaquin Delta System. To combat the increase in water salinity, Shimmick is adding a desalination reverse osmosis (RO) treatment train to the existing Antioch Desalination Plant.

LaGrange Lock and Dam (Versailles, IL)

Market drivers: Aging infrastructure, efficient movement of goods
Market: Inland waterways, locks, dams
Client: U.S. Army Corps. of Engineers
Status: Completed

Description: USACE chose Shimmick to perform a major rehabilitation of this 81-year-old dam on the Illinois River, one of the main inland waterways along which barges transport nearly $830 million tons of the nation's goods each year. Shimmick removed and replaced the miter gate and tainter valve hydraulic and electrical control equipment, as well as the associated anchorages. Shimmick also dewatered and refaced the lock chamber and constructed and installed mechanical equipment-protection structures.

Our Market Opportunity

Due to water's essential nature, climate change, coastal population growth, aging infrastructure, regulatory requirements, infrastructure resilience needs, and technological advancements, we anticipate the demand for

water infrastructure to continue to grow. Aging infrastructure requires maintenance and upgrades, while regulatory standards, as well as new extreme weather patterns like droughts, drive the need for conveyance, new facilities and treatment technologies. Additionally, water infrastructure is critical and, in many cases, life-sustaining, less impacted by economic downturns than other markets like residential or commercial construction. We believe these and other factors contribute to the sustained demand for water infrastructure, for which we have already seen a significant increase in authorized spending.

The Infrastructure Investment and Jobs Act ("IIJA"), passed in November 2021, authorized the spending of $1.2 trillion over five years to expand access to clean drinking water, rebuild the nation's transportation system, and address climate change, among other initiatives. Of the $1.2 trillion in supplemental spending authorized by the IIJA, more than $50 billion will go to the EPA to strengthen the nation's drinking water and wastewater systems, representing the single largest investment in water ever by the federal government and representing a significant, multi-year market opportunity for Shimmick. Specifically, it provides more than $20 billion for safe drinking water, with $12 billion going to a state clean water revolving fund, to which states can apply for grants and loans for critical water infrastructure projects. The remainder, around $9 billion, will address emerging contaminants, including PFAS in drinking water. Another $15 billion is included to replace lead pipes, more than $12 billion to ensure clean water for communities, and nearly $2 billion for regional water protection.

According to S&P, water and other critical infrastructure spending is forecasted to have a compound annual growth rate ("CAGR") of 5% between 2023 and 2027. Additionally, because projects often take several years to plan and advertise, we believe the bulk of the newly authorized spending is yet to come. According to Dodge Data's 2023 second quarter forecast, just 35% of the IIJA funding has flowed to projects thus far, with the bulk of spending coming in future years. Despite economic uncertainty surrounding federal monetary policy and inflationary pressures, nonbuilding infrastructure starts, defined by Dodge Data as public works like dams, sewerage and waste disposal, water supply, and bridges, are forecasted to see a 16% increase to $281 billion in 2023. Furthermore, nonbuilding infrastructure will be "more insulated from economic turmoil than other sectors" due to the recent passage of several federal legislative efforts, according to Dodge Construction Network's 2023 Construction Outlook.

In addition to the IIJA, the American Rescue Plan Act of 2021 provided another $6.5 billion in grants for state and local governments for water projects through 2024. Although the bill was originally designed to address impacts related to the COVID-19 pandemic, the final version provides state and local governments with "wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities." By permitting funds to be used for water and sewer infrastructure needs, the revised rule states that, "Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health."

Management considers the size of our market opportunity to be the total market opportunity for all companies similarly situated to meet the demand for water infrastructure, which includes our current competitors and any future market entrants. We estimate that the total market opportunity for water infrastructure is $60 billion, and given current competitors and future market entrants, we will likely only be able to convert on a portion of that market opportunity. Furthermore, the federal government and our private clients may face challenges implementing the funding allocated to them, which would decrease the size of the total estimated market opportunity.

California

One of California's major economic drivers is water availability. Seventy-five percent of California's water supply comes from watersheds north of Sacramento, while the state's highest demand comes from the south. This requires an extensive network of water conveyance, storage, and other infrastructure to deliver water where it is most needed. As the most populous state in the U.S., California delivers drinking water to around 40 million people through a robust network of water facilities. California maintained more than 420 wastewater treatment plants and processed more than five million acre-feet, or nearly two trillion gallons, of influent and effluent water in 2021.

California's water infrastructure has deteriorated over the last several decades. The EPA 2018 Drinking Water Infrastructure Needs Survey and Assessment determined that the cost of California's water infrastructure needs to be increased to over $51.0 billion. California's needs include an estimated $31.6 billion to improve drinking water transmission, $9.2 billion for water treatment and $7.0 billion for water storage. According to S&P, the size of the California water and transportation infrastructure market, the largest market in which we operate, will be approximately $23 billion in 2024. It is projected to grow nearly 30% faster than the national average, with a nominal CAGR of approximately 7% between 2023 and 2027.

In 2017, the Public Policy Institute of California ("PPIC") reported that "every county has been declared a flood disaster area multiple times." And that "transportation, energy, water supply, and sewer networks are also at risk of disruption." Due to these factors, proactive steps are being taken to fund water projects and programs. According to the PPIC, Californians have approved $27.0 billion in water bonds since 2020.

Additionally, California is the federal government's largest recipient of formula-based funds for infrastructure, with $39.0 billion expected from the IIJA over the next five years and another $3.5 billion in federal funding for clean water infrastructure. In November 2022, California received $609 million in supplemental state revolving funds from the EPA for water projects, by far the most allocated to any state.

Since the passage of the California Infrastructure Planning Act in 1999, the California Governor's office has been required to submit a five-year infrastructure plan with the annual budget bill to the California Legislature for consideration. California enacted a 2023-2024 total budget of $310 billion, which allocates more than $32 billion for infrastructure.

Additionally, the federal Bipartisan Budget Act of 2018 allocated $3.5 billion to improve water infrastructure in California and $8 billion for western water infrastructure. The Inflation Reduction Act provides another $4 billion for drought relief throughout western states, including California. According to the PPIC, over the past three years the California state legislature has authorized more than $8 billion to improve water supply and river and wetland ecosystems.

Funding for water-related projects also comes from revenue generated from water sales. In California, the vast majority (84%) of water projects are funded from local water bills and taxes. The balance comes from state (13%) and federal (3%) contributions.

Federal

According to an April 2023 Congressional Resource Service report, the IIJA provided $17.1 billion in direct, emergency appropriations to USACE for construction (68%), operations and maintenance (23%) and Mississippi River and Tributaries (5%). Much of this funding is being allocated directly to the core markets in which we operate, including $2.5 billion to inland waterways and another $5 billion for coastal and inland flood management. The remainder is slated for aquatic ecosystem restoration, pilot programs for flood risk, and other programs.

In addition to the IIJA, the Bipartisan Budget Act, passed in 2018, authorized $15 billion for construction for projects like the Sabine Pass to Galveston Bay Coastal Storm Risk Management Program that will reduce risk from coastal storm surges along the Texas coast. Shimmick is currently pursuing this important project, and if prequalified, will be granted the opportunity to bid task orders under the $7 billion MATOC. The USACE has already prequalified Shimmick for two other MATOCs this year — the Huntington Land Based Construction MATOC and the Nashville Construction MATOC. Shimmick is one of two large businesses prequalified on Huntington MATOC and one of four large businesses prequalified for Nashville MATOC. MATOCs limit competition to a subset of prequalified competitors and offer significant, long-term project and revenue opportunities.

Both the IIJA and the Bipartisan Budget Act are supplemental to the USACE's annual budget, which in recent years has been approximately seven to eight billion dollars annually, historically reflecting modest year-over-year increases. This funding is directly appropriated to USACE for projects outlined in its annual work plans.

Our Industry

Several long-term trends, including the impact of climate change, the deterioration of aging infrastructure, and coastal population growth, have resulted in a renewed focus on infrastructure development and funding in the United States. Droughts and flooding in the west, along with extreme weather along coastal states, have demonstrated the need for expanded water and storm water infrastructure, flooding mitigation and disaster recovery efforts. In addition, our nation's infrastructure, much of it built more than 50 years ago, has deteriorated over the last several decades.

The demand for water infrastructure stems from multiple factors driving the need for reliable water management systems. Growing urbanization and industrialization have amplified water consumption, putting pressure on existing water supply networks. Furthermore, aging infrastructure in many regions requires significant upgrades and modernization to ensure clean water delivery, effective flood control, and efficient navigation.

Critical infrastructure ensures the efficient movement of goods and people, supports economic growth, and enhances connectivity between regions. Major economic drivers for these projects include increasing international trade, urbanization, and population growth. As governments and private entities continue to invest in upgrading and expanding infrastructure to meet these demands, opportunities for innovative solutions and technologies are expected to flourish.

Based on these and other factors, we believe that demand for construction and ongoing maintenance of water and other critical infrastructure projects will continue to increase.

Water Treatment

In the United States, the delivery of drinking water, wastewater treatment, and stormwater services rely on a comprehensive network of treatment plants, pumps, pipes, storage facilities, and other essential components. According to an ASCE Report, more than 50,000 drinking water systems distribute 39 billion gallons of drinking water to U.S. homes, industries, and other businesses. These systems are regulated by the EPA and state agencies under the Safe Drinking Water Act. The drinking water systems in the United States have been assessed as poor/at-risk, with a grade of C- by the ASCE.

With over 16,000 publicly owned wastewater treatment systems, centralized plants are expected to handle a larger share of wastewater treatment due to urban growth. These systems are currently operating at an average of 81% of their design capacity, with 15% exceeding capacity. Many systems built in the 1970s under the Clean Water Act are reaching the end of their expected 40- to 50-year lifespan. Nationwide, water pipes average 45 years old, and some components are over a century old, despite an expected lifespan of 50 to 100 years.

Water Resources

According to the America's ASCE Infrastructure Report Card, there are over 91,000 dams with an average age of 57 years across the U.S. Approximately 15,600 dams in the United States are classified as high-hazard structures, with an estimated rehabilitation cost for non-federal dams of nearly $20 billion.

The inland waterway network in the United States is comprised of approximately 12,000 miles of inland navigation channels as well as an additional 11,000 miles of intracoastal waterways owned and operated by the USACE. Most of the locks and dams are well past their 50-year design life. According to the ASCE's 2021 America's Infrastructure Report Card, the USACE backlog of authorized projects that are waiting for appropriations funding, which includes the nation's inland waterway locks and dams, is $6.8 billion. The ASCE reports a navigation backlog of $2.7 billion annually in unmet maintenance work activities. Estimates show the need to rehabilitate federal dams is approximately $27.6 billion.

Industry Drivers and Trends

We believe our core markets of water and other critical infrastructure are in the midst of a prolonged expansion, driven by several macro-economic and geopolitical trends, including the following:

Climate change and extreme weather events. The U.N. Intergovernmental Panel on Climate Change 2023 report highlighted that climate change has affected water security due to warming, changing precipitation patterns, and greater frequency and intensity of climatic extremes. Sea-level rise, droughts and flooding continue to affect highly populated areas, including coastal populations. As of July 2023, the U.S. National Oceanic and Atmospheric Administration ("NOAA") indicated that more than 70 million people are currently being affected by droughts and 38 states are experiencing moderate droughts or worse. At the same time, other parts of the country are seeing extreme flooding. According to NOAA, there were 40 tropical cyclone and flooding events in the United States from 2013 to 2023, with an aggregate cost of approximately $730.0 billion.

In coastal regions, rising sea levels and storm surges pose risks to low-lying areas. For example, California has a coastal population of more than 25 million people according to the Office of Coastal Management's 2023 estimate, which is anticipated to be significantly affected by climate change.

Aging infrastructure. Our nation's infrastructure — much of it built more than 50 years ago — has deteriorated over the last several decades and is in need of major upgrades and expansions. In its 2021 America's Infrastructure Report Card, the ASCE graded America's overall infrastructure as a C- with many of our target markets graded in the Ds. The report estimated that the cumulative needed investment in infrastructure in the United States for the 10 years from 2020 to 2029 was in excess of $2.6 trillion. The ASCE report estimated that by 2039, failure to improve our infrastructure could cost over $10.0 trillion in lost U.S. GDP.

Additionally, the replacement of old, lead pipes is required to protect public health. The EPA estimates that 9 million lead pipes currently deliver drinking water to homes and businesses across the U.S., putting millions at risk for neurological damage and coronary heart disease. Recognized as a serious public health risk, the IIJA includes $15 billion to replace lead pipes across the United States.

Increasing regulations to safeguard public health and address contaminants. Given the widespread exposure to PFAS — harmful, long-lasting chemicals that have been found in our nation's water supply — state legislatures and the federal government are acting to mitigate the public health impacts and environmental degradation that these chemicals have caused, according to the National Conference for State Legislatures. The IIJA dedicates $10 billion in funding for communities impacted by emerging contaminants in water, including PFAS. In 2021, the EPA released a PFAS roadmap to prevent unsafe new PFAS chemicals from entering the market and protect public health.

As part of this roadmap, in 2023 the EPA took steps to designate PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). CERCLA establishes liability for owners, operators, generators and others, potentially making entities that handle designated PFAS liable for recovery and remediation costs related to PFAS.

Water conservation and efficiency. According to a 2021 Nasdaq report, contracts for water reuse have surpassed those for desalination. Water recycling offers cost savings, lower energy requirements, and enhanced environmental benefits. In addition to being more economical than desalination, it minimizes the necessity for expanding production capacity and transforms wastewater treatment plants from cost centers into profit centers.

Commitment to ESG

We seek to deploy operational best practices for winning, executing, and supporting the work we do, much of which is designed to achieve environmental or social goals such as clean water or building infrastructure to

withstand extreme weather events or other natural disasters. These best practices, tools, and techniques have been developed for key areas of Shimmick's operations. One of these key areas is Safety, Health, and Environmental ("SH&E"). We seek to achieve SH&E success through a comprehensive, internal program that incorporates SH&E standards and innovative techniques, with the ultimate goal of achieving zero work-related injuries or illnesses and preventing damage to property and the environment. Our SH&E program includes specific guidelines to protect people and the environment and includes environmental compliance maps, environmental impact assessments, environmental management plans, environmental compliance checklists, and a workflow outlining how to manage environmental compliance.

Additionally, we aim to create an inclusive and equitable workplace. For example, in 2021, Shimmick established a mission to empower and support women by providing professional and personal development opportunities. We founded Women at Shimmick, an employee resource group charged with improving the experiences of women at Shimmick, providing programs, events, activities, and other opportunities for professional and personal development for women. The group aims to build awareness of women's experience among the general employee population, recruit and retain more high performing women, and increase the number of women in leadership positions. In the group's first year, survey results indicated improvement in key areas including welcoming, leadership and development opportunities, building awareness among the general employee population, and recognition.

For further information on our ESG disclosures see "*Business — Environmental, Social and Governance (ESG).*" In addition, we are committed to providing transparent disclosures on our human capital management. See "*Business — Human Capital Management.*"

Transition Services Agreement

In connection with the closing of the AECOM Sale Transactions, we entered into a Transition Services Agreement ("TSA") with AECOM in January 2021, pursuant to which we provide them with certain (i) business and operational services, including services relating to information technology, accounting, human resources and benefits, equipment and real estate leasing, data storage services and regulatory services and (ii) general and administrative services, including business technology services, compliance services, finance/ accounting services and procurement and supply chain services, in each case, with respect to the Business that we purchased from AECOM. Under the TSA, AECOM also provided us with certain facilities and facility management services.

AECOM began providing the services in January 2021 and was substantially done providing services as of December 31, 2021 as the Company now provides its own services, with the exception of the services relating to a few reverse transition service agreements for supporting legacy projects under which we have agreed to provide services to AECOM for 18 months to 5 years and would be compensated for such services at predetermined rates not expected to exceed $200,000 per annum. The services and employees for each service may be amended from time to time by the parties.

The term of the agreement began in January 2021 and ends on the earlier of the last date that AECOM or the Company, as applicable, is required to provide the services or the termination of the TSA in accordance with the agreement. The TSA also includes customary indemnification and termination provisions.

Backlog

Our backlog consists of the remaining unearned revenue on awarded contracts, including our pro-rata share of work to be performed by unconsolidated joint ventures, less the joint venture partners' pro-rata share of work to be performed by consolidated joint ventures. We include in backlog estimates of the amount of consideration to be received, including bonuses, awards, incentive fees, fixed-price awards, claims, unpriced change orders, penalties, minimum customer commitments on cost plus arrangements, liquidated damages and certain time and material arrangements in which the estimated value is firm or can be estimated with a reasonable amount of

certainty in both timing and amounts. As construction on our contracts progresses, we increase or decrease backlog to take account of changes in estimated quantities under fixed-price contracts, as well as to reflect changed conditions, change orders and other variations from initially anticipated contract revenue and costs, including completion penalties and bonuses. Substantially all of the contracts in our backlog may be canceled or modified at the election of the customer. See "*— Types of Contracts and Contract Management Process — Selective Bidding Process and Project Management.*"

As of June 30, 2023, we had a backlog of projects of $1.3 billion, approximately $142 million, or 11%, of which are through our joint venture arrangements. We estimate that approximately $1.0 billion will be recognized as revenue over the next twenty four months. None of our backlog is subject to AECOM contractual obligations. Our customer backlog by customer type, contract type and estimated time periods recognized is presented in the following tables:

	As of June 30, 2023 (in millions)
Backlog by customer type:	
State and local agencies	$ 971
Federal Agencies	164
Private Owners	148
Total backlog	$ 1,284

	As of June 30, 2023 (in millions)
Backlog by contract type:	
Fixed Price	$ 1,138
Cost Plus	146
Total backlog	$ 1,284

	As of June 30, 2023 (in millions)
Estimated backlog recognized	
0 to 24 months	$ 993
25 to 36 months	127
Beyond 36 months	163
Total backlog	$ 1,284

In addition to backlog, we have a robust pipeline of priority projects — those that meet strict internal and external criteria, including size, scope, location, customer, competition and other — that we are both actively bidding and targeting to bid in the near-term. These opportunities represent strategically chosen projects that fit our strategy of focusing on water and other critical infrastructure projects.

Competition

Competitors in the water and critical infrastructure markets can range from large firms with significant financial resources to smaller, regional companies operating within a specialized market or area. The larger competitors may have well-established relationships with government entities, municipalities, and private customers, a capacity to invest in advanced technology and equipment, and/or the ability to operate and manage large projects or facilities.

These contractors include Barnard Construction Company, Inc., Ames Construction Inc., Dragados USA Inc., Flatiron Construction Corp., Fluor Corporation, Michels Corporation, Granite Construction Incorporated, Kiewit Corporation, Skanska USA Inc., Traylor Bros., Inc., and Walsh Construction Group, LLC, among others.

We also compete against smaller, specialized companies that focus on niche areas within the infrastructure space. These specialized firms might possess particular expertise in areas like water treatment technologies or facility rehabilitation. On smaller, regional projects (primarily in California), we will often compete against small or mid-sized regional contractors. These include C. Overaa & Co. Inc., Pacific Hydrotech Corporation, J.F. Shea Co., Inc., Western Weather Constructors, Inc., Steve P. Rados, Inc., Myers and Sons Construction, LLC, and Anvil Builders Inc.

In some cases, projects are awarded based on “best value.” Criteria that may influence our competitiveness include price, technical approach, past performance, plans for quality, equipment resources, financial strength, surety bonding capacity, relevant project experience, knowledge of local markets and conditions, and project management team and experience. For this reason, Shimmick is highly selective in the projects we pursue, pursuing only those in which we have a distinct advantage.

Types of Contracts and the Contract Management Process

Types of Contracts

We provide general contracting and construction management services necessary to deliver a project. These may include planning, scheduling manpower and equipment, and managing materials and subcontractors, all of which are required for the timely completion of a project in accordance with the terms, plans and specifications contained in a construction contract. We provide these services under traditional general contracting arrangements, such as fixed-price, construction manager/general contractor or design-build and, to a lesser extent, guaranteed maximum price and cost-plus contracts. These contract types and the risks generally inherent therein are discussed below:

Fixed-price (“FP”), contracts, which include fixed unit price contracts, are generally used in competitively bid public infrastructure projects and generally commit the contractor to provide all of the resources required to complete a project for a fixed sum (lump sum) or at fixed unit prices. Usually, FP contracts transfer more risk to the contractor but offer opportunity, under favorable circumstances, for greater profits. FP contracts represent a significant portion of our publicly bid infrastructure projects. Design-build projects are also generally performed under special FP contracts.

Cost reimbursable contracts provide for reimbursement of the cost required to complete a project plus a fee. The fee is typically negotiated and could include an incentive fee based on cost and/or schedule performance. Cost-plus contracts minimize the contractor’s financial risk but may also limit profits.

Historically, a high percentage of our contracts have been fixed-price. These contracts are typically awarded to the lowest bidder, although the contract bidding process has changed to include “best value” contracting. Winning these contracts requires the submission of a statement of qualifications and/or proposal in addition to project pricing. The specific requirements for these submissions differ greatly by customer but generally consider the technical capabilities of the bidder, the specific approach to the project, performance on past projects, safety records, and the proposed project team, among others. The proposals and price are subjected to scoring criteria previously outlined in the solicitation to determine which submitter has provided the “best value” to the customer. A "best value" solicitation is often used for design-build and/or federal projects.

Selective Bidding Process and Project Management

We identify new business opportunities through a variety of sources, including customer relationships, industry networking, subscriber services that notify us of all contracts out for bid, advertisements by federal, state and local governmental entities, business development efforts, and one-on-one meetings with other participants in the construction industry, among others. The projects we pursue often undergo a long planning phase, which enables us to identify them well before they are advertised for construction for more accurate forecasting and resource

planning. Once the customer has identified how the project will be funded, it is typically advertised for construction. Often times, we have already determined whether to pursue a project before it is advertised. In determining whether to make a bid on a project opportunity, management follows a formal and detailed multi-step bid approval process, evaluating each opportunity using the following factors to determine the collective risk and reward profile of each prospective project. We start with an initial screening of the projects to pursue based on such factors as the relevant skills required, contract size and duration, location, the availability of our personnel and equipment, the size and makeup of our current backlog, our competitive advantages and disadvantages, prior experience, the contracting agency or client, the source of contract funding, geographic location, likely competition, construction and other risks, gross margin opportunities, penalties or incentives, project complexity, contract terms, the type of contract, and overall ability to resource and complete the contract on time, among other factors. The pursuit team utilizes this information to develop a recommended bid. Management then reviews the recommended bid and provides approval for further pursuit. The bid approval process culminates in a final decision to bid or not bid by management. We have never withdrawn a bid once submitted. Our historical success rate on bids submitted (by number of bids submitted vs. success rate per contract) is between 15-25%.

As a condition to pursuing certain contracts, we are sometimes required to complete a prequalification process with the applicable agency or customer. The request for qualification process generally limits bidders to those companies with operational experience and financial capability to effectively complete the particular contract in accordance with the plans, specifications and construction schedule, or may limit the number of prequalified bidders to a predetermined number, further reducing competition for those shortlisted bidders.

Our in-house estimating process typically involves three phases. Initially, we perform a detailed review of the plans and specifications, summarize the various types of work involved and related estimated quantities, determine the contract duration and schedule and highlight the unique and riskier aspects of the contract. The second phase consists of estimating the cost and availability of labor, material, equipment, any subcontractors and the project team required to complete the contract on time and in accordance with the plans and specifications. Substantially all of our estimates are made on a per unit basis for each line item, with the typical contract containing 50 to 300 line items. The final phase consists of a detailed review of the estimate by management, including, among other things, assumptions regarding cost, approach, means and methods, staffing, productivity and risk. After the final review of the cost estimate, management adds an amount for profit to arrive at the total bid amount. This profit amount will vary according to management’s perception of the degree of difficulty of the contract, the current competitive climate and the size and makeup of our backlog. Our project managers are intimately involved throughout the estimating and construction process so that the issues concerning a contract, and risks relating thereto, can be understood and addressed on a timely basis.

To ensure that the material prices and subcontracting costs used in tendering bids for construction contracts do not change, we obtain firm quotations from our suppliers and subcontractors before submitting a bid. These quotations typically include quantity guarantees as passed through the prime contract. We have no obligation for materials or subcontract services beyond those required to complete the respective contracts that we are awarded for which quotations have been provided.

After the contract has been awarded and during the construction phase, we monitor our progress by comparing actual costs incurred and quantities completed to date with budgeted amounts and the contract schedule and at least monthly prepare an updated estimate of total forecasted revenue, cost and expected profit for the contract.

During the normal course of most projects, the customer, and sometimes the contractor, initiates modifications or changes to the original contract to reflect, among other things, changes in quantities, specifications or design, method or manner of performance, facilities, materials, site conditions and period for completion of the work. Generally, the scope and price of these modifications are documented in a change order to the original contract and reviewed, approved and paid in accordance with the normal change order provisions of the contract. We are often required to perform extra or change order work as directed by the customer even if the customer has not agreed in advance on the scope or price of the work to be performed. This process may result in disputes over

whether the work performed is beyond the scope of the work included in the original contract plans and specifications or, even if the customer agrees that the work performed qualifies as extra work, the price that the customer is willing to pay for the extra work. These disputes may not be settled to our satisfaction. Even when the customer agrees to pay for the extra work, we may be required to fund the cost of such work for a lengthy period of time until the change order is approved and funded by the customer. In addition, any delay caused by the extra work may adversely impact the timely scheduling of other work on the contract (or on other contracts) and our ability to meet contract milestone dates. Historically, we have been successful at managing the adverse impacts caused by change orders.

All state government contracts and most of our other contracts provide for termination of the contract for the convenience of the customer, with provisions to pay us only for work performed through the date of termination. We have not been materially adversely affected by these provisions in the past.

Insurance and Bonding

All of our buildings and equipment are covered by insurance, which our management believes to be adequate. In addition, we maintain general liability, workers' compensation and excess liability insurance, all in amounts consistent with our risk of loss and industry practice.

As a normal part of the construction business, we generally are required to provide various types of surety and payment bonds that provide an additional measure of security for our performance on public contracts. Typically, a bidder for a contract must post a bid bond for 5% to 10% of the amount bid, and on winning the bid, must post a performance and payment bond for 100% of the contract amount. Our ability to obtain surety bonds depends upon our capitalization, working capital, aggregate contract size, past performance, management expertise and external factors, including the capacity of the overall surety market. Surety companies consider such factors in light of the amount of our backlog that we have currently bonded and their current underwriting standards, which may change from time to time.

The capacity of the surety market is subject to market-based fluctuations driven primarily by the level of surety industry losses and the degree of surety market consolidation. Some of our competitors may be limited in the projects they can bid because of bidding and bonding capacity constraints. Our track record of successful project execution and profitability, coupled with a strong balance sheet, provide us with ample bidding and bonding capacity, which allows us to bid a large number of projects simultaneously. Historically, Liberty Mutual Group and Berkshire Hathaway have provided us with surety bonding. Upon the completion of this offering, we expect that our total bonding capacity may increase.

Joint Ventures

We participate in various construction joint ventures in order to share expertise, risk and resources for certain highly complex, large, and/or unique projects. Generally, each construction joint venture is formed to accomplish a specific project and is jointly controlled by the joint venture partners. We select our joint venture partners based on our analysis of their construction and financial capabilities, expertise in the type of work to be performed and past working relationships, among other criteria. The joint venture agreements typically provide that our interests in any profits and assets, and our respective share in any losses and liabilities, that may result from the performance of the contract are limited to our stated percentage interest in the project.

Under each joint venture agreement, one partner is designated as the sponsor. The sponsoring partner typically provides administrative, accounting and much of the project management support for the project and generally receives a fee from the joint venture for these services. We have been designated as the sponsoring partner in some venture projects and are a non-sponsoring partner in others.

Environmental, Social and Governance (ESG)

Environmental

Our work directly addresses the nation's need for reliable and resilient infrastructure, particularly in water end-markets. Our projects contribute to protecting water sources and enhancing water supply reliability to meet the growing demand for safe and clean water. Our water infrastructure solutions incorporate advanced systems for treating and repurposing wastewater, reducing strain on freshwater resources and alleviating the burden on local ecosystems. By maximizing water efficiency, these projects contribute to conserving water resources for future generations.

We also deliver projects that protect vulnerable regions from flooding. We build state-of-the-art flood control systems to mitigate the impact of natural disasters and sea-level rise to communities. Our goal is to deliver solutions to meet our customers' needs for resilient infrastructure. Additionally, our work along the nation's inland waterways enables the efficient and emissions-reducing transportation of goods, supporting commerce, and connecting regions for economic growth and trade.

Social

Our ESG focus is not limited to the environment. We also prioritize social responsibility across our operations and deploy operational best practices across all of our projects. These best practices, tools, and techniques have been developed for key areas of Shimmick's operations. One of these key areas is Safety, Health, and Environmental ("SH&E"). As our #1 core value, Safety is our foremost concern, and we maintain stringent safety standards to protect our employees and the communities we serve.

We seek to achieve SH&E success through a comprehensive, internal program that incorporates SH&E standards and innovative techniques, with the ultimate goal of achieving zero work-related injuries or illnesses and preventing damage to property and the environment. Shimmick's SH&E program includes specific guidelines to protect people and the environment and includes environmental compliance maps, environmental impact assessments, environmental management plans, environmental compliance checklists, and workflows outlining how to manage environmental compliance.

We aim to create an inclusive and equitable workplace to harness the power of different perspectives and drive innovation. For example, in 2021, Shimmick established a mission to empower and support women by providing professional and personal development opportunities. We founded Women at Shimmick, an employee resource group charged with improving the experiences of women at Shimmick, providing programs, events, activities, and other opportunities for professional and personal development for women. The group aims to build awareness of women's experience among the general employee population, recruit and retain more high performing women, and increase the number of women in leadership positions. In the group's first year, survey results indicated improvement in key areas including welcoming, leadership and development opportunities, building awareness, and recognition.

All employees are responsible for maintaining a respectful workplace free of unlawful discrimination, harassment, and retaliation. We do not tolerate discrimination, and any employee who witnesses or observes discrimination or harassment is encouraged to report it. We maintain an ethics hotline that employees can use to report incidents confidentially and without fear of retaliation. This helps promote a culture of integrity and increase trust in leadership.

Additionally, we have a proven track record of partnering with small and diverse business partners to provide maximum practicable subcontracting opportunities for them. We have a dedicated team of small business and supplier diversity program managers and exceptional year-over-year subcontracting performance. We provide a robust outreach program that includes an evolving Mentor-Protégé Program. We are committed to achieving subcontract objectives that are realistic, challenging, and attainable. Our commitment to small and diverse business participation is demonstrated by the awards and recognition received throughout our history.

Governance

Our corporate governance philosophy is based on maintaining a close alignment of our interests with those of our stakeholders. We uphold a strong governance framework that ensures transparency, ethical conduct, and accountability. Our board of directors comprises experienced professionals who provide strategic guidance and oversight.

Human Capital Management

Shimmick is focused on hiring and retaining highly talented employees with diverse backgrounds and empowering them to create value for our stockholders. Our success is dependent on employee understanding of and investment in their role in that value creation. Our chief executive officer periodically leads employee meetings intended to reinforce the importance of our core values and regularly meets with small groups of employees to receive their feedback on our business. Our employees are responsible for upholding our mission, values, strategy and talent leadership expectations.

It is important to us that our employees are engaged in our mission to drive our business forward, to recruit from their networks, and to envision a long tenure with us. We provide information to employees no less than quarterly on our core values, strategic plan and financial results. In addition to soliciting feedback through employee surveys, we continuously evaluate our employees' level of engagement by visiting projects and asking open-ended questions. We also evaluate our employees' engagement via formal surveys or similar tools on a periodic basis. We care about our employees' employment experience and care about them as individuals who are motivated in different ways. Based on the feedback received from employees, we have developed multiple strategic initiatives focused on culture, specifically on promoting a positive employee experience, as well as focusing on career development and engagement to attract and retain the best talent in the industry.

We adhere to a blended learning approach with the understanding that our people learn from experiences (on the job and in life), from other people (mentors or supportive managers), and by participating in formal learning and training programs. We acknowledge that learning is highly individualized and needs to be offered in a way that is most conducive to a specific learner's needs and learning objectives. We run a periodic education series which includes internal and external speakers presenting topics of interest that are relevant to our employees. We provide multiple learning solutions which cover a wide range of areas such as diversity and inclusion training, leadership skills, safety training, financial knowledge, technology training and presentation skills.

Managers hold performance conversations with their employees on a periodic basis (targeting a minimum of twice a year) to ensure they receive the performance feedback they deserve, to allow managers to obtain insight into how to support the development of their teams, and to ensure that performance expectations are clear and aligned with the Company's strategic objectives. We also promote continuous dialogue between managers and employees in addition to these formal touchpoints.

We provide attractive benefits that promote the health of our employees and their families and design compelling job opportunities, aligned with our mission, in an energizing work environment. We also encourage our employees to continue to develop in their careers, including by obtaining advanced degrees or professional certifications. We compensate our employees according to our fair remuneration policies and believe in paying for performance. Accordingly, some employees may receive a portion of their compensation in the form of equity.

We encourage our employees to contribute their time to support various community and charitable activities and sponsor several local community organizations. Recently, Shimmick launched a volunteer time off program that provides eight hours of paid time off to volunteer. In addition to competitive base salaries, cash bonuses, and stock options for the majority of management, we are committed to continuously evaluating and ensuring the competitiveness of our benefits offerings so that we meet the various needs of our employees and their families. Despite a healthcare environment that is facing rising costs, we continue to pay the majority of the cost of our employees' healthcare insurance.

We take a values-driven, broad view of diversity and inclusion. We believe that fostering an internal climate that is supportive and allows people of all backgrounds to flourish lends itself to the highest levels of company performance and facilitates the attraction and retention of best-in-class talent. We also believe it is inherently the right way to conduct business. We support an innovative, creative culture where people can bring their best and most authentic selves to work. Employees who hold divergent opinions are encouraged to voice their views. We track and report internally on key talent metrics including workforce demographics, critical role pipeline data, diversity data and engagement and inclusion indices.

Decisions regarding staffing, selection, and promotions are made on the basis of individual qualifications related to the requirements of the position. We are committed to identifying and developing the talents of our next generation of leaders. We endeavor to select qualified individuals from a diverse pool of candidates derived from broad outreach efforts when we are recruiting. We are committed to the sourcing and/or promotion of highly- qualified women, people of color and other under-represented groups for management and board positions. We are also challenging ourselves to better support our female and underrepresented employees in their onboarding, training, development and progression within the Company.

As of June 30, 2023, we had more than 1,500 employees. We are party to collective bargaining agreements covering a majority of our craft workforce. See *"Risk Factors – Risks Related to Our Business and Industry – Strikes or work stoppages could have a negative impact on our operations and results."*

Our business is dependent upon a readily available supply of management, supervisory and field personnel. In the past, we have been able to attract sufficient numbers of personnel to support the growth of our operations.

Training and Safety

We place the highest emphasis on the safety of the public, our customers and our employees. Safety is the #1 Shimmick core value. We begin meetings with safety messages and conduct extensive training programs, which have allowed us to maintain a high safety level at our worksites. All new employees undergo an initial safety orientation, and for certain types of projects, we conduct specific hazard training programs. Our project foremen and superintendents conduct weekly on-site safety meetings, and our full-time safety inspectors make random site safety inspections and perform assessments and training if infractions are discovered. In addition, our superintendents and project managers are required to complete an OSHA-approved safety course. Thanks to these efforts, our incident rate is trending well below industry average and represents our continuing effort to improve our culture of safety. For instance, according to the Bureau of Labor Statistics, the average rate of recordable incidents per 100 employees for the construction industry in 2021, the most recent data published, was 2.1. Shimmick's most recent average rate of recordable incidents for the most recently completed fiscal year 2022 is notably lower, at 1.5 per 100 employees.

Properties

We complete the scope work on our projects from multiple locations throughout the country. We lease administrative offices in Irvine, California, Denver, Colorado, Suisun, California, and in other locations throughout the United States. Our equipment maintenance and repair facility is located in Tracy, California, and we also use the site to store our inventory of construction materials. Below are our primary regional office and equipment facility locations. We have identified the locations that support our business strategy and maintain contractor licenses in all other states where we have current or awarded projects and have both project offices on site and sufficient equipment available at every facility. Should a project opportunity arise in a state in which we currently do not maintain a contractor license, we have the ability to obtain additional licenses and transport equipment and other resources to such states where we do not currently operate to meet the requirements of future contracts. Accordingly, we believe we have active and appropriate licensing in all strategic locations and we have the ability to obtain the proper licenses in additional states we may choose to do business in the future.

Location	Owned or Leased	Approximate Size
Irvine, CA – Office	Leased	6,000 sq. ft.
Denver, CO – Office	Leased	7,211 sq. ft.
Suisun, CA – Office	Leased	10,221 sq. ft.
Tracy, CA – Equipment Facility	Owned	10,000 sq. ft., 43 acres

Government and Environmental Regulations and Climate Change Matters

We are subject to various federal, state and local laws and regulations relating to the environment, including those relating to discharges to air, water and land, the handling and disposal of solid and hazardous waste, the handling of underground storage tanks and the cleanup of properties affected by hazardous substances. We also are subject to compliance with numerous other laws and regulations of federal, state and local agencies and authorities, including those relating to workplace safety, wage and hour and other labor issues (including the requirements of the OSHA and comparable state laws), immigration controls, vehicle and equipment operations and other aspects of our business. In addition, most of our construction contracts are entered into with public authorities, and these contracts frequently impose additional requirements, including requirements regarding labor relations and subcontracting with designated classes of disadvantaged businesses. We continually monitor our compliance with these laws, regulations and other requirements. While compliance with existing laws, regulations and other requirements has not materially adversely affected our operations in the past, and we are not aware of any proposed requirements that we anticipate will have a material adverse impact on our operations, there can be no assurance that these requirements will not change or that compliance will not otherwise adversely affect our operations in the future. While we typically pass any costs of compliance through to our customers under the applicable project agreement, either directly or as part of our estimate depending on the type of contract, there can be no assurance that we will not incur compliance expenses in the future that materially adversely affect our results of operations. In addition, some operations require operating permits granted by governmental agencies.

The diesel particulate and nitrogen oxide emissions produced by the vehicles and other equipment used in our operations are subject, among other things, to the regulations of the California Air Resources Board (“CARB”). Certain CARB regulations require California equipment owners/operators to meet progressively more restrictive emission targets that require California off-road and on-road diesel equipment owners to retrofit equipment with diesel emission control devices or replace equipment with new engine technology, which will result in higher equipment-related expenses. In general, we have maintained compliance with the regulations by replacing our existing equipment as it reaches the end of its useful life with new equipment that meets or exceeds the requirements of the CARB regulations. Accordingly, we have not incurred material incremental expenses to comply with the regulations.

As is the case with other companies in our industry, some of our aggregate materials products contain varying amounts of crystalline silica, a common mineral. Furthermore, some of our construction and materials processing operations release, as dust, crystalline silica that is in the materials being handled. Excessive, prolonged inhalation of very small-sized particles of crystalline silica has been associated with respiratory disease (including silicosis). OSHA has established occupational thresholds for crystalline silica exposure as respirable dust. We have implemented dust control procedures to measure compliance with requisite thresholds and to verify that respiratory protective equipment is made available as necessary. We also communicate, through safety information sheets and other means, what we believe to be appropriate warnings and cautions to employees and customers about the risks associated with excessive, prolonged inhalation of mineral dust in general and crystalline silica in particular. We have not incurred material expenses in connection with these compliance activities.

Although we do not generate large amounts of solid wastes, we occasionally dispose of solid wastes on behalf of customers. Solid wastes, which may include hazardous solid wastes, are subject to the requirements of the federal Solid Waste Disposal Act, the federal Resource Conservation and Recovery Act (the “RCRA”), and comparable state statutes.

From time to time, the EPA considers the adoption of stricter disposal standards for non-hazardous solid wastes. Moreover, it is possible that additional solid wastes will in the future be designated as “hazardous wastes.” Hazardous solid wastes are subject to more rigorous and costly disposal requirements than are non-hazardous solid wastes. Generally, under the applicable project agreement, the customer, as the generator of the waste, is at risk for its proper disposal. We typically pass the cost of disposal through to our customers under such agreement.

Certain environmental laws impose substantial penalties for non-compliance and others, such as CERCLA, and comparable state laws, impose strict, retroactive, joint and several liability upon persons that contributed to the release of a hazardous substance into the environment. These persons include the owner or operator of the site where the release occurred and companies that disposed or arranged for the disposal of the hazardous substances found at the site. Under CERCLA, these persons may be liable for the costs of cleaning up the hazardous substances that have been released into the environment, for damages to natural resources and for the costs of certain health studies. CERCLA also authorizes the EPA and, in some instances, third parties, to act in response to threats to the public health or the environment and to seek to recover from the responsible classes of persons the costs they incur. We may be required to remediate contaminated properties currently or formerly owned or operated by us, regardless of whether such contamination resulted from the conduct of others or from the consequences of our own actions that complied with applicable laws at the time those actions were taken. In connection with certain acquisitions, we could assume, or be required to provide indemnification against, environmental liabilities that could expose us to material losses. Furthermore, the existence of contamination at properties we own, lease or operate could result in increased operational costs or restrictions on our ability to use those properties as intended.

In certain instances, citizen groups also have the ability to bring legal proceedings against us if we are not in compliance with environmental laws, or to challenge our ability to receive environmental permits that we need to operate. In addition, claims for damages to persons or property, including natural resources, may result from the SH&E impacts of our operations. Our insurance may not cover all environmental risks and costs or may not provide sufficient coverage if an environmental claim is made against us. Moreover, public interest in the protection of the environment has increased dramatically in recent years. The trend of more expansive and stringent environmental legislation and regulations applied to the construction industry could continue, resulting in increased costs of doing business and consequently affecting profitability.

We have incurred, and may in the future incur, significant capital and operating expenditures to comply with such laws and regulations. To the extent that laws are enacted or other governmental action is taken that restricts our operations or imposes more stringent and costly operating, waste handling, disposal and cleanup requirements, our business, financial condition or results of operations could be materially adversely affected.

The potential impact of climate change on our operations is highly uncertain. Climate change may result in, among other things, changes in rainfall patterns, storm patterns and intensity and temperature levels. Our results of operations are significantly influenced by weather and major changes in historical weather patterns could significantly impact our future results of operations. For example, if climate change results in significantly more adverse weather conditions in a given period, we could experience reduced productivity and increases in certain other costs, which could negatively results of operations.

Legal Proceedings

From time to time, we and our joint ventures are party to routine legal proceedings and claims which arise in the ordinary course of our business. We believe, based on advice from our outside legal counsel, that the final disposition of such matters will not have a material adverse impact on our financial condition, results of operations or cash flows.

MANAGEMENT

Executive Officers and Directors

The following table sets forth information concerning our executive officers and directors upon completion of this offering.

Name	Age	Position
Mitchell B. Goldsteen	50	Executive Chairman
Steven E. Richards	64	Chief Executive Officer and Director Nominee
Devin J. Nordhagen	40	Executive Vice President, Chief Financial Officer
Carolyn L. Trabuco	54	Director Nominee
Geoffrey E. Heekin	58	Director Nominee
J. Brendan Herron	63	Director Nominee

The following are biographical summaries, including experience, of those individuals who will serve as our executive officers and directors:

Mitchell B. Goldsteen has served as our Executive Chairman since January 2021. Since May 2014, Mr. Goldsteen has served as a Director of MariTrace Ltd, a UK based software company that provides data on commodities, vessels and ports to a wide base of customer types. Mr. Goldsteen is Manager of Oroco Capital, a private investment firm, a position he has held since January 2010. Mr. Goldsteen is also the founder and Chief Executive Officer of eqhq inc., an ecommerce heavy equipment platform, a position he has held since April 2021. From February 2017 through June 2021, Mr. Goldsteen served as Manager of Oroco FirstMark. Mr. Goldsteen began his career at Alex, Brown & Sons and thereafter worked at The Carlyle Group, Credit Suisse First Boston and Merrill Lynch. Mr. Goldsteen received a BBA from the University of Wisconsin Madison. We believe Mr. Goldsteen is well qualified to serve on our board of directors based on his extensive company strategy and oversight expertise, as well as his significant professional and leadership experience.

Steven E. Richards has served as Chief Executive Officer since January 2021 and is a director nominee for the Company. Mr. Richards also served as the President of Shimmick from March 2020 to July 2023. From August 2017 to March 2020, Mr. Richards was Executive Vice President, Civil Construction at AECOM, where he was responsible for domestic and international construction operations. From January 2014 to August 2017, Mr. Richards served as Senior Vice President, Operations Civil Construction & Mining Group at AECOM, where he oversaw civil construction and mining operations. Prior to that, Mr. Richards held senior managerial positions at URS Corporation, an AECOM company from December 2008 to December 2013. Mr. Richards began his career with Morrison Knudsen, a Shimmick legacy company, where he was employed in various positions for over 20 years, including Project Director on numerous field assignments in the industrial buildings and civil infrastructure markets. Mr. Richards received his Bachelor of Science degree in Civil Engineering from the University of Idaho and completed M.B.A. studies at the University of Denver. We believe Mr. Richards is well qualified to serve on our board of directors based on his significant professional and leadership experience in the infrastructure solutions industry.

Devin J. Nordhagen has served as our Executive Vice President and Chief Financial Officer since August 2022. From January 2021 until August 2022, Mr. Nordhagen served as our Executive Vice President of Business Operations. From December 2019 to January 2021, Mr. Nordhagen was Chief Financial Officer of FirstMark Construction, a civil infrastructure company, where he was responsible for all aspects of accounting, reporting, control, corporate finance and treasury. From August 2015 to July 2019, Mr. Nordhagen was Vice President of Finance at ASRC Energy Services, an oil and gas O&M and construction company, where he oversaw finance, accounting and business operations. From August 2013 to August 2015, Mr. Nordhagen was a Controller at Alaska Growth Capital BIDCO, Inc., an alternative lending company, where he oversaw accounting and reporting operations. Mr. Nordhagen spent the first part of his career as an Audit Manager with major accounting firm KPMG LLP. Mr. Nordhagen holds a Bachelor of Science in Finance and a Bachelor of Science in Accounting from Minot State University. He is also a Certified Public Accountant (CPA).

Carolyn L. Trabuco is a director nominee for the Company. Ms. Trabuco is a co-founder and has served as a director of Azul Linhas Aéreas Brasileiras SA (NYSE: AZUL), a Brazilian airline, listed on the NYSE since 2017, since 2008. She is also the founder of Thistledown Advisory Group, LLC, a strategic advisory firm, a position she has held since 2017. Ms. Trabuco served as Managing Director at Cornerstone Capital Group in 2016, where she created original research in the field of ESG to be used alongside traditional financial analysis. From 2009 to 2014, Ms. Trabuco served as Senior Vice President and Senior Analyst at Phibro Trading LLC and Astenbeck Capital Markets, respectively. Prior to that, Ms. Trabuco was a portfolio manager and senior equity research analyst at Pequot Capital Management where she established the firm's investment presence in global metals, mining and steel and in Brazil. Ms. Trabuco began her investment career in Equity Research at Fidelity Investments and later at the Wall Street firms Lehman Brothers, Montgomery Securities and First Union Capital Markets. Ms. Trabuco has served as an independent member of the board of directors of Sizzle Acquisition Corp., listed on the NASDAQ, since November 2021. She is also an adjunct professor of finance at Sacred Heart University. Ms. Trabuco holds a bachelor's degree in art history from Georgetown University and a master's degree in public administration from Sacred Heart University. We believe Ms. Trabuco is well qualified to serve on our board of directors based on her extensive financial markets and investor background and public company board experience.

Geoffrey E. Heekin is a director nominee for the Company. Mr. Heekin has served as President of Global Construction and Infrastructure at Aon PLC (NYSE: AON) from 2012 until his retirement in 2019. In this position, he had primary stewardship of Aon's largest industry vertical, representing over $500 million in annual revenue and over 1,000 colleagues. He also served as President of Aon Infrastructure Solutions during the same period. From 1997 to 2012, Mr. Heekin was the National Surety Practice Leader for Commercial and Construction at Aon. He was previously Executive Vice President at Near North Insurance Brokerage from 1991 to 1997, as well as Surety Manager of the Chubb Group from 1987 to 1991. Mr. Heekin received his bachelor's degree in political science with a minor in mass communications from DePauw University. We believe Mr. Heekin's significant professional and leadership experience in construction risk, surety and insurance makes him well qualified to serve on our board of directors.

J. Brendan Herron is a director nominee for the Company. Mr. Herron is a Strategic Advisor for Hannon Armstrong Sustainable Infrastructure Capital, Inc. (NYSE: HASI), a leading investor in climate solutions. He developed the concept for and led HASI's IPO and served in several senior executive roles including as the first chief financial officer from 2013 to 2019 and most recently as an executive vice president until 2021. Mr. Herron has over 30 years of experience in structuring, executing and operating infrastructure and technology investments. He serves on the boards of various private companies and nonprofit organizations including as a board observer for REsurety, Inc., the Advisory Board of the Smithsonian Environmental Research Center and the Board of Directors of Fair Chance (Washington, DC) and formerly served on the U.S. Commerce Secretary's Renewable Energy and Energy Efficiency Advisory Committee. Mr. Herron received a Bachelor of Science degree in accounting and computer science from Loyola University Maryland and a Master of Business Administration degree from Loyola University Maryland and has passed the CPA and CMA examinations. He is also directorship certified by the National Association of Corporate Directors, a professional credential supporting his qualifications and experience as a corporate board director. Mr. Herron's significant professional experience, including as a public company CFO, his knowledge of ESG and success in developing growth strategies for newly public companies, makes him well qualified to serve on our board of directors.

Board Structure and Composition

Our business and affairs are managed under the direction of our board of directors. Upon completion of the offering, our board of directors will consist of five members. Our board of directors will not be classified, and each of our directors will be subject to re-election annually.

Director Independence

The rules of Nasdaq require that a majority of our board of directors be independent within one year of the date of our initial public offering. An "independent director" is defined generally as a person who, in the opinion of the company's board of directors, has no material relationship with the listed company (either directly or as a partner, stockholder or officer of an organization that has a relationship with the company). Our board of directors has undertaken a review of the independence of each director and director nominee. Based on information provided by each director or director nominee concerning his or her background, employment and affiliations, our board of directors has determined that , and qualify as "independent directors," as defined under the rules of Nasdaq. As required by Nasdaq listing standards, our independent directors will meet in regularly scheduled executive sessions at which only independent directors are present.

Family Relationships

There are no family relationships among any of our directors or executive officers.

Controlled Company Exemption

Because our controlling stockholder will continue to control a majority of the voting power of our common stock after the completion of this offering, we will be a "controlled company" for purposes of the listing standards of Nasdaq and the rules of the SEC. As a "controlled company", exemptions under the listing standards of Nasdaq will exempt us from certain of Nasdaq's corporate governance requirements, including the following requirements:

- that our board of directors be composed of a majority of "independent directors," as defined under the rules of Nasdaq,
- that our compensation and human capital committee be composed entirely of independent directors, and
- that our nominating and corporate governance committee be composed entirely of independent directors.

Although we do not currently expect to rely on the "controlled company" exemption, we may elect to do so in the future. Accordingly, for so long as we are a "controlled company," holders of our common stock may not have the same protections afforded to stockholders of companies that are subject to all of Nasdaq's corporate governance requirements to the extent we elect to take advantage of these exemptions. In the event that we cease to be a "controlled company", we will be required to comply with these provisions within the transition periods specified in the rules of Nasdaq.

These exemptions do not modify the independence requirements for our audit committee, and we expect to satisfy the member independence requirement for the audit committee upon completion of this offering.

Board Committees

Our board of directors plans to have an audit committee, a compensation and human capital committee and a nominating and corporate governance committee following this offering. All the members of our audit committee, compensation and human capital committee and nominating and corporate governance committee will be independent under applicable Nasdaq listing rules. In addition, all the members of our audit committee will be independent under Section 10A-3 of the Exchange Act. The charter for each of the committees will be available on our website at *www.shimmick.com*.

Audit Committee

Upon consummation of the offering, we will establish an audit committee, consisting of , and , with serving as Chair. The audit committee will assist the board of directors in overseeing: (i) the integrity of our financial statements, (ii) our compliance with legal and regulatory requirements, (iii) the independence and qualifications of our independent registered public accounting firm, and (iv) the performance of our independent registered public accounting firm. The audit committee also will review all related party transactions. Our board of directors has determined that is an audit committee financial expert within the meaning of the rules and regulations of the SEC. In addition, we must certify to Nasdaq that the audit committee has, and will continue to have, at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual's financial sophistication. Our board of directors has determined that 's qualifications also satisfy Nasdaq's definition of financial sophistication.

Compensation and Human Capital Committee

Upon consummation of the offering, we will establish a compensation and human capital committee, consisting of , and , with serving as Chair. The compensation and human capital committee will review and approve the compensation of our Chief Executive Officer and our other executive officers and administer and make recommendations to the board of directors with respect to our 2023 Omnibus Incentive Plan and any other compensation plans. In performing these duties, the compensation and human capital committee also will evaluate the performance of our Chief Executive Officer and oversee the performance evaluation of our other executive officers and key employees. In addition, the compensation and human capital committee will oversee the Company's human capital management, including the Company's policies with respect to performance management, talent management, diversity, equity and inclusion, work culture and the development and retention of the Company's workforce.

Nominating and Corporate Governance Committee

Upon consummation of the offering, we will establish a nominating and corporate governance committee, consisting of , and , with serving as Chair. The nominating and corporate governance committee will assist the board of directors in identifying candidates qualified to become members of our board of directors, recommending a slate of nominees for election by the stockholders, recommending committee assignments for directors to the board of directors, overseeing the evaluation of the board of directors and management and developing, updating and recommending to the board of directors appropriate corporate governance principles for our company. In performing these duties, the nominating and corporate governance committee also will review and approve compensation for non-employee directors.

Code of Ethics

Upon consummation of the offering, our board of directors will adopt a code of ethics that applies to all of our directors, officers and employees, including our Chief Executive Officer and Chief Financial Officer. Our code of ethics will prohibit all conflicts of interest unless they have been approved or ratified by a majority of the independent directors on our board of directors (or an authorized committee of our board of directors). This code of ethics will be available on our website at *www.shimmick.com*, and we will disclose any future amendments or waivers of certain provisions of our code of ethics on our website in a Current Report on Form 8-K, as legally required.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation and human committee is or has been an officer or employee of our company. None of our executive officers currently serves, or during the year ended December 30, 2022 served, as a member of the board of directors, or as a member of the compensation or similar committee, of any entity that has one or more of its executive officers serving on our board of directors or compensation committee.

Limitations of Liability and Indemnification of Directors and Officers

We are incorporated under the laws of the State of Delaware. Section 145 of the DGCL provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee, or agent of such corporation or is or was serving at the request of such corporation as an officer, director, employee, or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit, or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director has actually and reasonably incurred. Our amended and restated certificate of incorporation provides that we must indemnify our directors and officers to the fullest extent authorized by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this section or otherwise.

Section 102(b)(7) of the DGCL allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation will provide for this limitation of liability.

Section 174 of the DGCL provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

EXECUTIVE COMPENSATION

This section provides an overview of our executive compensation programs, including a narrative description of the material factors necessary to understand the information disclosed regarding our named executive officers ("NEOs"), in the summary compensation table below. We are an "emerging growth company" as defined in the JOBS Act and as such, we have opted to comply with the executive compensation disclosure applicable to such companies.

For the fiscal year ended December 30, 2022, our NEOs were:

Name	Position
Steven E. Richards	Chief Executive Officer
Devin J. Nordhagen	Executive Vice President, Chief Financial Officer
Gregory J. Dukellis	Former Executive Vice President, Chief Legal Officer

Summary Compensation Table

The following table sets forth information concerning the compensation of our NEOs for the year ended December 30, 2022 and December 31, 2021.

Name and principal position	Year	Salary ($)	Bonus ($) (1)	Option awards ($) (2)	Non-equity Incentive Plan compensation ($) (3)	All other compensation ($) (4)	Total ($)
Steven E. Richards	2022	500,000	—	229,222	291,536	17,466	1,038,224
Chief Executive Officer	2021	500,000	50,000	1,305,251	—	16,159	1,871,410
Devin J. Nordhagen	2022	350,000	—	332,371	136,050	15,431	833,852
Executive Vice President, Chief Financial Officer	2021	350,000	225,000	1,892,615	—	9,467	2,477,082
Gregory J. Dukellis[5]	2022	375,000	—	42,979	109,325	25,768	553,072
Former Executive Vice President, Chief Legal Officer	2021	375,000	62,863	109,325	—	20,651	567,839

(1) Amounts represent retention bonus for Mr. Richards, retention bonus for Mr. Dukellis, and sign-on bonus for Mr. Nordhagen.

(2) The amounts in this column represent the aggregate grant-date fair value of awards granted to each NEO, computed in accordance with the FASB's Accounting Standards Codification ("ASC") Topic 718. See Note 9 to our audited consolidated financial statements included elsewhere in this prospectus for a discussion of the assumptions made by us in determining the grant-date fair value of our equity awards. Amounts in 2022 represent the incremental fair value increase of the option grant reprice (calculated in accordance with FASB ASC Topic 718 as of the date of the reprice.

(3) Amounts represent annual cash bonuses received by our NEOs under our annual cash bonus plan.

(4) Amounts represent (i) 401(k) matching contributions earned by each NEO, (ii) the executive long-term disability premium paid on behalf of each NEO and (iii) an automobile allowance paid to Mr. Dukellis.

(5) Mr. Dukellis was terminated in August 2023.

Narrative Disclosure to Summary Compensation Table

For 2021, the compensation program for our NEOs consisted of base salary, annual incentive and long-term three-year vesting cash bonus, and long-term equity incentive compensation delivered in the form of stock options. For fiscal 2022, the compensation program for our NEOs consisted of base salary and annual incentive.

Base Salary

The base salary of our NEOs is set at a level that is commensurate with each executive's duties and authorities, contributions, prior experience and sustained performance. For fiscal 2022, the base salary for Mr. Richards was $500,000, the base salary for Mr. Dukellis was $375,000 and the base salary for Mr. Nordhagen was $350,000.

Annual Cash Bonus

Annual cash bonuses are offered to incentivize the NEOs to achieve annual financial and operating performance metrics. Annual cash bonuses are paid at the discretion of the board of directors following the certification of results after the end of each fiscal year.

Long-Term Cash Bonus

Long-term cash bonuses are offered to incentivize the NEOs to achieve long-term financial and operating performance metrics. Long-term cash bonuses are paid at the discretion of the board of directors following the certification of results after the end of a three-year performance period. Bonuses under this program were only issued in fiscal year 2021 and payable at the end of fiscal year 2023.

Stock Options

Stock options are used to provide a strong incentive to our NEOs for the creation of long-term stockholder value. Stock options may be exercised to provide value to executives to the extent our stock price appreciates after the grant date to enhance retention and long-term thinking. The stock options granted to our NEOs in 2021 vest 25% on the 12-month anniversary of the vesting commencement date and 1/36th of the remaining options vest on the last day of each full calendar month thereafter. Based on 409A analysis done in 2022, the Board of Directors approved, effective August 8, 2022, a change in the strike price of all outstanding stock options from a strike price of $8.39 to $3.45, all other provisions remained unchanged.

Benefits and Perquisites

We provide benefits to our NEOs on the same basis as provided to all of its employees for health, dental, and vision insurance; voluntary life and accidental death and dismemberment ("AD&D") insurance; short-term disability insurance; and a tax-qualified Section 401(k) plan with a Company match.

In both fiscal years 2022 and 2021, we offered our NEOs a separate executive basic life and AD&D and long-term disability that differs from that offered to our non-executive employees. The executive basic life and AD&D coverage is 100% employer paid and is equal to 400% of annual earnings, up to a $2 million maximum. The executive long-term disability benefit is 100% employer paid. The month long-term disability benefit is 60% of the executive's monthly pre-disability earnings, up to the maximum of $25,000, less deductible sources of income.

Retirement Benefits

We provide a tax-qualified Section 401(k) plan for all employees, including the NEOs. We provide an employer match of 50% of the employee's contributions, up to a maximum of 3.5% employer match. We do not provide to employees, including our named executive officers, any other retirement benefits, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans or nonqualified defined contribution plans.

Employment Agreements

We presently do not have employment agreements with any of our NEOs.

Potential Payments upon Termination or Change of Control

Our NEOs are not party to any agreement providing for payments or severance at, following, or in connection with any termination or change in control.

Outstanding Equity Awards as of December 30, 2022

The following table provides information about the outstanding equity awards held by our NEOs as of December 30, 2022. All awards were granted under the 2021 Stock Plan.

		Option Awards (1)				Stock Awards	
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Units that have not Vested (#)	Market Value of Units that have not Vested ($)
Steven E. Richards	May 6, 2021	118,750	181,250	$ 3.45	May 5, 2031	—	—
Gregory J. Dukellis	May 6, 2021	22,265	33,985	$ 3.45	May 5, 2031	—	—
Devin J. Nordhagen	May 6, 2021	172,187	262,813	$ 3.45	May 5, 2031	—	—

(1) See "*Stock Options*" for vesting provisions and strike price change in 2022.

Equity Compensation Plans

The following description of our equity compensation plans is qualified by reference to the full text of those plans, which will be filed as exhibits to the registration statement.

2021 Stock Plan

We currently maintain the 2021 Stock Plan. The primary purpose of the 2021 Stock Plan is to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any affiliate and provide a means by which the eligible recipients may benefit from increases in the value of the Company's common stock.

Following the effectiveness of the registration statement of which this prospectus forms a part, we will not make any further grants under the 2021 Stock Plan. However, the 2021 Stock Plan will continue to govern the terms and conditions of the outstanding awards granted under the 2021 Stock Plan. We have only granted stock options under the 2021 Stock Plan through June 30, 2023.

Share Reserve

We have reserved an aggregate of 2,000,000 shares of our common stock (which does not give effect to the for stock split of our common stock to be effected prior to the completion of this offering) for issuance under the 2021 Stock Plan of which 365,141 shares remained available for additional award grants as of June 30, 2023. The remaining reserved shares will be rolled over to the 2023 Omnibus Incentive Plan.

Administration

Our board of directors (or a committee delegated by our board of directors) administers the 2021 Stock Plan. Our board of directors has the authority to determine who will be granted stock awards, when and how each stock award will be granted, what type of stock award will be granted, the provisions of each stock award (which need not be identical), the number of shares of common stock subject to, or the cash value, of a stock award and the fair market value applicable to a stock award. In addition, the administrator has the authority to interpret the 2021 Stock Plan and to adopt rules for the administration, interpretation, and application of the 2021 Stock Plan that are consistent with the terms of the 2021 Stock Plan.

Payment

The exercise price of options and stock appreciation rights or purchase price of stock purchase rights granted under the 2021 Stock Plan may be paid in such form as determined by our board of directors, including, without limitation, cash, check, bank draft or money order payable to the Company, delivery to the Company (either by actual delivery or attestation) of shares of common stock, a "net exercise" arrangement (for nonstatutory stock opinions only), a deferred payment or similar arrangement with the optionholder, or any other form of consideration determined to be appropriate by the board of directors.

Transfer

The 2021 Stock Plan generally does not allow for the transfer of awards other than by a beneficiary designation, will or the laws of descent and distribution. If the applicable stock option agreement provides, a nonstatutory stock option will also be transferable by gift or domestic relations order to a family member of the participant.

Amendment, Suspension, or Termination

Our board of directors may amend, suspend, or terminate the 2021 Stock Plan at any time. An amendment of the 2021 Stock Plan shall be subject to the approval of our stockholders only to the extent required by applicable laws. No awards may be granted under our 2021 Stock Plan after it is terminated.

2023 Omnibus Incentive Plan

Our board of directors is expected to approve and adopt the 2023 Omnibus Incentive Plan prior to the effective date of the registration statement. Under the 2023 Omnibus Incentive Plan, we will be authorized to grant equity and cash incentive awards to eligible service providers.

The purpose of the 2023 Omnibus Incentive Plan is to enhance our ability to attract, retain and motivate persons who make (or are expected to make) important contributions to us by providing these individuals with equity ownership opportunities. We believe that the 2023 Omnibus Incentive Plan is essential to our success. Equity awards are intended to motivate high levels of performance and align the interests of our directors, employees and consultants with those of our stockholders by giving directors, employees and consultants an equity stake in us and providing a means of recognizing their contributions to our success. Our board of directors and management believe that equity awards are necessary to remain competitive in our industry and are essential to recruiting and retaining the highly qualified employees who help us meet our goals.

If approved by our board of directors, the 2023 Omnibus Incentive Plan will become effective upon the later to occur of (i) its adoption by our board of directors or (ii) the business day immediately prior to the effective date of the registration statement. The 2023 Omnibus Incentive Plan will be subject to approval by our stockholders within twelve months of effectiveness.

Description of the Material Features of the 2023 Omnibus Incentive Plan

The following is a summary of the material features of the 2023 Omnibus Incentive Plan. This summary is qualified in its entirety by reference to the complete text of the 2023 Omnibus Incentive Plan, which will be filed an exhibit to the registration statement.

Purpose

The purpose of the 2023 Omnibus Incentive Plan is to provide a means through which to attract, retain and motivate key personnel and to provide a means whereby our directors, officers, employees, consultants and advisors can acquire and maintain an equity interest in us, or be paid incentive compensation, including incentive compensation measured by reference to the value of our common stock, thereby strengthening their commitment to our welfare and aligning their interests with those of our stockholders.

Persons Eligible to Participate

Awards under the 2023 Omnibus Incentive Plan may be granted to any (i) individual employed by us or our subsidiaries, (ii) director or officer of us or our subsidiaries or (iii) consultant or advisor to us or our subsidiaries who may be offered securities registrable pursuant to a Registration Statement on Form S-8 under the Securities Act. The compensation and human capital committee of our board of directors (the "Compensation Committee") may grant awards to any individual eligible to participate in the 2023 Omnibus Incentive Plan. Incentive stock options may only be granted to our employees or the employees of our subsidiaries. As of the date of this prospectus, all Shimmick employees and approximately 3 non-employee directors would be eligible to participate in the 2023 Omnibus Incentive Plan following the consummation of this offering, including all of our executive officers. In addition, certain consultants and other service providers may, in the future, become eligible to participate in the 2023 Omnibus Incentive Plan, though, as of the date of this prospectus, no grants to any consultants or other service providers are expected.

Authorized Shares

The 2023 Omnibus Incentive Plan will reserve a number of our common shares for grant thereunder equal to (i) of our common stock outstanding as of immediately following consummation of this offering (including, for the avoidance of doubt, the common shares reserved for issuance pursuant to this sentence) plus (ii) any reserved and authorized shares for awards under the 2021 Stock Plan that were not granted as of this offering. The maximum aggregate number of common shares that may be issued under the 2023 Omnibus Incentive Plan will automatically increase annually on the first day of each fiscal year beginning with the 2023 fiscal year in an amount equal to of the common stock outstanding on the last day of the immediately preceding fiscal year or such lesser amount as determined by the Administrator.

If an award expires or is terminated, surrendered or cancelled or otherwise becomes unexercisable without having been exercised in full, is forfeited in whole or in part (including as the result of shares subject to the award being repurchased by us at or below the original issuance price pursuant to a contractual repurchase right, or is forfeited or repurchased due to failure to vest, then the unpurchased shares (or the forfeited, unused or repurchased shares) will become available for future grant or sale under the 2023 Omnibus Incentive Plan. With respect to stock appreciation rights, the number of shares counted against the shares available for issuance under the 2023 Omnibus Incentive Plan will be the full number of shares subject to the stock appreciation right multiplied by the percentage of the stock appreciation right actually exercised, regardless of the number of shares actually used to settle such stock appreciation right upon exercise. Shares that have actually been issued under the 2023 Omnibus Incentive Plan under any award will not be returned to the 2023 Omnibus Incentive Plan. Shares used to pay the exercise price of any award or to satisfy tax withholding obligations by a participant will become available for future grant or sale under the 2023 Omnibus Incentive Plan. The number of shares available for issuance under the 2023 Omnibus Incentive will not be reduced if an award is settled or paid out in cash rather than shares.

Plan Administration

Our 2023 Omnibus Incentive Plan will be administered by the Compensation Committee, another committee designated by our board of directors, or our board of directors. We expect our Compensation Committee to administer our 2023 Omnibus Incentive Plan. Subject to the provisions of our 2023 Omnibus Incentive Plan and applicable law, the administrator (or its delegate) will have the authority to administer our 2023 Omnibus Incentive Plan and make all determinations deemed necessary or advisable for administering the 2023 Omnibus Incentive Plan, such as the power to determine the fair market value of our common stock, select the service providers to whom awards may be granted, determine the number of shares covered by each award, approve forms of award agreements for use under the 2023 Omnibus Incentive Plan, determine the terms and conditions of awards (such as the exercise price, the time or times at which the awards may be exercised, any vesting or forfeiture restrictions, any vesting acceleration or waiver of forfeiture restrictions, and any restriction or

limitation regarding any award or the shares relating thereto), construe and interpret the terms of our 2023 Omnibus Incentive Plan and awards granted under it, prescribe, amend, and rescind rules relating to our 2023 Omnibus Incentive Plan, including creating sub-plans, modify or amend each award, including the discretionary authority to extend the post-termination exercisability period of awards, allow a participant to defer the receipt of payment of cash or the delivery of shares that would otherwise be due to such participant under an award and determine the timing and characterization or reason for a participant's termination of employment or service with us. The administrator's decisions, determinations, and interpretations will be final and binding on all participants.

Stock Options

We are able to grant stock options under our 2023 Omnibus Incentive Plan. The per share exercise price of options granted under our 2023 Omnibus Incentive Plan must be at least equal to the fair market value of a share of our common stock on the date of grant. The term of an option does not exceed 10 years, except that with respect to any incentive stock option granted to any participant who owns more than 10% of the voting power of all classes of stock of ours or any parent or subsidiary corporations, the term must not exceed five years and the per share exercise price must equal at least 110% of the fair market value of a share of our common stock on the grant date. The administrator will determine the methods of payment of the exercise price of an option, which may include cash, shares or other property acceptable to the administrator, as well as other types of consideration permitted by applicable law or any combination thereof. After the termination of service of a participant, he or she will be able to exercise his or her option (to the extent it has vested as of the date of the termination of service) for the period of time stated in his or her award agreement. If termination is due to death or disability, the option will remain exercisable for 12 months in the absence of a specified time in an award agreement. In all other cases, in the absence of a specified time in an award agreement, the option will remain exercisable for three months following the termination of service. An option may not be exercised later than the expiration of its term. Subject to the provisions of our 2023 Omnibus Incentive Plan, the administrator determines the other terms of options.

Stock Appreciation Rights

We are able to grant appreciation rights under our 2023 Omnibus Incentive Plan. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. Stock appreciation rights will not have a term exceeding 10 years. After the termination of service of a participant, he or she will be able to exercise his or her stock appreciation right for the period of time stated in his or her award agreement. Subject to the provisions of our 2023 Omnibus Incentive Plan, the administrator determines the other terms of stock appreciation rights, including when such rights become exercisable and whether to pay any increased appreciation in cash or with shares of our common stock, or a combination thereof, except that the per share exercise price for a stock appreciation right will be no less than 100% of the fair market value per share on the date of grant.

Restricted Stock

We are able to grant restricted stock under our 2023 Omnibus Incentive Plan. Restricted stock awards are grants of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant and, subject to the provisions of our 2023 Omnibus Incentive Plan, will determine the terms and conditions of such awards. The administrator will be able to impose whatever conditions to vesting it determines to be appropriate (for example, the administrator will be able to set restrictions based on the achievement of specific performance goals or continued service to us); provided, however, that the administrator will have the discretion to accelerate the time at which any restrictions will lapse or be removed. Recipients of restricted stock awards generally will have voting and dividend rights with respect to such shares upon grant without regard to vesting, unless the administrator provides otherwise; provided, however, that if dividends are paid in shares, such dividends will be subject to the same vesting schedule as the restricted stock awards. Shares of restricted stock that do not vest will be subject to our right of repurchase or forfeiture.

RSUs

We are able to grant restricted stock units ("RSUs") under our 2023 Omnibus Incentive Plan. Each RSU is a bookkeeping entry representing an amount equal to the fair market value of one share of our common stock. Subject to the provisions of our 2023 Omnibus Incentive Plan, the administrator determines the terms and conditions of RSUs, including the vesting criteria and the form and timing of payment. The administrator will be able to set vesting criteria based upon continued employment or service, the achievement of company-wide, divisional, business unit, or individual goals, or any other basis determined by the administrator in its discretion. The administrator will have the discretion to pay earned restricted stock units in the form of cash, in shares or in some combination thereof. The administrator will also have the discretion to accelerate the time at which any restrictions will lapse or be removed.

Performance Units and Performance Shares

We are able to grant performance units and performance shares under our 2023 Omnibus Incentive Plan. Performance units and performance shares are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator will establish performance objectives or other vesting criteria (including continued employment or service) in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units and performance shares to be paid out to participants. The administrator will be able to set performance objectives based on the achievement of company-wide, divisional, business unit, or individual goals, or any other basis determined by the administrator in its discretion. After the grant of a performance unit or performance share, the administrator will have the discretion to reduce or waive any performance criteria or other vesting provisions for such performance units or performance shares. Performance units will have an initial dollar value established by the administrator on or prior to the grant date. Performance shares will have an initial value equal to the fair market value of our common stock on the grant date. The administrator will have the discretion to pay earned performance units or performance shares in the form of cash, in shares or in some combination thereof.

Other Share-Based Awards

We are able to grant other share-based awards under our 2023 Omnibus Incentive Plan. Subject to the provisions our 2023 Omnibus Incentive Plan, the administrator will determine the terms and conditions of such awards.

Outside Directors

Our 2023 Omnibus Incentive Plan provides that all outside (non-employee) directors are eligible to receive all types of awards (except for incentive stock options) under our 2023 Omnibus Incentive Plan. Prior to the completion of this offering, we intend to implement a formal policy pursuant to which our outside directors will be eligible to receive equity awards under our 2023 Omnibus Incentive Plan. See "— *Director Compensation*." Our 2023 Omnibus Incentive Plan will include a maximum annual limit of cash compensation and equity awards that may be paid, issued, or granted to an outside director in any fiscal year of $750,000. For purposes of this limitation, the value of equity awards is based on the grant date fair value (determined in accordance with GAAP). Any cash compensation paid or equity awards granted to a person for his or her services as an employee, or for his or her services as a consultant (other than as an outside director), will not count for purposes of the limitation. The maximum limit does not reflect the intended size of any potential compensation or equity awards to our outside directors.

Non-Transferability of Awards

Unless the administrator provides otherwise, our 2023 Omnibus Incentive Plan generally does not allow for the transfer of awards (other than by will, by the laws of descent or distribution or to a trust or estate planning

vehicle that is approved by the administrator) and only the recipient of an award is able to exercise an award during his or her lifetime. If the administrator makes an award transferrable, such award will contain such additional terms and conditions as the administrator deems appropriate.

Certain Adjustments

In the event of certain changes in our capitalization or applicable laws, regulations, or accounting principles, to prevent diminution or enlargement of the benefits or potential benefits available under our 2023 Omnibus Incentive Plan, the administrator will, subject to compliance with Section 409A of the Code (as defined herein) and other applicable law, adjust the number and class of shares that may be delivered under our 2023 Omnibus Incentive Plan and/or the number, class and price of shares covered by each outstanding award, the terms and conditions of any outstanding award and the numerical share limits set forth in our 2023 Omnibus Incentive Plan.

Dissolution or Liquidation

In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable and all awards will terminate immediately prior to the consummation of such proposed transaction.

Merger or Change in Control

Our 2023 Omnibus Incentive Plan provides that in the event of a merger or change in control, as defined under our 2023 Omnibus Incentive Plan, each outstanding award will be treated as the administrator determines, without a participant's consent. The administrator is not required to treat all awards, all awards held by a participant, all awards of the same type, or all participants, similarly.

In the event that a successor corporation does not assume or substitute an equivalent award for any outstanding award, then such award will fully vest, all restrictions on such award will lapse, all performance goals or other vesting criteria applicable to such award will be deemed achieved at 100% of target levels (unless specifically provided otherwise under the applicable award agreement, policy, or other written agreement with the participant) and such award will become fully exercisable, if applicable, for a specified period prior to the transaction. If an option or stock appreciation right is not assumed or substituted, the administrator will notify the participant that such option or stock appreciation right will be exercisable for a period of time determined by the administrator in its sole discretion and the option or stock appreciation right will terminate upon the expiration of such period.

In addition, in the event of a change in control, each outside director's options and stock appreciation rights, if any, will vest fully and become immediately exercisable, all restrictions on his or her restricted stock and restricted stock units will lapse and all performance goals or other vesting requirements for his or her performance shares and units will be deemed achieved at 100% of target levels and all other terms and conditions met (unless specifically provided otherwise under the applicable award agreement, policy, or other written agreement with the outside director).

Forfeiture and Clawback

All awards granted under our 2023 Omnibus Incentive Plan will be subject to recoupment under any clawback policy that we have in place from time to time, including any policy that we are required to adopt pursuant to the listing standards of Nasdaq or under applicable law. In addition, the administrator will be able to provide in an award agreement that the recipient's rights, payments, and benefits with respect to such award will be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events. In the event of any accounting restatement, the recipient of an award will be required to repay a portion of the proceeds received in connection with the settlement of an award earned or accrued under certain circumstances.

Amendment, Suspension, or Termination

Our board of directors will have the authority to amend, suspend or terminate our 2023 Omnibus Incentive Plan provided such action does not impair the existing rights of any participant. Our 2023 Omnibus Incentive Plan will automatically terminate in 2031, unless we terminate it sooner.

Director Compensation

Our policy is to reimburse directors for reasonable and necessary out-of-pocket expenses incurred in connection with attending board and committee meetings or performing other services in their capacities as directors.

Our Board expects to review director compensation periodically to ensure that director compensation remains competitive such that we are able to recruit and retain qualified directors.

Upon completion of this offering, we expect to grant each of our non-employee directors an IPO equity grant of restricted stock units under the 2023 Omnibus Incentive Plan in the amount of $150,000. The IPO equity grant of restricted stock units will be fully vested on the date of grant. Going forward following the completion of this offering, we expect to pay our non-employee directors (i) an annual cash retainer fee of $90,000, payable in equal quarterly installments and (ii) an annual equity retainer of restricted stock units in the amount of $150,000. The restricted stock units will be granted on the business day following our annual meeting on stockholders and will vest on the date of the following year's annual meeting of stockholders, subject to the directors continued service on our board of directors to the vesting date. In addition, the chair of the Audit Committee will receive an additional $10,000 cash retainer and the chair of each of the Compensation Committee and the Nominating and Corporate Governance Committee will receive an additional $5,000 annual cash retainer, each of which will be payable in equal quarterly installments.

PRINCIPAL STOCKHOLDERS

The following table sets forth information as of , 2023 with respect to the ownership of our common stock of: (i) each of our directors and director nominees; (ii) each named executive officer; (iii) each person who is known by us to the beneficial owner of more than 5% of the outstanding shares of common stock; and (iv) all directors, director nominees and current executive officers as a group.

Shares of common stock that a person has the right to acquire or will have the right to acquire within 60 days of , 2023 are considered beneficially owned by such person. Such shares are deemed outstanding for calculating the percentage of outstanding shares of the person holding such right, but are not deemed outstanding for calculating the percentage of any other person. To our knowledge, except as indicated in the footnotes to this table or as provided by applicable community property laws, the persons named in the table have sole investment and voting power with respect to the shares of common stock indicated.

On January 2, 2021, the company issued 100 shares of common stock, par value $0.01 per share, to the sole stockholder, GOHO, LLP. On April 12, 2021, the Company declared a stock dividend increasing the GOHO, LLP total to 8,000,000 shares of common stock, par value $0.01 per share. Such issuances were exempt from registration under 4(a)(2) of the Securities Act of 1933, as amended, and Regulation D promulgated thereunder.

	Shares Beneficially Owned Prior to This Offering		Shares Beneficially Owned After This Offering Assuming No Exercise of the Over-Allotment Option		Shares Beneficially Owned After This Offering Assuming Full Exercise of the Over-Allotment Option	
Name and Address of Owner [1]	Number	Percent	Number	Percent	Number	Percent
5% Stockholders:						
GOHO, LLC						
Directors, Director Nominees and Named Executive Officers:						
Mitchell B. Goldsteen						
Steven E. Richards						
Gregory J. Dukellis						
Devin J. Nordhagen						
Carolyn L. Trabuco						
Geoffrey E. Heekin						
J. Brendan Herron						
All current executive officers and directors as a group (7 persons)						

(1) Mr. Goldsteen controls the shares held by GOHO, LLC. The address for GOHO, LLC is 530 Technology Drive, Suite 300, Irvine, CA 92618.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Our Related Person Transaction Policy

Our board of directors, upon the recommendation of our audit committee, will adopt a written policy with respect to related party transactions upon consummation of this offering.

Pursuant to our related person transaction policy, any related person transaction (as defined below) must be pre-approved by a majority of the independent directors on our board of directors and by our audit committee. In determining whether to pre-approve a transaction with related persons (as defined below), our independent directors and our audit committee may consider, among other things: (i) whether the terms of the transaction are fair to us and would apply on the same basis if the other party to the transaction did not involve a related person; (ii) whether there are compelling business reasons for us to enter into the transaction; (iii) whether the transaction would impair the independence of an otherwise independent director; and (iv) whether the transaction presents an improper conflict of interest, taking into account the size of the transaction, the overall financial condition of the related person, the direct or indirect nature of his or her interest in the transaction and the ongoing nature of any proposed relationship and any other factors our board of directors and our audit committee deem relevant.

Under our related person transaction policy, a "related person transaction" is any transaction, arrangement or relationship between us or any of our subsidiaries and a related person that involves or is expected to involve an amount that exceeds the lesser of $120,000 or 1% of the average of our total assets as of the year-end for the last two completed fiscal years. A "related person" is any of our executive officers, directors or director nominees, any stockholder beneficially owning in excess of 5% of our stock or securities exchangeable for our stock, any immediate family member of any of the foregoing persons, and any firm, corporation or other entity in which any of the foregoing persons is an executive officer, a partner or principal or in a similar position or in which such person has a 5% or greater beneficial interest in such entity.

Transactions with Related Persons

Since the AECOM Sale Transactions, there have been no related party transactions in which the amount involved in the transaction exceeded or will exceed the lesser of $120,000 or 1% of the average of our total assets as of the year-end for the last two completed fiscal years, and to which any of our directors, executive officers or beneficial holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

Indemnification of Directors and Officers

We expect to enter into indemnification agreements with each of our directors and executive officers prior to the completion of this offering and expect to enter into a similar agreement with any new director or executive officer. The indemnification agreements, together with our amended and restated bylaws, will provide that we will jointly and severally indemnify each indemnitee to the fullest extent permitted by the DGCL from and against all loss and liability suffered and expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred by or on behalf of the indemnitee in connection with any threatened, pending, or completed action, suit or proceeding. Additionally, we will agree to advance to the indemnitee all out-of-pocket costs of any type or nature whatsoever incurred in connection therewith. See "*Description of Capital Stock—Limitation on Liability and Indemnification of Directors and Officers*."

DESCRIPTION OF CAPITAL STOCK

The following describes our common stock, preferred stock and certain terms of our amended and restated certificate of incorporation and amended and restated bylaws as proposed to be in effect upon consummation of the offering. This description is a summary only and is subject to the complete text of our amended and restated certificate of incorporation and bylaws, which we will file as exhibits to the registration statement of which this prospectus is a part.

General

Upon completion of this offering, our amended and restated certificate of incorporation will authorize capital stock consisting of shares of common stock, par value $0.01 per share, and shares of preferred stock, par value $0.01 per share. Immediately prior to this offering, there has been no public market for our common stock. Upon completion of this offering, there will be shares of common stock outstanding (or shares if the underwriters exercise their over-allotment option in full) and no shares of preferred stock outstanding. The number of shares of common stock outstanding excludes shares issuable in connection with bonuses earned in 2020 upon achievement of certain vesting conditions and shares reserved for issuance pursuant to the 2021 Stock Plan and the 2023 Omnibus Incentive Plan. Although we intend to apply for listing of our common stock on Nasdaq, a market for our common stock may not develop, and if one develops, it may not be sustained.

Common Stock

Each share of common stock will entitle the holder to one vote on all matters on which holders are permitted to vote, including the election of directors. There will be no cumulative voting rights. Accordingly, holders of a majority of shares entitled to vote in an election of directors will be able to elect all of the directors standing for election.

Subject to preferences that may be applicable to any outstanding preferred stock, the holders of the common stock will share equally on a per share basis any dividends when, as and if declared by the board of directors out of funds legally available for that purpose. If we are liquidated, dissolved or wound up, the holders of our common stock will be entitled to a ratable share of any distribution to stockholders, after satisfaction of all of our liabilities and of the prior rights of any outstanding class of our preferred stock. Our common stock will not carry any preemptive or other subscription rights to purchase shares of our stock and are not convertible, redeemable or assessable.

Preferred Stock

Our board of directors will have the authority, without stockholder approval, to issue shares of preferred stock from time to time in one or more series and to fix the number of shares and terms of each such series. The board may determine the designation and other terms of each series, including, among others:

- dividend rates,
- whether dividends will be cumulative or non-cumulative,
- redemption rights,
- liquidation rights,
- sinking fund provisions,
- conversion or exchange rights, and
- voting rights.

The issuance of preferred stock, while providing us with flexibility in connection with possible acquisitions and other corporate purposes, could reduce the relative voting power of holders of our common stock. It could also affect the likelihood that holders of our common stock will receive dividend payments and payments upon liquidation.

Anti-takeover Provisions of Our Certificate of Incorporation and Bylaws

Our amended and restated certificate of incorporation and bylaws will include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control of our company, including the following:

Authorized Capital. The issuance of shares of capital stock, or the issuance of rights to purchase shares of capital stock, could be used to discourage an attempt to obtain control of our company. For example, if, in the exercise of its fiduciary obligations, our board of directors determined that a takeover proposal was not in the best interest of our stockholders, the board could authorize the issuance of preferred stock or common stock without stockholder approval. The shares could be issued in one or more transactions that might prevent or make the completion of the change of control transaction more difficult or costly by:

- diluting the voting or other rights of the proposed acquirer or insurgent stockholder group,
- creating a substantial voting bloc in institutional or other hands that might undertake to support the position of the incumbent board, or
- effecting an acquisition that might complicate or preclude the takeover.

In this regard, our amended and restated certificate of incorporation will grant our board of directors broad power to establish the rights and preferences of the authorized and unissued preferred stock. Our board could establish one or more series of preferred stock that entitle holders to:

- vote separately as a class on any proposed merger or consolidation,
- cast a proportionately larger vote together with our common stock on any transaction or for all purposes,
- elect directors having terms of office or voting rights greater than those of other directors,
- convert preferred stock into a greater number of shares of our common stock or other securities,
- demand redemption at a specified price under prescribed circumstances related to a change of control of our company, or
- exercise other rights designed to impede a takeover.

Alternatively, a change of control transaction deemed by the board to be in the best interest of our stockholders could be facilitated by issuing a series of preferred stock having sufficient voting rights to provide a required percentage vote of the stockholders.

Action by Written Consent. Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that holders of our common stock are not able to act by written consent without a meeting.

Advance Notice Requirements for Stockholder Proposals and Director Nominations. Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders, or to nominate candidates for election as directors at any meeting of stockholders. Our amended and restated bylaws also will specify certain requirements regarding the form and content of a stockholder's notice. These provisions may preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our meetings of stockholders.

Amendment of Certificate of Incorporation and Amended and Restated Bylaws. Certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws as proposed to be in effect upon consummation of the offering that have antitakeover effects may be amended only by the affirmative vote of holders of at least two-thirds of the voting power of our outstanding shares of voting stock, voting together as a single class. This will have the effect of making it more difficult to amend our certificate of incorporation or bylaws to remove or modify these provisions. The affirmative vote of holders of a majority of the voting power of our outstanding shares of stock will generally be able to amend other provisions of our amended and restated certificate of incorporation and the holders of a majority of the voting power present and entitled to vote will generally be able to amend other provisions of our amended and restated bylaws.

These provisions of our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult to acquire of control of us by means of a tender offer, merger, proxy contest or otherwise. Accordingly, these provisions could have the effect of discouraging coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased protection give us the potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us, and that the benefits of this increased protection outweigh the disadvantages of discouraging those proposals, because negotiation of those proposals could result in an improvement of their terms.

Exclusive Forum

Our amended and restated charter documents will provide, subject to limited exceptions, that unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or if such court does not have subject matter jurisdiction another state or the federal court (as appropriate) located within the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (1) derivative action or proceeding brought on our behalf, (2) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee or stockholder of ours to us or our stockholders, (3) action asserting a claim against us or any current or former director or officer of ours arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (4) action asserting a claim governed by the internal affairs doctrine of the State of Delaware.

Our amended and restated certificate of incorporation will further provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the federal securities laws of the United States, including any claims under the Securities Act and the Exchange Act. However, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce a duty or liability created by the Securities Act or the rules and regulations thereunder and accordingly, we cannot be certain that a court would enforce such provision. It is possible that a court could find our forum selection provisions to be inapplicable or unenforceable and, accordingly, we could be required to litigate claims in multiple jurisdictions, incur additional costs or otherwise not receive the benefits that we expect our forum selection provisions to provide.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated charter documents. Our exclusive forum provision shall not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

Limitation of Liability and Indemnification of Directors and Officers

The DGCL authorizes corporations to limit or eliminate the personal liability of directors and certain officers to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties, subject to certain exceptions. Our amended and restated certificate of incorporation will include a provision that eliminates the personal liability of directors and officers for monetary damages for any breach of fiduciary duty as a director or officer, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of these provisions will be to eliminate the rights of us and our stockholders, through stockholders' derivative suits on our behalf, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior. This provision will not limit or eliminate the liability of any officer in any action by or in the right of the Company, including any derivative claims. Further, the exculpation will not apply to any director or officer if the director or officer has breached the duty of loyalty to the corporation and its stockholders, acted in bad faith, knowingly or intentionally violated the law, or derived an improper benefit from his or her actions as a director or officer. In addition, exculpation will not apply to any director in connection with the authorization of illegal dividends, redemptions or stock repurchases.

Our amended and restated bylaws will provide that we must generally indemnify, and advance expenses to, our directors and officers to the fullest extent authorized by the DGCL. We also are expressly authorized to carry directors' and officers' liability insurance providing indemnification for our directors, officers and certain employees for some liabilities. We also intend to enter into indemnification agreements with our directors, which agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We believe that these indemnification and advancement provisions, and insurance will be useful to attract and retain qualified directors and officers.

The limitation of liability, indemnification and advancement provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors or officers for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

There is currently no pending material litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought.

Listing of Common Stock

We intend to apply to list our common stock on Nasdaq under the symbol "SHIM."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to the date of this prospectus, there has been no public market for our common stock and we cannot assure you that a significant market for our common stock will develop or be sustained after this offering. The sales of a substantial amount of common stock in the public market in the future, or the perception that such sales may occur, could adversely affect the prevailing market price of our common stock and our ability to raise equity capital in the future.

Upon completion of this offering, we will have shares of common stock outstanding. Of these shares of common stock, the shares of common stock being sold in this offering, plus any shares sold upon exercise of the underwriters' option to purchase additional shares, will be freely tradable without restriction under the Securities Act, except for any such shares which may be held or acquired by an "affiliate" of ours, as that term is defined in Rule 144 promulgated under the Securities Act, which shares will be subject to the volume limitations and other restrictions of Rule 144 described below. The remaining shares of common stock held by our existing stockholder and shares issuable upon exercise of outstanding options will be "restricted securities," as that term is defined in Rule 144, and may be resold only after registration under the Securities Act or pursuant to an exemption from such registration, including, among others, the exemptions provided by Rule 144 and Rule 701 under the Securities Act, which rules are summarized below. These remaining shares of common stock will be available for sale in the public market only after the expiration of the lock-up agreements described in "Underwriting," and then only if registered or if they qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, as described below.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the current public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person is entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144 as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell, within any three-month period beginning 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1.0% of the then outstanding shares of our common stock, or
- the average weekly trading volume during the four calendar weeks preceding the date on which notice of the sale is filed on Form 144.

Such sales by affiliates under Rule 144 are also subject to restrictions relating to the manner of sale, notice requirements and the availability of current public information about us, and to the holding period requirements set forth above if the shares are restricted securities.

Rule 701

Rule 701 of the Securities Act, as currently in effect, permits each of our employees, officers, directors, and consultants, to the extent such persons are not "affiliates" as that term is defined in Rule 144, who purchased or received our shares pursuant to a written compensatory plan or contract, to resell such shares 90 days after the effective date of this prospectus in reliance upon Rule 144, but without compliance with the specific

requirements regarding the availability of public information or holding periods thereunder. Rule 701 provides that affiliates who purchased or received shares pursuant to a written compensatory plan or contract are eligible to resell their Rule 701 shares under Rule 144 without complying with the holding period requirement of Rule 144.

Lock-Up Agreements

Our controlling stockholder, executive officers and director nominees have agreed to a 180-day "lock-up" from the date of this prospectus relating to shares of our common stock that they beneficially own, including the issuance of common stock upon the exercise of currently outstanding options and options that may be issued. See "*Underwriting — Lock-Up Agreements*."

Equity Incentive Plans

We intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of common stock reserved under the 2021 Stock Plan and the 2023 Omnibus Incentive Plan. We expect to file this registration statement as soon as practicable after our initial public offering. Once registered, all of the shares of our common stock issued under the plans may be sold without restriction, subject to applicable lock-up agreements, or further registration under the Securities Act, unless the recipients of the shares are "affiliates" as that term is defined in Rule 144 under the Securities Act.

UNDERWRITING

We have entered into an underwriting agreement with Roth Capital Partners, LLC, as representative of the underwriters named below, with respect to the shares subject to this offering. Subject to the terms and conditions in the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has, severally and not jointly, agreed to purchase from us on a firm commitment basis, the respective number of shares of our common stock set forth opposite its name in the table below:

Underwriters	Number of Shares
Roth Capital Partners, LLC	
Total	

The underwriting agreement provides that the obligation of the underwriters to purchase all of the shares being offered to the public is subject to approval of legal matters by counsel and the satisfaction of other conditions. These conditions include, among others, the continued accuracy of representations and warranties made by us in the underwriting agreement, delivery of legal opinions and the absence of any material changes in our assets, business or prospects after the date of this prospectus. The underwriters are obligated to purchase all of our shares in this offering, other than those covered by the over-allotment option described below, if they purchase any of our shares.

The representative of the underwriters has advised us that the underwriters propose to offer the common stock directly to the public at the public offering prices listed on the cover page of this prospectus and to selected dealers, who may include the underwriters, at the public offering price less a selling concession not in excess of $ per share for the common stock. After the completion of this offering, the underwriters may change the offering price and other selling terms.

Pursuant to the underwriting agreement, we have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments which the underwriters or other indemnified parties may be required to make in respect of any such liabilities.

We intend to apply to have our common stock listed on Nasdaq under the symbol “SHIM”.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representative of the underwriters. In determining the initial public offering price, we and the representative of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representative,
- our prospects and the history and prospects for the industry in which we compete,
- an assessment of our management,
- our prospects for future earnings,
- the general condition of the securities markets at the time of this offering,
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies, and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for the shares of our common stock, or that the shares will trade in the public market at or above the initial public offering price.

Over-Allotment Option

We have granted the underwriters an over-allotment option. This option, which is exercisable for up to 30 days after the date of this prospectus, permits the underwriters to purchase a maximum of additional shares from us to cover over-allotments, if any. If the underwriters exercise all or part of this option, each underwriter will be obligated to purchase its proportionate number of shares covered by the option at the public offering price that appears on the cover page of this prospectus, less the underwriting discounts and commissions.

Commissions and Expenses

The following table provides information regarding the amount of the underwriting discounts and commissions to be paid to the underwriters by us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares to cover over-allotments, if any.

		Total	
	Per Share	Without Over-Allotment	With Over-Allotment
Underwriting discounts and commissions paid by us	$	$	$
Proceeds, before expenses, to us	$	$	$

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $, which includes Company legal, accounting and printing costs and various other fees associated with registration and listing of our common stock. We have agreed to reimburse the representative for its out-of-pocket expenses actually incurred in the offering, including fees and disbursements of legal counsel to the representative, in an aggregate amount not to exceed $450,000. If the offering is not consummated within a specified period agreed to by and between the representative and us and any person introduced to us by the representative during its engagement purchases securities from us within twelve months thereafter, we will pay the representative a termination fee equal to 7% of the price paid by the purchaser of such securities, subject to FINRA Rule 5110(g)(5).

Right of First Refusal

We have granted the representative a right of first refusal, for a period of twelve (12) months from the closing of this offering, to act as underwriter or placement agent at the representative's discretion, for each and every future public and private equity, equity-linked or debt securities offering.

Lock-Up Agreements

Our controlling stockholder, executive officers and director nominees have agreed to a 180-day "lock-up" from the date of this prospectus relating to shares of our common stock that they beneficially own, including the issue of common stock upon exercise of outstanding issued options and options that may be issued. This means that, for a period of 180 days following the date of this prospectus, these persons may not offer, sell, pledge or otherwise dispose of these securities without the prior written consent of the representative, subject to certain exceptions.

The representative may, in its sole discretion and at any time or from time to time, release all or any portion of the common stock or other securities subject to the lock-up agreement. Any determination to release any common stock would be based upon a number of factors at the time of determination, which may include the

market price of the common stock, the liquidity of the trading market of the common stock, general market conditions, the number of shares of common stock or other securities proposed to be sold or otherwise transferred and the timing, purposes and terms of the proposed sale or other transfer. The representative does not have any present intention, agreement or understanding, implicit or explicit, to release any of the shares of common stock or other securities subject to the lock-up agreements prior to the expiration of the lock-up period described above.

In addition, the underwriting agreement provides that, subject to certain exceptions, we will not, for a period of 180 days following the date of this prospectus, offer, sell or distribute any of our securities, without the prior written consent of the underwriters.

Stabilization

Until the distribution of the securities offered by this prospectus is completed, rules of the SEC may limit the ability of the underwriters to bid for and to purchase our common stock. As an exception to these rules, the underwriters may engage in transactions effected in accordance with Regulation M under the Exchange Act that are intended to stabilize, maintain or otherwise affect the price of our common stock. The underwriters may engage in over-allotment sales, syndicate covering transactions, stabilizing transactions and penalty bids in accordance with Regulation M:

- Stabilizing transactions permit bids or purchases for the purpose of pegging, fixing or maintaining the price of the common stock, so long as stabilizing bids do not exceed a specified maximum.
- Over-allotment involves sales by the underwriters of securities in excess of the number of securities the underwriters are obligated to purchase, which creates a short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares of common stock over-allotted by the underwriters is not greater than the number of shares of common stock that they may purchase in the over-allotment option. In a naked short position, the number of shares of common stock involved is greater than the number of shares in the over-allotment option. The underwriters may close out any covered short position by either exercising their over-allotment option or purchasing shares of our common stock in the open market.
- Covering transactions involve the purchase of securities in the open market after the distribution has been completed in order to cover short positions. In determining the source of securities to close out the short position, the underwriters will consider, among other things, the price of securities available for purchase in the open market as compared to the price at which they may purchase securities through the over-allotment option. If the underwriters sell more shares of common stock than could be covered by the over-allotment option, creating a naked short position, the position can only be closed out by buying securities in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in this offering.
- Penalty bids permit the underwriters to reclaim a selling concession from a selected dealer when the securities originally sold by the selected dealer are purchased in a stabilizing or syndicate covering transaction.

These stabilizing transactions, covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market.

Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the prices of our common stock. These transactions may occur on any trading market. If any of these transactions are commenced, they may be discontinued without notice at any time.

Electronic Prospectus

This prospectus may be made available in electronic format on internet sites or through other online services maintained by the underwriters or their affiliates. In those cases, prospective investors may view offering terms online and may be allowed to place orders online. Other than this prospectus in electronic format, any information on the underwriters' or their affiliates' websites and any information contained in any other website maintained by the underwriters or any affiliate of the underwriters is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the underwriters and should not be relied upon by investors.

Offer Restrictions Outside the United States

Other than in the United States, no action has been taken by us or the underwriter that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to this offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Australia

This prospectus is not a disclosure document under Chapter 6D of the Australian Corporations Act, has not been lodged with the Australian Securities and Investments Commission and does not purport to include the information required of a disclosure document under Chapter 6D of the Australian Corporations Act. Accordingly, (i) the offer of the securities under this prospectus is only made to persons to whom it is lawful to offer the securities without disclosure under Chapter 6D of the Australian Corporations Act under one or more exemptions set out in section 708 of the Australian Corporations Act, (ii) this prospectus is made available in Australia only to those persons as set forth in clause (i) above, and (iii) the offeree must be sent a notice stating in substance that by accepting this offer, the offeree represents that the offeree is such a person as set forth in clause (i) above, and, unless permitted under the Australian Corporations Act, agrees not to sell or offer for sale within Australia any of the securities sold to the offeree within 12 months after its transfer to the offeree under this prospectus.

Canada

The securities may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws. Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor. Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriter is not required to comply with the disclosure requirements of NI33-105 regarding underwriter conflicts of interest in connection with this offering.

China

The information in this document does not constitute a public offer of the securities, whether by way of sale or subscription, in the People's Republic of China (excluding, for purposes of this paragraph, Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan). The securities may not be offered or sold directly or indirectly in the PRC to legal or natural persons other than directly to "qualified domestic institutional investors."

European Economic Area — Belgium, Germany, Luxembourg and Netherlands

The information in this document has been prepared on the basis that all offers of securities will be made pursuant to an exemption under the Directive 2003/71/EC ("Prospectus Directive"), as implemented in Member States of the European Economic Area (each, a "Relevant Member State"), from the requirement to produce a prospectus for offers of securities.

An offer to the public of securities has not been made, and may not be made, in a Relevant Member State except pursuant to one of the following exemptions under the Prospectus Directive as implemented in that Relevant Member State:

- to legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity that has two or more of (i) an average of at least 250 employees during its last fiscal year; (ii) a total balance sheet of more than €43,000,000 (as shown on its last annual unconsolidated or consolidated financial statements) and (iii) an annual net turnover of more than €50,000,000 (as shown on its last annual unconsolidated or consolidated financial statements);
- to fewer than 100 natural or legal persons (other than qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive) subject to obtaining our prior consent or any underwriter for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall require us to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

France

This document is not being distributed in the context of a public offering of financial securities (offre au public de titres financiers) in France within the meaning of Article L.411-1 of the French Monetary and Financial Code (Code monétaire et financier) and Articles 211-1 et seq. of the General Regulation of the French Autorité des marchés financiers ("AMF"). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.

This document and any other offering material relating to the securities have not been, and will not be, submitted to the AMF for approval in France and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in France.

Such offers, sales and distributions have been and shall only be made in France to (i) qualified investors (investisseurs qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2 and D.411-1 to D.411-3, D. 744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation and/or (ii) a restricted number of non-qualified investors (cercle restreint d'investisseurs) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-4, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation.

Pursuant to Article 211-3 of the General Regulation of the AMF, investors in France are informed that the securities cannot be distributed (directly or indirectly) to the public by the investors otherwise than in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code.

Ireland

The information in this document does not constitute a prospectus under any Irish laws or regulations and this document has not been filed with or approved by any Irish regulatory authority as the information has not been prepared in the context of a public offering of securities in Ireland within the meaning of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005 (the "Prospectus Regulations"). The securities have not been offered or sold, and will not be offered, sold or delivered directly or indirectly in Ireland by way of a public offering, except to (i) qualified investors as defined in Regulation 2(l) of the Prospectus Regulations and (ii) fewer than 100 natural or legal persons who are not qualified investors.

Israel

The securities offered by this prospectus have not been approved or disapproved by the Israeli Securities Authority (the ISA), or ISA, nor have such securities been registered for sale in Israel. The shares may not be offered or sold, directly or indirectly, to the public in Israel, absent the publication of a prospectus. The ISA has not issued permits, approvals or licenses in connection with this offering or publishing the prospectus; nor has it authenticated the details included herein, confirmed their reliability or completeness, or rendered an opinion as to the quality of the securities being offered. Any resale in Israel, directly or indirectly, to the public of the securities offered by this prospectus is subject to restrictions on transferability and must be effected only in compliance with the Israeli securities laws and regulations.

Italy

The offering of the securities in the Republic of Italy has not been authorized by the Italian Securities and Exchange Commission (Commissione Nazionale per le Società e la Borsa, "CONSOB" pursuant to the Italian securities legislation and, accordingly, no offering material relating to the securities may be distributed in Italy and such securities may not be offered or sold in Italy in a public offer within the meaning of Article 1.1(t) of Legislative Decree No. 58 of 24 February 1998 ("Decree No. 58"), other than:

- to Italian qualified investors, as defined in Article 100 of Decree no. 58 by reference to Article 34-ter of CONSOB Regulation no. 11971 of 14 May 1999 ("Regulation no. 1197l") as amended ("Qualified Investors"); and
- in other circumstances that are exempt from the rules on public offer pursuant to Article 100 of Decree No. 58 and Article 34-ter of Regulation No. 11971 as amended.

Any offer, sale or delivery of the securities or distribution of any offer document relating to the securities in Italy (excluding placements where a Qualified Investor solicits an offer from the issuer) under the paragraphs above must be:

- made by investment firms, banks or financial intermediaries permitted to conduct such activities in Italy in accordance with Legislative Decree No. 385 of 1 September 1993 (as amended), Decree No. 58, CONSOB Regulation No. 16190 of 29 October 2007 and any other applicable laws; and
- in compliance with all relevant Italian securities, tax and exchange controls and any other applicable laws.

Any subsequent distribution of the securities in Italy must be made in compliance with the public offer and prospectus requirement rules provided under Decree No. 58 and the Regulation No. 11971 as amended, unless an exception from those rules applies. Failure to comply with such rules may result in the sale of such securities being declared null and void and in the liability of the entity transferring the securities for any damages suffered by the investors.

Japan

The securities have not been and will not be registered under Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948), as amended (the "FIEL") pursuant to an exemption from the registration requirements applicable to a private placement of securities to Qualified Institutional Investors (as defined in and in accordance with Article 2, paragraph 3 of the FIEL and the regulations promulgated thereunder). Accordingly, the securities may not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan other than Qualified Institutional Investors. Any Qualified Institutional Investor who acquires securities may not resell them to any person in Japan that is not a Qualified Institutional Investor, and acquisition by any such person of securities is conditional upon the execution of an agreement to that effect.

New Zealand

The shares of common stock offered hereby have not been offered or sold, and will not be offered or sold, directly or indirectly in New Zealand and no offering materials or advertisements have been or will be distributed in relation to any offer of shares in New Zealand, in each case other than:

- to persons whose principal business is the investment of money or who, in the course of and for the purposes of their business, habitually invest money;
- to persons who in all the circumstances can properly be regarded as having been selected otherwise than as members of the public;
- to persons who are each required to pay a minimum subscription price of at least NZ$500,000 for the shares before the allotment of those shares (disregarding any amounts payable, or paid, out of money lent by the issuer or any associated person of the issuer); or
- in other circumstances where there is no contravention of the Securities Act 1978 of New Zealand (or any statutory modification or reenactment of, or statutory substitution for, the Securities Act 1978 of New Zealand).

Portugal

This document is not being distributed in the context of a public offer of financial securities (oferta pública de valores mobiliários) in Portugal, within the meaning of Article 109 of the Portuguese Securities Code (Código dos Valores Mobiliários). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in Portugal. This document and any other offering material relating to the securities have not been, and will not be, submitted to the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários) for approval in Portugal and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in Portugal, other than under circumstances that are deemed not to qualify as a public offer under the Portuguese Securities Code. Such offers, sales and distributions of securities in Portugal are limited to persons who are "qualified investors" (as defined in the Portuguese Securities Code). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Sweden

This document has not been, and will not be, registered with or approved by Finansinspektionen (the Swedish Financial Supervisory Authority). Accordingly, this document may not be made available, nor may
the securities be offered for sale in Sweden, other than under circumstances that are deemed not to require a prospectus under the Swedish Financial Instruments Trading Act (1991:980) (Sw. lag (1991:980) om handel med finansiella instrument). Any offering of securities in Sweden is limited to persons who are "qualified investors" (as defined in the Financial Instruments Trading Act). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Switzerland

The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering material relating to the securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering material relating to the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority (FINMA).

This document is personal to the recipient only and not for general circulation in Switzerland.

United Arab Emirates

Neither this document nor the securities have been approved, disapproved or passed on in any way by the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates, nor have we received authorization or licensing from the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates to market or sell the securities within the United Arab Emirates. This document does not constitute and may not be used for the purpose of an offer or invitation. We may not render services relating to the securities within the United Arab Emirates, including the receipt of applications and/or the allotment or redemption of such shares.

No offer or invitation to subscribe for securities is valid or permitted in the Dubai International Financial Centre.

United Kingdom

Neither the information in this document nor any other document relating to the offer has been delivered for approval to the Financial Services Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended ("FSMA")) has been published or is intended to be published in respect of the securities. This document is issued on a confidential basis to "qualified investors" (within the meaning of section 86(7) of FSMA) in the United Kingdom, and the securities may not be offered or sold in the United Kingdom by means of this document, any accompanying letter or any other document, except in circumstances which do not require the publication of a prospectus pursuant to section 86(1) FSMA. This document should not be distributed, published or reproduced, in whole or in part, nor may its contents be disclosed by recipients to any other person in the United Kingdom.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) received in connection with the issue or sale of the securities has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) of FSMA does not apply us.

In the United Kingdom, this document is being distributed only to, and is directed at, persons (i) who have professional experience in matters relating to investments falling within Article 19(5) (investment professionals) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 ("FPO"), (ii) who fall within the categories of persons referred to in Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the FPO or (iii) to whom it may otherwise be lawfully communicated (together "relevant persons"). The investments to which this document relates are available only to, and any invitation, offer or agreement to purchase will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a summary of certain material U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock to a non-U.S. holder that purchases shares of our common stock in this offering. For purposes of this summary, a "non-U.S. holder" means a beneficial owner of our common stock that is not, for U.S. federal income tax purposes:

- a citizen of or resident alien in the United States,
- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state thereof, or the District of Columbia,
- an estate the income of which is subject to U.S. federal income taxation regardless of its source, or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code") have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

An individual non-U.S. citizen may, in some cases, be deemed to be a resident alien in the United States (as opposed to a nonresident alien) by virtue of being present in the United States for at least 31 days in the calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. Generally, for this purpose, all the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year, are counted.

Resident aliens are generally subject to U.S. federal income tax as if they were U.S. citizens. Individuals who are uncertain of their status as resident or nonresident aliens for U.S. federal income tax purposes are urged to consult their own tax advisors regarding the U.S. federal income tax consequences of the ownership or disposition of our common stock.

In the case of a holder that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of a partner in such partnership generally will depend upon the status of the partner and the activities of the partner and the partnership. If you are a partner in a partnership holding our common stock, then you should consult your own tax advisor.

This summary is based upon the provisions of the Code, the Treasury Regulations promulgated thereunder and administrative and judicial interpretations thereof, all as of the date hereof. Those authorities may be changed, perhaps retroactively, or subject to differing interpretations, so as to result in U.S. federal income tax consequences different from those summarized below. We cannot assure you that a change in law, possibly with retroactive application, will not significantly alter the tax considerations that we describe in this summary. We have not sought and do not plan to seek any ruling from the U.S. Internal Revenue Service, which we refer to as the IRS, with respect to the tax consequences described in the following summary, and there can be no assurance that the IRS or a court will agree with the consequences described below.

This summary does not address all aspects of U.S. federal income taxes that may be relevant to non-U.S. holders in light of their particular circumstances, and does not deal with other federal taxes, including U.S. federal gift and estate taxes, except to the limited extent set forth below. This summary also does not address any non-U.S., state or local tax considerations. Special rules, not discussed here, may apply to certain non-U.S. holders, including:

- U.S. expatriates and former citizens or long-term residents of the United States,
- persons holding our common stock as part of a hedge, straddle, or other risk reduction strategy or as part of a conversion transaction or other integrated investment,

- controlled foreign corporations,
- passive foreign investment companies,
- banks and other financial institutions,
- insurance companies,
- brokers or dealers in securities or commodities,
- traders in securities who elect to mark their investments to market,
- tax-exempt organizations,
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation,
- tax-qualified retirement plans, and
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein).

Such non-U.S. holders should consult their own tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.

This summary applies only to a non-U.S. holder that holds our common stock as a capital asset (within the meaning of Section 1221 of the Code).

If you are considering the purchase of our common stock, you should consult your own tax advisor concerning the particular U.S. federal income tax consequences to you of the purchase, ownership and disposition of our common stock, as well as the consequences to you arising under U.S. tax laws other than the federal income tax law or under the laws of any other taxing jurisdiction.

Dividends

As described in "*Dividends and Dividend Policy*" above, we do not currently anticipate paying cash dividends. If we do make a distribution of cash or property (other than certain stock distributions) with respect to our common stock (or certain redemptions that are treated as distributions with respect to common stock), any such distributions will be treated as a dividend for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Dividends paid to you generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

However, dividends that are effectively connected with the conduct of a trade or business by you within the United States or, if required by an applicable income tax treaty, are attributable to a United States permanent establishment that you maintain, are not subject to the withholding tax, but instead are subject to United States federal income tax on a net income basis at applicable graduated individual or corporate ordinary income tax rates. Certain certification and disclosure requirements, including delivery to the withholding agent of a properly executed IRS Form W-8ECI (or other applicable form), must be satisfied for effectively connected income to be exempt from withholding. Any such dividends received by a foreign corporation that are effectively connected with its conduct of a trade or business within the United States may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

If the amount of a distribution paid on our common stock exceeds our current and accumulated earnings and profits, such excess will be allocated ratably among each share of common stock with respect to which the distribution is paid and treated first as a tax-free return of capital to the extent of your adjusted tax basis in each

such share, and thereafter as capital gain from a sale or other disposition of such share of common stock that is taxed to you as described below in "*Gain on Disposition of Common Stock*." Your adjusted tax basis is generally equal to your purchase price for such shares, reduced by the amount of any such tax-free returns of capital.

If you wish to claim the benefit of an applicable treaty rate to avoid or reduce withholding of U.S. federal income tax for dividends, then you must (a) provide the withholding agent with a properly completed IRS Form W-8BEN or W-8BEN-E (or other applicable form) and certify under penalties of perjury that you are not a U.S. person and are eligible for treaty benefits, or (b) if our common stock is held through certain foreign intermediaries, satisfy the relevant certification requirements of applicable U.S. Treasury Regulations. Special certification and other requirements apply to certain non-U.S. holders that act as intermediaries (including partnerships).

If you are eligible for a reduced rate of U.S. federal income tax pursuant to an income tax treaty, then you may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim with the IRS. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable tax treaties.

Gain on Disposition of Common Stock

You generally will not be subject to U.S. federal income tax with respect to gain realized on the sale or other taxable disposition of our common stock, unless:

- the gain is effectively connected with a trade or business you conduct in the United States, or, if required by an applicable income tax treaty, is attributable to a United States permanent establishment that you maintain,
- you are an individual and you are present in the United States for 183 days or more in the taxable year of the sale or other taxable disposition, and certain other conditions are met, or
- we are or have been during a specified testing period a "U.S. real property holding corporation" for U.S. federal income tax purposes, and certain other conditions are met.

If you are an individual described in the first bullet point above, you generally will be subject to tax on the net gain derived from the sale under regular graduated United States federal income tax rates or such lower rate as specified by an applicable income tax treaty. If you are a foreign corporation described in the first bullet point above, you will be subject to tax on your gain under regular graduated United States federal income tax rates and, in addition, may be subject to the branch profits tax on your effectively connected earnings and profits at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. If you are an individual described in the second bullet point above, you generally will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by United States source capital losses.

Generally, we will be a "U.S. real property holding corporation" if the fair market value of our U.S. real property interests equals or exceeds 50% of the sum of the fair market values of our worldwide real property interests and other assets used or held for use in a trade or business, all as determined under applicable U.S. Treasury Regulations. We believe that we have not been and are not a "U.S. real property holding corporation" for U.S. federal income tax purposes. Although we do not anticipate it based on our current business plans and operations, we may become, and there can be no assurance that we will not become, a "U.S. real property holding corporation" in the future. If we have been or were to become a "U.S. real property holding corporation," you might be subject to U.S. federal income tax with respect to gain realized on the disposition of our common stock. However, such gain would not be subject to U.S. federal income or withholding tax if (1) our common stock is regularly traded on an established securities market and (2) you did not own, actually or constructively, at any time during the five-year period preceding the disposition, more than 5% of the value of our common stock. There can be no assurance that our common stock will qualify as regularly traded on an established securities market.

Estate Tax

The estate of a nonresident alien individual generally is subject to U.S. federal estate tax on property with a U.S. situs. Because we are a U.S. corporation, our common stock will be U.S. situs property and therefore will be included in the U.S. taxable estate of a nonresident alien decedent, unless an applicable estate tax treaty between the United States and the decedent's country of residence provides otherwise. The terms "resident" and "nonresident" are defined differently for U.S. federal estate tax purposes than for U.S. federal income tax purposes. Non-U.S. holders should consult their own tax advisors regarding any potential estate tax implications of owning our common stock.

Information Reporting and Backup Withholding

We must report annually to the IRS and to you the amount of any dividends paid to you and the amount of income taxes, if any, withheld with respect to such dividends. The IRS may make this information available to the tax authorities in the country in which you are resident.

In addition, you may be subject to information reporting requirements and backup withholding tax (currently at a rate of 24%) with respect to dividends paid on, and the proceeds of disposition of, shares of our common stock, unless, generally, you certify under penalties of perjury (usually on IRS Form W-8BEN or W-8BEN-E) that you are not a U.S. person or you otherwise establish an exemption. Additional rules relating to information reporting requirements and backup withholding tax with respect to payments of the proceeds from the disposition of shares of our common stock are set forth below.

- If the proceeds are paid to or through the U.S. office of a broker, the proceeds generally will be subject to backup withholding tax and information reporting, unless you certify under penalties of perjury (usually on IRS Form W-8BEN or W-8BEN-E) that you are not a U.S. person or you otherwise establish an exemption.
- If the proceeds are paid to or through a non-U.S. office of a broker that is not a U.S. person and is not a foreign person with certain specified U.S. connections, or a U.S.-related person, information reporting and backup withholding tax generally will not apply.
- If the proceeds are paid to or through a non-U.S. office of a broker that is a U.S. person or a U.S.-related person, the proceeds generally will be subject to information reporting (but not to backup withholding tax), unless you certify under penalties of perjury (usually on IRS Form W-8BEN or W-8BEN-E) that you are not a U.S. person.

Any amounts withheld under the backup withholding tax rules may be allowed as a refund or a credit against your U.S. federal income tax liability, provided the required information is timely furnished by you to the IRS.

FATCA Withholding

Provisions commonly referred to as "FATCA" impose withholding of 30% on payments of dividends on our common stock to "foreign financial institutions" and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (generally relating to ownership by United States persons of interests in or accounts with those entities) have been satisfied by, or an exemption applies to, the payee (typically certified by the delivery of a properly completed IRS Form W-8BEN-E). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. 30% withholding under FATCA was scheduled to apply to payments of gross proceeds from the sale or other disposition of property that produces U.S.-source dividends beginning on January 1, 2019. However, proposed Treasury Regulations, if finalized in their proposed form, would eliminate the obligation to withhold on gross proceeds. Although these proposed Treasury Regulations are not final, taxpayers generally may rely on them until final Treasury Regulations are issued. There can be no assurance that final Treasury Regulations will provide the same exceptions from FATCA withholding as the proposed Treasury

Regulations. Prospective investors should consult their tax advisors regarding the potential application of FATCA to their investment in our common stock.

THE SUMMARY OF CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES ABOVE IS INCLUDED FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. PROSPECTIVE PURCHASERS OF OUR COMMON STOCK ARE URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSIDERATIONS OF PURCHASING, OWNING AND DISPOSING OF OUR COMMON STOCK.

LEGAL MATTERS

Certain legal matters in connection with this offering will be passed upon for us by King & Spalding LLP, Atlanta, Georgia. Nelson Mullins Riley & Scarborough LLP, Washington, DC, will pass upon certain legal matters for the underwriters.

EXPERTS

The financial statements of SSCI National Holdings, Inc. as of December 30, 2022 and December 31, 2021, and for the fiscal years then ended, included in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report. Such financial statements are included in reliance upon the report of such firm given their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered by this prospectus. In this prospectus we refer to that registration statement, together with all amendments, exhibits and schedules to that registration statement, as “the registration statement.”

As is permitted by the rules and regulations of the SEC, this prospectus, which is part of the registration statement, omits some information, exhibits, schedules and undertakings set forth in the registration statement. For further information with respect to us, and the securities offered by this prospectus, please refer to the registration statement.

Following the declaration of effectiveness of the registration statement on Form S-1, of which this prospectus forms a part, we will be required to file current, quarterly and annual reports, proxy statements and other information without charge with the SEC. The SEC maintains a web site at *www.sec.gov* that contains reports, proxy and information statements and other information regarding registrants that make electronic filings with the SEC using its EDGAR system.

Index to Financial Information

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Owner of SCCI National Holdings, Inc. and Subsidiaries:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of SCCI National Holdings, Inc. and Subsidiaries (the "Company") as of December 30, 2022 and December 31, 2021, and the related consolidated statements of operations, stockholder's equity, and of cash flows for each of the two fiscal years in the period ended December 30, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 30, 2022 and December 31, 2021, and the results of its operations and its cash flows for each of the two fiscal years in the period ended December 30, 2022, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ DELOITTE & TOUCHE LLP

Denver, Colorado

July 14, 2023 (August 9, 2023 as to earnings per share information and Notes 1, 7, 10 and 14)

We have served as the Company's auditor since 2022.

SCCI National Holdings, Inc. and Subsidiaries
Consolidated Balance Sheets
As of December 30, 2022 and December 31, 2021
(In thousands, except share data)

	December 30, 2022	December 31, 2021
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 77,762	$ 73,176
Restricted cash	4,323	8,727
Accounts receivable, net	56,430	98,004
Accounts receivable from former parent	—	32,000
Costs and estimated earnings in excess of billings on uncompleted contracts	80,901	18,513
Due from unconsolidated joint ventures	313	7,392
Prepaids and other current assets	13,747	17,351
TOTAL CURRENT ASSETS	233,476	255,163
Property, plant and equipment, net	55,208	62,209
Intangible assets, net	12,044	14,677
Costs and estimated earnings in excess of billings on uncompleted contracts, non-current	35,219	59,860
Retainage receivable	48,805	39,817
Lease right-of-use assets	22,690	22,224
Investment in unconsolidated joint ventures	17,363	17,685
Deferred tax assets	18,851	19,304
Other assets	3,143	1,057
TOTAL ASSETS	$ 446,799	$ 491,996
LIABILITIES AND STOCKHOLDER'S EQUITY		
CURRENT LIABILITIES		
Accounts payable	$ 67,541	$ 57,105
Billings on uncompleted contracts in excess of costs and estimated earnings	55,117	117,169
Forward loss reserve	108,608	140,721
Accrued salaries, wages and benefits	36,248	32,099
Construction accruals	60,758	29,287
Other current liabilities	12,672	12,281
TOTAL CURRENT LIABILITIES	340,944	388,662
Lease liabilities, non-current	14,442	11,904
Billings on uncompleted contracts in excess of costs and estimated earnings, non-current	1,846	14,069
Contingent consideration	15,662	6,200
Deferred tax liabilities	18,851	19,304
Other liabilities	3,459	4,836
TOTAL LIABILITIES	395,204	444,975
Commitments and Contingencies (Note 13)		
STOCKHOLDER'S EQUITY		
Common stock — authorized, 10,000,000 shares of $0.01 par value as of December 30, 2022 and December 31, 2021; issued and outstanding 8,000,000 shares as of December 30, 2022 and December 31, 2021	80	80
Additional paid-in-capital	3,480	1,185
Retained earnings	49,083	45,323
Non-controlling interests	(1,048)	433
TOTAL STOCKHOLDER'S EQUITY	51,595	47,021
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	$ 446,799	$ 491,996

SCCI National Holdings, Inc. and Subsidiaries
Consolidated Statements of Operations
For the fiscal years ended December 30, 2022 and December 31, 2021
(In thousands, except per share data)

	Fiscal Year Ended	
	December 30, 2022	December 31, 2021
Revenue	$ 664,158	$ 572,666
Cost of revenue	640,643	705,470
Gross margin	23,515	(132,804)
Selling, general and administrative expenses	60,442	77,519
Amortization of intangibles	2,632	2,632
Total operating expenses	63,074	80,151
Equity in earnings of unconsolidated joint ventures	52,471	1,067
Income (loss) from operations	12,912	(211,888)
Bargain purchase gain	—	233,147
Other (expense) income	(8,731)	453
Net income before income taxes	4,181	21,712
Income tax (expense) benefit	(1,274)	24,122
Net income	2,907	45,834
Net (loss) income attributable to non-controlling interests	(853)	431
Net income attributable to SCCI National Holdings, Inc. and Subsidiaries	$ 3,760	$ 45,403
Net income attributable to SCCI National Holdings, Inc. and Subsidiaries per common share		
Basic	$ 0.47	$ 5.68
Diluted	$ 0.47	$ 5.68

See accompanying notes to the consolidated financial statements.

SCCI National Holdings, Inc and Subsidiaries
Consolidated Statements of Stockholder's Equity
For the fiscal years ended December 30, 2022 and December 31, 2021
(In thousands, except share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Non-controlling	Total Stockholder's Equity
	Shares	Amount				
Beginning balance as of January 2, 2021	100	$ —	$ —	$ —	$ 2	$ 2
Net income	—	—	—	45,403	431	45,834
Stock-based compensation	—	—	1,185	—	—	1,185
Issuance of stock dividend to initial stockholder	7,999,900	80	—	(80)	—	—
Balance at December 31, 2021	8,000,000	$ 80	$ 1,185	$45,323	$ 433	$ 47,021
Net income (loss)	—	—	—	3,760	(853)	2,907
Stock-based compensation	—	—	2,295	—	—	2,295
Distributions to non-controlling interests	—	—	—	—	(628)	(628)
Balance at December 30, 2022	8,000,000	$ 80	$ 3,480	$49,083	$ (1,048)	$ 51,595

See accompanying notes to consolidated financial statements.

SCCI National Holdings, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
For the fiscal years ended December 30, 2022 and December 31, 2021
(In thousands)

	Fiscal Year Ended	
	December 30, 2022	December 31, 2021
Operating Activities		
Net income	$ 2,907	$ 45,834
Adjustments to reconcile net income to net cash used in operating activities:		
Stock-based compensation	2,295	1,185
Depreciation and amortization	15,979	14,929
Equity in earnings of unconsolidated joint ventures	(52,471)	(1,067)
Return on investment in unconsolidated joint ventures	59,651	26,104
Bargain purchase gain	—	(233,147)
Changes in fair value of contingent consideration	9,462	(11,600)
Deferred income tax benefit	—	(24,122)
Changes in operating assets and liabilities:		
Accounts receivable, net	41,574	(40,799)
Due from unconsolidated joint ventures	7,079	(4,313)
Costs and estimated earnings in excess of billings on uncompleted contracts	(37,748)	37,509
Prepaid and other current assets	3,604	3,376
Retainage receivable	(8,988)	(102)
Other assets	590	826
Accounts payable	10,436	16,551
Billings on uncompleted contracts in excess of costs and estimated earnings	(62,052)	74,276
Forward loss reserve	(32,113)	80,828
Accrued salaries, wages and benefits	4,149	(6,406)
Construction accruals	31,471	(29,176)
Other liabilities	1,091	(4,661)
Net cash used in operating activities	(3,084)	(53,975)
Investing Activities		
Cash acquired in business combination	—	160,393
Net working capital settlement in association with business combination	32,000	—
Purchases of property, plant and equipment	(10,443)	(2,935)
Proceeds from sale of property, plant and equipment	1,722	1,700
Unconsolidated joint venture equity contributions	(19,709)	(22,986)
Return of investment in unconsolidated joint ventures	627	—
Net cash provided by investing activities	4,197	136,172
Financing Activities		
Payments on finance lease obligation	(303)	(294)
Distributions to non-controlling interests	(628)	—
Net cash used in financing activities	(931)	(294)
Net increase in cash, cash equivalents and restricted cash	182	81,903
Cash, cash equivalents and restricted cash		
Beginning of period	81,903	—
End of period	$ 82,085	$ 81,903
Supplemental cash flow information		
Interest paid	$ 164	$ 72

See accompanying notes to the consolidated financial statements.

SCCI National Holdings, Inc. and Subsidiaries
Notes to the Consolidated Financial Statements

Note 1. Business, Basis of Presentation and Significant Accounting Policies

Basis of Presentation

On December 9, 2020, SCCI National Holdings, Inc. and Subsidiaries ("Shimmick" or the "Company") and AECOM and URS Holdings, Inc., an affiliate of AECOM, entered into a purchase and sale agreement ("Purchase Agreement") with SCC Group, LLC ("SCC Group"). Under the Purchase Agreement, SCC Group agreed to purchase and acquire 100% of Shimmick stock and certain other assets related to the Shimmick business and subsidiaries that were owned by AECOM and its affiliates. On January 2, 2021, Shimmick became an independent company as a result of the sale by AECOM of its civil construction business, which consisted of the Shimmick operations, to subsidiaries of SCC Group and 100 shares were concurrently issued to the initial stockholder.

The accompanying consolidated financial statements present the Company's historical financial position, results of operations, and cash flows in accordance with accounting principles generally accepted in the United States of America ("GAAP"). A statement of comprehensive income is not presented as the Company's results of operations do not contain any items classified as comprehensive income. All intercompany accounts and transactions have been eliminated.

Fiscal Year

The Company's fiscal years consist of 52 or 53 weeks, ending on the Friday closest to December 31. Fiscal years 2022 and 2021 contained 52 weeks and 52 weeks, respectively, and ended on December 30 and December 31, respectively. Fiscal year 2022 commenced on January 1, 2022 and ended on December 30, 2022. Fiscal year 2021 commenced on January 2, 2021 and ended on December 31, 2021.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from estimates and significant estimates affecting amounts reported in the consolidated financial statements are:

- project revenues, costs and profits at completion of the Company's contracts with customers, including recognition of estimated losses on uncompleted contracts;
- claims against customers and recoveries of costs from subcontractors, vendors and others;
- provisions for income taxes and related valuation allowances and tax uncertainties;
- recoverability of equity method investments;
- accruals for estimated liabilities, including litigation accruals;
- fair value of assets and liabilities acquired under the Purchase Agreement; and
- amounts owed to AECOM for contingent consideration.

Revenue Recognition

The Company derives revenue predominantly by providing construction and operations and management services to government and commercial clients throughout the United States. The Company's construction,

operations and management services are usually provided in association with capital projects, which are predominantly fixed-price contracts that are billed based on project milestones. Contracts with clients may contain advance billing terms, milestone billings based on the completion of certain phases of work or services provided to date, and contract retentions. For further discussion regarding the Company's revenue from contracts with clients by type of contract, see Note 3.

Step 1: Contract Identification

The Company does not recognize revenue unless an identified a contract with a customer is established. A contract with a customer exists when it has approval and commitment from both parties, the rights and obligations of the parties are identified, payment terms are identified, the contract has commercial substance, and collectability is probable. The Company also evaluates whether a contract should be combined with other contracts and accounted for as a single contract. This evaluation requires judgment and could change the timing of the amount of revenue and profit recorded for a given period.

Step 2: Identify Performance Obligations

Next, each performance obligation in the contract is identified. A performance obligation is a promise to provide a distinct good or service or a series of distinct goods or services to the customer. Revenue is recognized separately for each performance obligation in the contract. Many of the Company's contracts have one clearly identifiable performance obligation. However, many contracts provide the customer an integrated service that includes two or more of services associated with construction, operations and management. For these contracts, the Company does not consider the integrated services to be distinct within the context of the contract when the separate scopes of work combine into a single commercial objective or capability for the customer. Accordingly, the Company generally identifies one performance obligation in each contract. The determination of the number of performance obligations in a contract requires significant judgment and could change the timing of the amount of revenue recorded for a given period.

Step 3: Determine Contract Price

After determining the performance obligations in the contract, the Company determines the contract price. The contract price is the amount of consideration expected to be received from the customer for completing the performance obligation(s). In a fixed-price contract, the contract price is a single lump-sum amount. In reimbursable and time and materials-based contracts, the contract price is determined by the agreed upon rates or reimbursements for time and materials expended in completing the performance obligation(s) in the contract.

In the course of providing its services, the Company routinely subcontracts and collaborates with partners providing services and incurs other direct costs. The Company controls the services provided by subcontractors and accounts for such costs gross as the principal.

Determination of the contract price is dependent upon a number of factors, including the accuracy of a variety of estimates made at the consolidated balance sheet date, such as estimated costs at completion. Additionally, the Company is required to make estimates for the amount of consideration to be received, including bonuses, awards, incentive fees, claims, unapproved change orders, unpriced change orders, penalties, and liquidated damages. Variable consideration is included in the estimate of the transaction price only to the extent that it is probable that a significant reversal would not occur when the contingency is resolved. The Company estimates the amount of revenue to be recognized on variable consideration using the most likely amount method. The Company's estimates of variable consideration and determination of whether to include such amounts in the contract price are based largely on the Company's assessment of legal enforceability, anticipated performance, and any other information (historical and forecasted) that is reasonably available to the Company. Management continuously monitors factors that may affect the quality of its estimates, and material changes in estimates are disclosed accordingly.

Step 4: Assign Contract Price to Performance Obligations

After determining the contract price, the Company assigns such price to the performance obligation(s) in the contract. If a contract has multiple performance obligations, the Company assigns the contract price to each performance obligation based on the stand-alone selling prices of the distinct services that comprise each performance obligation.

Step 5: Recognize Revenue as Performance Obligations are Satisfied

The Company records revenue for contracts with customers as the contracts' performance obligations are satisfied. Under fixed-unit price contracts, the Company performs a number of units of work at an agreed price per unit with the total payment under the contract determined by the actual number of units delivered. Revenue is recognized for fixed-price contracts using the input method measured on a cost-to-cost basis. This method is reasonable in measuring performance towards completion because it measures the value of all goods and services transferred to the customer.

The Company recognizes revenue on performance obligations associated with cost reimbursable contracts based on actual direct costs incurred and the applicable fixed rate or portion of the fixed fee earned as of the consolidated balance sheet date. Under time-and-materials price contracts, the Company negotiates hourly billing rates and charges its customers based on the actual time that it expends on a project. In addition, customers reimburse the Company for materials and other direct incidental expenditures incurred in connection with its performance under the contract. The Company may apply a practical expedient to recognize revenue in the amount in which it has the right to invoice if its right to consideration is equal to the value of performance completed to date.

Costs incurred may include direct labor, direct materials, subcontractor costs and indirect costs, such as salaries and benefits, supplies and tools, equipment costs and insurance costs. Indirect costs are charged to projects based upon direct costs and overhead allocation rates per dollar of direct costs incurred or direct labor hours worked.

The Company has numerous contracts that are in various stages of completion which require estimates to determine the forecasted costs at completion. Due to the nature of the work left to be performed on many of the Company's contracts, the estimation of total cost at completion for fixed-price contracts is complex, subject to many variables and requires significant judgment. Estimates of total cost at completion are made each period and changes in these estimates are accounted for prospectively as cumulative adjustments to revenue recognized in the current period. If estimates of costs to complete fixed-price contracts indicate a loss, a provision is made through a contract write-down for the total loss anticipated.

Change Orders

Contracts are often modified to account for changes in contract specifications and requirements. Most of the Company's contract modifications are for goods or services that are not distinct from existing contracts due to the significant integration provided in the context of the contract and are accounted for as if they were part of the original contract. The effect of a contract modification on the transaction price and the Company's measure of progress for the performance obligation to which it relates are recognized as an adjustment to revenue (either as an increase or decrease) on a cumulative catch-up basis. The Company accounts for contract modifications prospectively when the modification results in the promise to deliver additional goods or services that are distinct and the increase in price of the contract is for the same amount as the stand-alone selling price of the additional goods or services included in the modification.

Claims

Sometimes the Company seeks claims for amounts in excess of the contract price for delays, errors in specifications and designs, contract terminations, change orders in dispute or other causes of additional costs

incurred. Costs attributable to claims from customers are treated as costs of contract performance as incurred. The transaction price does not include any amounts collected on behalf of third parties, such as sales tax.

Government Contracts

The Company's federal government and certain state and local agency contracts are subject to, among other regulations, regulations issued under the Federal Acquisition Regulations ("FAR"). These regulations can limit the recovery of certain specified indirect costs on contracts and subjects the Company to ongoing multiple audits by government agencies such as the Defense Contract Audit Agency ("DCAA"). In addition, most of the Company's federal and state and local contracts are subject to termination at the discretion of the client.

Audits by the DCAA and other agencies consist of reviews of the Company's overhead rates, operating systems and cost proposals to ensure that the Company accounted for such costs in accordance with the Cost Accounting Standards of the FAR ("CAS"). If the DCAA determines the Company has not accounted for such costs consistent with CAS, the DCAA may disallow these costs. There can be no assurance that audits by the DCAA or other governmental agencies will not result in material cost disallowances in the future.

There are no ongoing audits and or material adjustments related to noncompliance are required. The Company is in compliance with all federal and state regulations and is not aware of any material adjustments as of the consolidated balance sheet dates.

Commitments and Contingencies

For asserted claims and assessments, liabilities are recorded when an unfavorable outcome of a matter is concluded to be probable and the loss is reasonably estimable. With respect to unasserted claims or assessments, management must first determine that the probability that an assertion will be made is likely. Then, a determination as to the likelihood of an unfavorable outcome and the ability to reasonably estimate the potential loss is made. Legal matters are reviewed on a continuous basis to determine if there has been a change in management's judgment regarding the likelihood of an unfavorable outcome or the estimate of a potential loss. Legal costs are expensed as incurred.

Joint Ventures and Variable Interest Entities

The Company's joint ventures, the combination of two or more partners, are generally formed for the execution of a specific contract. Management of the joint venture is typically controlled by a joint venture management committee, comprised of representatives from the joint venture partners. The joint venture management committee normally provides management oversight and controls decisions which could have a significant impact on the joint venture.

Some of the Company's joint ventures have no employees and minimal operating expenses. For these joint ventures, the Company's employees perform work for the joint venture, which is then billed to a third-party client by the joint venture. For consolidated joint ventures of this type, the Company records the entire amount of the services performed and the costs associated with these services, including the services provided by the other joint venture partners, in the Company's results of operations. For certain of these joint ventures where a fee is added by an unconsolidated joint venture to client billings, these fees are eliminated to the extent the fee represents billings from the Company to the joint venture.

The Company assesses its joint ventures at inception to determine if they meet the qualifications of a VIE. The Company considers a partnership or joint venture a VIE if it has any of the following characteristics:

- the total equity investment is not sufficient to permit the entity to finance its activities without additional subordinated financial support;

- characteristics of a controlling financial interest are missing (either the ability to make decisions through voting or other rights, the obligation to absorb the expected losses of the entity or the right to receive the expected residual returns of the entity); or
- the voting rights of the equity holders are not proportional to their obligations to absorb the expected losses of the entity and/or their rights to receive the expected residual returns of the entity, and substantially all of the entity's activities either involve or are conducted on behalf of an investor that has disproportionately few voting rights.

The Company analyzes its joint ventures and classifies them as either:

- a VIE that must be consolidated because the Company is the primary beneficiary or the joint venture is not a VIE and the Company holds the majority voting interest with no significant participative rights available to the other partners; or
- a VIE that does not require consolidation and is treated as an equity method investment because the Company is not the primary beneficiary or the joint venture is not a VIE and the Company does not hold the majority voting interest.

Cash, Cash Equivalents and Restricted Cash

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents. The Company from time to time may have bank deposits in excess of insurance limits of the Federal Deposit Insurance Corporation. The Company has not experienced any credit losses in such accounts and believes it is not exposed to any significant credit risk related to its cash and cash equivalents.

The Company's cash equivalents include highly liquid investments which have an initial maturity of three months or less.

Cash and cash equivalents as of December 30, 2022 and December 31, 2021, include $4.3 million and $8.7 million, respectively, held by consolidated joint ventures that may not be distributed or used for certain other payments prescribed in the joint venture agreement without consent of the joint venture partners. These balances are presented as restricted cash within the consolidated balance sheets.

The following table provides a reconciliation of cash, cash equivalents and restricted cash in the consolidated balance sheets to the total cash, cash equivalents and restricted cash shown in the consolidated statements of cash flows (In thousands):

(In thousands)	Year Ended December 30, 2022	Year Ended December 31, 2021
Cash and cash equivalents	$ 77,762	$ 73,176
Restricted cash	4,323	8,727
Total cash, cash equivalents and restricted cash	$ 82,085	$ 81,903

Accounts Receivable and Allowance for Doubtful Accounts

The Company records its accounts receivable net of an allowance for doubtful accounts. This allowance for doubtful accounts is estimated based on management's evaluation of the contracts involved and the client's ability and willingness to pay. Allowances for doubtful accounts have been determined through specific identification of amounts considered to be uncollectible and potential write-offs, plus a non-specific allowance for other amounts for which some potential loss has been determined to be probable as of the consolidated balance sheet date based on current and past experience.

Property, Plant and Equipment

Property, plant and equipment are recorded at cost and are depreciated over their estimated useful lives using the straight-line method. Expenditures for maintenance and repairs are expensed as incurred. Estimated useful lives range as follows:

- Buildings — 10 to 45 years;
- Machinery, equipment, and vehicles — 3 to 12 years;
- Office furniture and equipment — 3 to 10 years;
- Leasehold improvements — the shorter of their estimated useful lives or the remaining terms of the underlying lease agreement.

Property, plant and equipment to be held and used are reviewed for impairment whenever events or circumstances indicate that the carrying amount of assets may not be recoverable. The carrying amount of an asset to be held and used is not recoverable if it exceeds the sum of the undiscounted cash flows expected from the use and eventual disposition of the asset. For assets to be held and used, impairment losses are recognized based upon the excess of the asset's carrying amount over the fair value of the asset. For property, plant and equipment assets to be disposed, impairment losses are recognized at the lower of the carrying amount or fair value less cost to sell. There was no impairment to property, plant and equipment for the fiscal years ended December 30, 2022 and December 31, 2021.

Intangible Assets

Under the acquisition method of accounting, the net assets of the entities acquired by the Company are recorded at their estimated fair value at the date of acquisition. Intangible assets identified as part of the SCCI Acquisition (see Note 2) are recorded at their estimated fair value, as determined by the Company's management, based on available information which includes a valuation from external experts. The estimated useful lives for intangible assets were determined based upon the remaining useful economic lives of the intangible assets that are expected to contribute directly or indirectly to future cash flows. The estimated useful lives for trademarks and customer contracts are seven years and six years, respectively. Intangible assets are amortized over the shorter of their contractual term or estimated useful life.

In order to determine the amount of intangible assets resulting from an acquisition, the Company performed an assessment to determine the value of the acquired company's tangible and intangible assets and liabilities. The Company considers events or circumstances that may warrant revised estimates of useful lives or that may indicate impairment. There was no impairment to intangible assets for the fiscal years ended December 30, 2022 or December 31, 2021.

Insurance Reserves

The Company maintains insurance for certain insurable business risks. Insurance coverage contains various retention and deductible amounts for which the Company accrues a liability based upon reported claims and an actuarially determined estimated liability for certain claims incurred but not reported. It is generally the Company's policy not to accrue for any potential legal expense to be incurred in defending the Company's position. The Company believes that its accruals for estimated liabilities associated with professional and other liabilities are sufficient and it is not reasonably possible that any excess liability beyond the accrual would have a material adverse effect on the Company's results of operations, cash flows or financial position.

Leases

The Company enters into lease arrangements for real estate, construction equipment and information technology equipment in the normal course of business. The Company determines if an arrangement is or contains a lease at

inception of the arrangement. An arrangement is determined to be a lease if it conveys the right to control the use of identified property and equipment for a period of time in exchange for consideration. Operating lease right-of-use assets are recognized as the present value of future lease payments over the lease term as of the commencement date, plus any lease payments made prior to commencement, and less any lease incentives received. Operating lease liabilities are recognized as the present value of the future lease payments over the lease term as of the commencement date. Operating lease expense is recognized based on the undiscounted future lease payments over the remaining lease term on a straight-line basis. Lease expense related to short-term leases is recognized on a straight-line basis over the lease term.

Determinations with respect to lease term (including any renewals and terminations), incremental borrowing rate used to discount lease payments, variable lease expense and future lease payments require the use of judgment based on the facts and circumstances related to each lease. The Company considers various factors, including economic incentives, intent, past history and business need, to determine the likelihood that a renewal option will be exercised.

Right-of-use assets are evaluated for impairment in accordance with the Company's policy for impairment of long-lived assets.

Non-controlling Interests

Non-controlling interests represent the equity investments of the minority owners in the Company's joint ventures and other subsidiary entities that are consolidated in its financial statements.

Fair Value Accounting

The Company categorizes its financial instruments using a valuation hierarchy for disclosure of the inputs used to measure fair value. This hierarchy prioritizes the inputs into three broad levels as follows: Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities; Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument; Level 3 inputs are unobservable inputs based on the Company's assumptions used to measure assets and liabilities at fair value. The classification of a financial asset or liability within the hierarchy is determined based on the lowest level (least observable) input that is significant to the fair value measurement.

Other than the contingent consideration discussed in Note 2, there were no assets and liabilities measured at fair value on a recurring basis as of December 30, 2022 or December 31, 2021.

Income Taxes

The Company accounts for income taxes under the asset and liability method prescribed by the Accounting Standards Codification Topic 740 — Income Taxes ("ASC 740"). This method requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements. Under this method, the Company determines deferred tax assets and liabilities on the basis of the differences between the consolidated financial statement and tax bases of assets and liabilities by using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

The Company records uncertain tax positions in accordance with ASC 740 on the basis of a two-step process in which (1) it determines whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50% likely to be realized upon ultimate settlement with the related tax authority.

The Company recognizes deferred tax assets to the extent that its management believes these assets are more likely than not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If the Company determines that it would be able to realize its deferred tax assets in the future in excess of their net recorded amount, it will make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

Management assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets. A significant piece of objective negative evidence evaluated was the cumulative loss incurred over the three periods prior to January 2, 2021. Such objective evidence limits the ability to consider other subjective evidence, such as our projections for future growth.

Based on this evaluation, as of December 30, 2022 and December 31, 2021, a valuation allowance of $118.4 million and $121.1 million, respectively, has been recorded to recognize only the portion of the deferred tax asset that is more likely than not to be realized. The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

Segment

The accounting guidance on Segment Reporting establishes standards for reporting information regarding operating segments in annual financial statements and requires selected information of those segments to be presented in financial statements. Operating segments are identified as components of an enterprise for which separate discrete financial information is available for evaluation by the chief operating decision maker (“CODM”) in making decisions on how to allocate resources and assess performance. Based on how the Company’s Chief Executive Officer as the CODM reviews financial performance and allocates resources on a recurring basis, the Company has one operating segment and one reportable segment.

Stock-Based Compensation

The Company accounts for stock-based payments, including grants of employee stock options, in accordance with ASC 718 — *Compensation-Stock Compensation*, which requires that all stock-based payments (to the extent that they are compensatory) be recognized as an expense in the Company’s consolidated statements of operations based on their fair values on the grant date. The Company accounts for forfeitures when they occur. The Company recognizes stock-based compensation expense on a straight-line basis over the service period of the award, which is no greater than four years. See Note 9 to the consolidated financial statements for discussion of stock-based compensation and incentive plans.

Accounting Standards Not Yet Adopted

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on the consolidated financial statements.

ASU 2016-13 — Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments

In June 2016, the FASB issued ASU 2016-13 which is a new credit loss standard that changes the impairment model for most financial assets and some other instruments. The new guidance will replace the current “incurred loss” approach with an “expected loss” model for instruments measured at amortized cost. It also simplifies the accounting model for purchased credit-impaired debt securities and loans. The guidance will be effective for the

Company's fiscal year starting December 31, 2022, including interim periods within those fiscal years. Management is currently evaluating the impacts the ASU has on the Company's consolidated financial statements.

ASU 2019-12 — Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes

In December 2019, the FASB issued ASU 2019-12, which eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. It also clarifies and simplifies other aspects of the accounting for income taxes. This guidance will be effective for the Company's fiscal year starting December 31, 2022. Management is currently evaluating the impacts the ASU has on the Company's consolidated financial statements.

Note 2. Business Combination

SCCI Acquisition

As discussed within Note 1, on January 2, 2021, the parties closed the transactions under the Purchase Agreement.

On November 19, 2021, SCC Group merged with and into Shimmick and Shimmick became the holder of all rights and obligations of SCC Group under the Purchase Agreement.

Purchase Consideration — SCC Group incurred a purchase price of approximately $17.8 million consisting of contingent consideration. The $32.0 million net working capital settlement was agreed to in the fourth quarter of 2021 and received in the first quarter of 2022. The total consideration as of the purchase date is detailed as follows:

(In thousands)	
Multi-step earnout payment	$ (8,000)
Project claim recoveries	(7,100)
Shared tax benefit	(2,700)
Purchase price	$(17,800)
Net working capital settlement	32,000
Net consideration received	$ 14,200

The contingent consideration is measured at fair value within the consolidated balance sheets using Level 3 inputs. The significant unobservable inputs used in measuring the fair values were the discount rate and forecasted cash flows.

Purchase Price Allocation — The aggregate purchase price noted above was allocated to the assets and liabilities acquired based upon their estimated fair values at the acquisition closing date, which were based, in part, upon an external appraisal and valuation of certain assets utilizing a discounted cash flows income approach, including specifically identified intangible assets. The excess of the estimated fair value of the net tangible and identifiable intangible assets acquired over the purchase price totaling $233.1 million was recorded as a bargain purchase gain. AECOM's intent to exit the civil construction business contributed to the resulting bargain purchase gain upon acquisition.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the acquisition date.

(In thousands)	
Assets:	
Cash, cash equivalents and restricted cash	$ 160,393
Accounts receivable	57,205
Costs and estimated earnings in excess of billings on uncompleted contracts	155,597
Prepaids and other current assets	23,805
Property, plant and equipment	72,970
Lease right-of-use assets	19,392
Intangible assets	17,309
Deferred tax asset	5,950
Other assets	7,652
Total assets acquired	$ 520,273
Liabilities:	
Accounts payable	$ 16,133
Billings on uncompleted contracts in excess of costs and estimated earnings	102,889
Lease liabilities	20,389
Construction accruals	24,421
Accrued salaries, wages and benefits	96,968
Deferred tax liabilities	30,072
Other liabilities	10,454
Total liabilities assumed	301,326
Total net assets acquired	218,947
Net consideration received	14,200
Bargain purchase gain	$ 233,147

Acquisition related expenses recorded in the Company's consolidated statements of operations totaled approximately $2.0 million and $3.4 million for the fiscal years ending December 30, 2022 and December 31, 2021, respectively, and are presented within selling, general and administrative expenses.

Note 3. Revenue

The following tables present the Company's revenue disaggregated by contract types:

	Fiscal Year Ended	
(In thousands)	December 30, 2022	December 31, 2021
Fixed-price	$ 601,903	$ 455,869
Cost reimbursable	54,835	106,237
Equipment and labor revenue	7,420	10,560
Total revenue	$ 664,158	$ 572,666

Remaining performance obligations

The Company had $1,215.2 million of remaining performance obligations yet to be satisfied as of December 30, 2022. The Company expects to recognize approximately $622.0 million of the remaining performance obligations as revenue within the next twelve months.

Contract Balances

Contract assets, including costs and estimated earnings in excess of billings on uncompleted contracts and retainage receivable, were $164.9 million and $118.2 million at December 30, 2022, and December 31, 2021, respectively. Contract liabilities, including billings on uncompleted contracts in excess of costs and estimated earnings and forward loss reserves were $165.6 million, and $272.0 million at December 30, 2022, and December 31, 2021, respectively. Contract liabilities represent amounts billed to customers in excess of revenue recognized to date and a reserve for loss contracts. The Company recognized revenue of $113.8 million during the fiscal year ended December 30, 2022 that was included in contract liabilities as of December 31, 2021.

Contract terms with customers include the timing of billing and payment, which usually differs from the timing of revenue recognition. As a result, the Company carries contract assets and liabilities within the consolidated balance sheets. These contract assets and liabilities are calculated on a contract-by-contract basis and reported on a net basis at the end of each period and are classified as current or non-current. The Company presents contract assets within the consolidated balance sheets as costs and estimated earnings in excess of billings on uncompleted contracts ("CIE"). CIE consists of revenue recognized in excess of billings. The Company presents contract liabilities in the consolidated balance sheets as billings on uncompleted contracts in excess of costs and estimated earnings ("BIE"). BIE consists of billings in excess of revenue recognized.

The following table provides information about CIE and BIE:

(In thousands)	December 30, 2022	December 31, 2021	Change
Costs and estimated earnings in excess of billings on uncompleted contracts	$ 116,120	$ 78,373	$ 37,747
Billings on uncompleted contracts in excess of costs and estimated earnings	(56,963)	(131,238)	74,275
Net	$ 59,157	$ (52,865)	$112,022

The Company's timing of revenue recognition may not be consistent with its rights to bill and collect cash from its clients. Those rights are generally dependent upon advance billing terms, milestone billings based on the completion of certain phases of work or when services are performed. The Company's accounts receivable represents amounts billed to clients that have yet to be collected and represent an unconditional right to cash from its clients as presented below.

(In thousands)	December 30, 2022	December 31, 2021
Total accounts receivable, gross	$ 57,395	$ 98,770
Allowance for doubtful accounts	(965)	(766)
Accounts receivable, net	$ 56,430	$ 98,004

Substantially all contract assets as of December 30, 2022 and December 31, 2021 are expected to be collected within the Company's estimated operating cycle, except for retainage and claims pertaining to certain contracts. The Company's operating cycle may extend beyond one year.

The Company is in the process of negotiating or awaiting approval of unapproved change orders and claims with its customers. The Company is proceeding with its contractual rights to recoup additional costs incurred from its customers based on completing work associated with change orders, including change orders with pending change order pricing, or claims related to significant changes in scope which resulted in substantial delays and additional costs in completing the work. The Company may take legal action if it and the customer cannot reach

a mutually acceptable resolution. Based on the Company's review of the provisions of its contracts, specific costs incurred, and other related evidence supporting the unapproved change orders and claims, the Company concluded it was appropriate to include in contract assets claims of $134.9 million and $147.1 million as of December 30, 2022 and December 31, 2021, respectively. Contract retentions represent amounts invoiced to clients where payments have been withheld from progress payments until the contracted work has been completed and approved by the client. These retention agreements vary from project to project and could be outstanding for several months or years. Contract assets included contract retainage receivable, which were $48.8 million and $39.8 million as of December 30, 2022 and December 31, 2021, respectively.

Information about significant customers

Significant Customers as a Percentage of Accounts Receivable

As of December 30, 2022	
Customer one	31.4%
Customer two	21.4%
Customer three	14.4%
As of December 31, 2021	
Customer one	16.3%
Customer two	11.8%
Customer three	11.2%
Customer four	10.2%

Significant Customers as a Percentage of Revenue

Fiscal Year Ended December 30, 2022	
Customer one	12.1%
Customer two	10.9%
Customer three	10.8%
Customer four	10.1%
Fiscal Year Ended December 31, 2021	
Customer one	15.5%
Customer two	12.8%
Customer three	12.2%

Revisions in Estimates

The Company's results of operations were materially impacted by an increase in the forecasted costs to complete a canal lock chamber project which reduced gross margin by $5.1 million in fiscal year 2022 and $141.1 million in fiscal year 2021. The increase in forecasted costs was principally due to significantly reduced productivity and schedule delays as a result of the COVID-19 pandemic as well as associated acceleration costs.

The Company's results of operations were also materially impacted by an increase in the forecasted costs to complete a waterway canal project which reduced gross margin by $3.5 million in fiscal year 2022 and $1.8 million in fiscal year 2021. The increase in forecasted costs was principally due to unexpected underwater soil conditions and associated schedule delays.

The Company's results of operations were also materially impacted by an increase in the forecasted costs to complete a water desalination project which reduced gross margin by $9.4 million in fiscal year 2022. The increase in forecasted costs was primarily the result of numerous project design modifications, unexpected site conditions and associated schedule delays.

The Company's 2021 results of operations were also materially impacted by an increase in the forecasted costs to complete a bridge project which reduced gross margin by $29.6 million. The increase in forecasted costs was primarily the result of schedule delays and higher than anticipated procurement and subcontractor costs.

The Company's 2021 results of operations were also materially impacted by an increase in the forecasted costs to complete a transportation project which reduced gross margin by $6.2 million. The increase in forecasted costs during the 2021 fiscal year was the result of higher than anticipated costs as the project neared completion.

Note 4. Joint Ventures and Variable Interest Entities

Summary of financial information of the consolidated joint ventures is as follows:

(In thousands)	December 30, 2022	December 31, 2021
Current assets	$ 29,485	$ 22,845
Non-current assets	8,235	7,456
Total assets	37,720	30,301
Current liabilities	$ 22,603	$ 40,058
Non-current liabilities	56,595	66,945
Total liabilities	$ 79,198	$ 107,003

Total revenue of the consolidated joint ventures for the fiscal years ended December 30, 2022 and December 31, 2021 was $27.2 million and $17.8 million, respectively. The assets of the Company's consolidated joint ventures are restricted for use only by the particular joint venture and are not available for the general operations of the Company.

Summary of financial information of the unconsolidated joint ventures, as derived from their financial statements, is as follows:

(In thousands)	December 30, 2022	December 31, 2021
Current assets	$ 78,228	$ 250,877
Non-current assets	25,026	23,408
Total assets	$ 103,254	$ 274,285
Current liabilities	$ 63,240	$ 268,908
Total liabilities	$ 63,240	$ 268,908

As of December 30, 2022 and December 31, 2021, the Company's investment in unconsolidated joint ventures was $17.4 million and $17.7 million, respectively.

	Fiscal Year Ended	
(In thousands)	December 30, 2022	December 31, 2021
Revenue	$ 430,634	$ 492,688
Cost of revenue	332,528	526,378
Gross margin	$ 98,106	$ (33,690)
Net income (loss)	$ 98,106	$ (27,474)

The Company recognized equity in earnings of unconsolidated joint ventures of $52.5 million and $1.1 million for the fiscal years ended December 30, 2022 and December 31, 2021, respectively.

Contractually required support provided to the Company's joint ventures is discussed in Note 13.

Related Party Transactions

We often provide construction management and other subcontractor services to the Company's joint ventures and revenue includes amounts related to these services. For the fiscal years ended December 30, 2022 and December 31, 2021, revenue included $7.4 million and $10.6 million, respectively, related to services provided to unconsolidated joint ventures.

Amounts included in the consolidated balance sheets related to services provided to unconsolidated joint ventures for the fiscal years ended December 30, 2022 and December 31, 2021 are as follows:

(In thousands)	December 30, 2022	December 31, 2021
Accounts receivable, net	$ 5,045	$ 21,024

Note 5. Property, Plant and Equipment

The following table summarizes the components of property, plant and equipment as of December 30, 2022 and December 31, 2021.

(In thousands)	December 30, 2022	December 31, 2021
Building and land	$ 3,887	$ 7,065
Machinery, equipment, and vehicles	67,698	60,466
Office furniture and equipment	7,891	6,674
Property, plant and equipment, gross	79,476	74,205
Accumulated depreciation	(24,268)	(11,996)
Property, plant and equipment, net	$ 55,208	$ 62,209

Depreciation and amortization expense for the fiscal years ended December 30, 2022 and December 31, 2021 was $13.0 million and $12.0 million, respectively. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, or in the case of leasehold improvements and capitalized leases, the lesser of the remaining term of the lease or its estimated useful life.

Note 6. Debt

Revolving Credit Facility

On March 27, 2023, we entered into a Revolving Credit Facility Agreement with MidCap Financial Services, LLC, which provides a total commitment amount of $30.0 million. Borrowings under the Revolving Credit Facility Agreement bear interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%. Further, the Revolving Credit Facility is subject to an annual collateral management fee of 0.50% and an annual unused line fee of 0.50%. Key financial covenants under the Revolving Credit Facility include maintaining a leverage ratio that does not exceed 1.75 to 1.0 and a minimum cash balance of $25.0 million. The Company is not aware of any instances of noncompliance with the key financial covenants as of the date the consolidated financial statements were issued. The Revolving Credit Facility matures on March 27, 2028.

Revolving Line of Credit

We had a $25.0 million Revolving Line of Credit with BMO Harris Bank, N.A., under which the Company had no outstanding borrowings as of December 30, 2022 or December 31, 2021. Borrowings under the Revolving Line of Credit bear interest at a rate based on SOFR or a combination of rates (prime rate, federal fund rate, and SOFR) at the Company's election, with an added margin depending on the Company's leverage ratio. The unused balance of the Revolving Line of Credit bears a commitment fee of between 0.25% and 0.40% per year, depending on the Company's leverage ratio. Key financial covenants under the Revolving Line of Credit include maintaining a leverage ratio that does not exceed 2.0 to 1.0 and a minimum cash balance of $35.0 million. The Company is not aware of any instances of noncompliance with the key financial covenants during and as of the fiscal years ended December 30, 2022 and December 31, 2021. The Revolving Line of Credit terminated on March 27, 2023 upon the Company entering into the Revolving Credit Facility.

Note 7. Income Taxes

The components of the provision for income taxes are as follows:

	Fiscal Year Ended	
	December 30, 2022	December 31, 2021
(In thousands)		
Current taxes:		
Federal	$ 1,030	$ —
State	244	—
Total current taxes	1,274	—
Deferred taxes:		
Federal	—	(19,262)
State	—	(4,860)
Total deferred taxes	—	(24,122)
Provision (benefit) for income taxes	$ 1,274	$ (24,122)

The differences between income taxes expected at the U.S. federal statutory income tax rate of 21% and the reported income tax (benefit) expense are summarized as follows:

	Fiscal Year Ended	
	December 30, 2022	December 31, 2021
(In thousands)		
Expected income tax (benefit) expense at federal statutory rate	$ 1,070	$ 4,469
Contingent consideration	1,987	(2,436)
Acquisition costs		849
Other permanent items	72	83
State and local taxes, net of federal taxes	790	749
Bargain purchase gain, including state impact	—	(61,315)
Valuation allowance for deferred tax assets, including state impact	(2,645)	33,479
Reported income tax (benefit) expense	$ 1,274	$ (24,122)
Effective tax rate	25%	(113)%

Deferred income taxes represent the tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The components of deferred tax liabilities and assets are as follows:

(In thousands)	December 30, 2022	December 31, 2021
Deferred tax liabilities:		
Depreciation and amortization	$ (12,682)	$ (13,281)
Right-of-use asset	(6,169)	(6,023)
Total deferred tax liabilities	$ (18,851)	$ (19,304)
Deferred tax assets:		
Intangible assets	$ 35,818	$ 39,193
Contract loss reserve	17,687	24,576
Investment in partnerships	25,645	27,202
Lease liability	6,132	6,083
Stock compensation	804	198
Accrued expenses and reserves	9,409	2,319
Assets subject to 382 limitation	30,070	25,087
Net operating loss carryovers	11,003	15,046
Other deferred tax assets	711	673
Total deferred tax assets	$ 137,279	$ 140,377
Net deferred tax assets before valuation allowance	$ 118,428	$ 121,073
Less: Valuation allowance	(118,428)	(121,073)
Net deferred tax assets	$ —	$ —

As of December 30, 2022 and December 31, 2021, gross deferred tax assets were $137.3 million and $140.4 million, respectively. The Company has recorded a valuation allowance of $118.4 million and $121.1 million as of December 30, 2022 and December 31, 2021, respectively. The Company has performed an assessment of positive and negative evidence, including the nature, frequency, and severity of cumulative financial reporting losses in recent years, the future reversal of existing temporary differences, predictability of future taxable income exclusive of reversing temporary differences of the character necessary to realize the asset, relevant carryforward periods, taxable income in carry-back years if carry- back is permitted under tax law, and prudent and feasible tax planning strategies that would be implemented, if necessary, to protect against the loss of the deferred tax asset that would otherwise expire. The net decrease in the valuation allowance of $2.7 million is attributed to the full valuation allowance being recorded on all changes in deferred tax assets in the current period. The Company recognizes interest and penalties related to tax matters as a component of “Selling, general and administrative expenses” in the accompanying consolidated statements of operations.

At December 30, 2022, the Company had federal and state net operating loss (“NOL”) carryforwards of $83.5 million which have an indefinite carryforward for U.S. federal income tax and either expire in the next 15 to 20 years or have indefinite carryforwards for the various state jurisdictions where we operate. Such state NOL carryforwards expire beginning in 2036 through 2041. At December 30, 2022, the Company has a full valuation allowance related to the tax-effected amount of these net operating losses. The Company had no unrecognized tax benefits recorded at December 30, 2022.

At December 31, 2021, the Company had federal and state net operating loss (“NOL”) carryforwards of $120.5 million which have an indefinite carryforward for U.S. federal income tax and either expire in the next 15 to 20 years or have indefinite carryforwards for the various state jurisdictions where we operate. Such state NOL carryforwards expire beginning in 2036 through 2041. At December 31, 2021, the Company has a full valuation allowance related to the tax-effected amount of these net operating losses. The Company had no unrecognized tax benefits recorded at December 31, 2021.

The Company files income tax returns in numerous tax jurisdictions, including the U.S., and multiple U.S. states. The statute of limitations generally ranges from three to five years for major jurisdictions in which the Company operates. Prior to the acquisition, Shimmick filed as a subsidiary of their parent company, AECOM. In connection with the separation, the Company entered into a tax matters agreement. Under the tax matters agreement, AECOM is generally responsible for all taxes associated with consolidated federal and state filings imposed on AECOM and its subsidiaries (including Shimmick) with respect to taxable periods ended on or prior to January 1, 2021. Also, pursuant to this agreement, AECOM is generally responsible for all taxes associated with separately filed state and local tax filings imposed on Shimmick and its subsidiaries with respect to taxable periods ended on or prior to January 1, 2021. Under these circumstances, Shimmick is only liable for tax periods filed on a standalone basis following the acquisition date.

Note 8. Employee Retirement Plans

Defined Contribution Profit Sharing Plan

The Company sponsors a defined contribution profit sharing plan covering substantially all non-union persons employed by the Company, whereby employees may contribute a percentage of compensation, limited to maximum allowed amounts under the Internal Revenue Code.

The Company made matching contributions of $2.1 million and $1.0 million for the fiscal years ended December 30, 2022 and December 31, 2021, respectively.

Multiemployer Pension Plans

The Company participates in construction-industry multiemployer pension plans. Generally, the plans provide defined benefits to substantially all employees covered by collective bargaining agreements. Under the Employee Retirement Income Security Act, a contributor to a multiemployer plan is liable, upon termination or withdrawal from a plan, for its proportionate share of a plan’s unfunded vested liability. The Company’s aggregate contributions to these multiemployer plans were $16.7 million and $14.0 million for the fiscal years ended December 30, 2022 and December 31, 2021, respectively.

Our participation in significant plans for the fiscal years ended December 30, 2022 and December 31, 2021 is outlined in the table below. The "EIN/Pension Plan Number" column provides the Employer Identification Number ("EIN") and the three digit plan number. The zone status is based on the latest information that the Company received from the plan and is certified by the plan's actuary. Plans in the red zone are generally less than 65% funded, plans in the yellow zone are generally less than 80% funded, and plans in the green zone are generally at least 80% funded. The "FIP/RP Status Pending/Implemented" column indicates plans for which a financial improvement plan ("FIP") or a rehabilitation plan ("RP") is either pending or has been implemented. The "Surcharge Imposed" column includes plans in a red zone status that require a payment of a surcharge in excess of regular contributions.

		Pension Protection Act Zone Status			Company Contributions Fiscal Year (In thousands)		
Pension Fund	EIN/Pension Plan Number	2022	2021	FIP/RP Status Pending or Implemented	Year Ended December 30, 2022	Year Ended December 31, 2021	Surcharge Imposed
Carpenters Pension Trust Fund for Northern CA	**94-6050970**	Described below (1)	Green	Implemented	$ 1,613	$ 1,105	No
Cement Masons Pension Trust Fund for Northern CA	**94-6277669**	Described below (1)	Green	NA	219	158	No
California Ironworkers Field Pension Fund	**95-6042866**	Described below (1)	Green	NA	1,931	1,817	No
Laborers Pension Trust Fund for Northern CA	**94-6277608**	Described below (1)	Green	NA	1,389	1,103	No
Pension Trust Fund for the Operating Engineers	**94-6090764**	Described below (1)	Yellow	Implemented	1,857	1,529	No
Southwest Carpenters Pension Fund	**95-6042875**	Green	Green	NA	651	480	No
Operating Engineers Trust Fund	**95-6032478**	Described below (1)	Yellow	Implemented	986	815	No
Construction Laborers Pension Trust for Southern California	**43-6159056**	Described below (1)	Green	NA	1,060	838	No
San Diego County Construction Laborers Pension Trust Fund	**95-6090541**	Described below (1)	Green	NA	343	274	No
IBEW Local 595 Pension Plan	**94-6279541**	Described below (1)	Green	NA	503	423	No
Southern California IBEW-NECA Pension Trust Fund	**95-6392774**	Described below (1)	Yellow	Implemented	703	658	No
San Diego Electrical Pension Plan	**95-6101801**	Described below (1)	Described below (1)	NA	148	200	No
Locals 302 & 612 of the IUOE — Employers Construction Industry Retirement Plan	**91-6028571**	Green	Green	NA	128	301	No
Western Washington Laborers Employers Pension Plan	**91-6022315**	Described below (1)	Green	NA	83	232	No
Tri-State Carpenters & Joiners Pension Trust Fund	**62-0976048**	Described below (1)	Yellow	Implemented	1,818	965	No
Central Pension Fund of the IUOE & Participating Employers	**36-6052390**	Described below (1)	Green	NA	949	747	No
Ironworkers District Council of TN Valley & Vicinity Welfare Pension Plans	**62-6098036**	Described below (1)	Green	NA	839	530	No
Northern California Pipe Trades Pension Plan	**94-3190386**	Green	Green	NA	441	708	No
				Contributions to other multiemployer plans	1,017	1,151	
				Total contributions made	$ 16,678	$ 14,034	

(1) For the plans noted above, we have not received a funding notification that covers the fiscal year presented during the preparation of the financial statements. Under Federal pension law, if a multiemployer pension plan is determined to be in critical or endangered status, the plan must provide notice of this status to participants, beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Department of Labor. The Company has also observed that these plans have not submitted any Critical or Endangered Status Notices to the Department of Labor for calendar years that the Company has not received notification.

The Company is not aware of any significant future obligations or funding requirements related to these plans other than the ongoing contributions that are paid as hours are worked by plan participants.

Note 9. Stock-Based Compensation

On April 12, 2021, the Company's board approved the Company's 2021 Stock Plan (the "Plan"). The Plan reserves 2,000,000 of the Company's shares for issuance of incentive instruments, including Incentive Stock Options ("ISOs"), Non-statutory Stock Options, Stock Appreciation Rights, Restricted Stock Awards, and Restricted Stock Unit Awards. ISOs granted under the Plan have a term of 10 years and vest over four years of service.

During the fiscal years ended December 30, 2022 and December 31, 2021, stock option activity was as follows:

	Stock Options			
	Number of shares	Weighted average exercise price per share	Weighted average grant date fair value	Weighted average remaining contractual term
Outstanding as of January 2, 2021	—	$ —	$ —	—
Granted	1,800,000	8.39	4.35	—
Forfeited	(143,175)	8.39	4.35	—
Outstanding as of December 31, 2021	1,656,825	$ 8.39	$ 4.35	9.34
Exercisable as of December 31, 2021	—	$ —	$ —	—
Outstanding as of December 31, 2021	1,656,825	$ 8.39	$ 4.35	9.34
Granted	1,652,775	3.45	0.76	—
Vested	(518,532)	8.37	—	—
Forfeited	(1,151,875)	8.34	4.32	—
Outstanding as of December 30, 2022	1,639,193	$ 3.45	$ —	8.33
Exercisable as of December 30, 2022	650,276	$ 3.45	$ —	8.32

A third-party valuation advisor was utilized to assist management in determining the fair value of options granted using the Black-Scholes option-pricing model based on the grant price and assumptions regarding the expected term, expected volatility, dividends, and risk-free interest rates. The grant price was determined based on the fair value of the Company's stock on the grant date. The grant date fair value is calculated using a Monte Carlo model which estimates the fair value of the awards based on simulations future prices of the Company's stock compared to the future prices of the common stock of peer companies based on historical volatilities.

The fair value of the stock options granted was estimated using the following weighted average assumptions used for grants in the fiscal years ended as follows:

	December 30, 2022	December 31, 2021
Expected Term (years)	6.1	6.1
Expected Volatility	55.1%	55.1%
Risk-free Interest Rate	3.9%	1.1%
Dividend Rate	0%	0%

The expected term was based on vesting criteria and time to expiration. The expected volatility was based on historical volatility of stock prices of a public company peer group. The risk-free interest rate was based on the implied risk-free rate using the expected term and yields of U.S. Treasury stock and S&P bond yields.

Total compensation expense related to stock-based payments was $2.3 million and $1.2 million for the fiscal years ended December 30, 2022 and December 31, 2021, respectively. Unrecognized compensation expense related to stock-based grants to employees of Shimmick outstanding as of December 30, 2022 and December 31, 2021 was $4.9 million and $6.0 million, respectively, to be recognized on a straight-line basis over the awards' weighted average remaining vesting period of 2.3 years and 3.3 years, respectively.

Note 10. Earnings Per Share

Basic earnings per share ("EPS") is calculated based on the weighted average shares outstanding during the period. Diluted earnings per share includes the dilutive effect of employee and director stock options. Stock options are considered dilutive whenever the exercise price is less than the average market price of the stock during the period and antidilutive whenever the exercise price exceeds the average market price of the common stock during the period. The Company issued employee stock options of 1.6 million shares and 1.7 million shares during the fiscal years ended December 30, 2022 and December 31, 2021, respectively, which were considered antidilutive as the fair value of the shares did not exceed the exercise price. No shares were excluded from the calculation of diluted earnings per share for either of the fiscal years ended December 30, 2022 and December 31, 2021.

The computation of basic and diluted EPS is as follows:

(*In thousands, except per share data*)	Fiscal Year Ended December 30, 2022	Fiscal Year Ended December 31, 2021
Numerator:		
Net income attributable to SCCI National Holdings, Inc. and Subsidiaries	$ 3,760	$ 45,403
Numerator for basic and diluted EPS	$ 3,760	$ 45,403
Denominator:		
Denominator for basic EPS - weighted average shares	8,000	8,000
Effect of dilutive securities:		
Employee stock options	—	—
Dilutive potential common shares	—	—
Denominator for diluted EPS - adjusted weighted average shares and assumed conversions	8,000	8,000
Basic EPS	$ 0.47	$ 5.68
Diluted EPS	$ 0.47	$ 5.68

Note 11. Leases

The Company adopted FASB Accounting Standard Codification 842 as of the inception of operations.

The Company also applied transition elections that allow it to avoid reassessment of whether expired or expiring leases are or contain leases, lease classification, and initial direct costs. Adoption of the new lease guidance did not significantly change the Company's accounting for finance leases, which were previously referred to as capital leases.

The Company is a lessee in non-cancelable leasing agreements for office buildings and equipment. Substantially all of the Company's office building leases are operating leases, and its equipment leases are operating leases. The Company groups lease and non-lease components for its equipment leases into a single lease component but separates lease and non-lease components for its office building leases.

The Company recognizes a right-of-use asset and lease liability for its operating leases at the commencement date equal to the present value of the contractual minimum lease payments over the lease term. The present value is calculated using the rate implicit in the lease, if known, or the Company's incremental secured borrowing rate. The discount rate used for operating leases is primarily determined based on an analysis of the Company's incremental secured borrowing rate, while the discount rate used for finance leases is primarily determined by the rate specified in the lease.

The related lease payments are expensed on a straight-line basis over the lease term, including, as applicable, any free-rent period during which the Company has the right to use the asset. For leases with renewal options where the renewal is reasonably assured, the lease term, including the renewal period, is used to determine the appropriate lease classification and to compute periodic rental expense. Leases with initial terms shorter than 12 months are not recognized in the consolidated balance sheets, and lease expense is recognized on a straight-line basis.

Lease expenses recorded within the consolidated statements of operations are comprised as follows:

(In thousands)	December 30, 2022	December 31, 2021
Operating lease cost:		
Cost of revenue	$ 10,267	$ 9,991
Selling, general and administrative expenses	1,539	1,054
Finance lease cost (all in cost of revenue):		
Amortization of right-of-use assets	300	300
Interest on lease liabilities	34	43
Short-term lease cost	382	66
Total lease cost	$ 12,522	$ 11,454

Additional consolidated balance sheet information related to leases is as follows:

(In thousands)	Consolidated Balance Sheet Classification	December 30, 2022	December 31, 2021
Assets:			
Operating lease assets	Lease right-of-use assets	$ 21,811	$ 21,046
Finance lease assets	Lease right-of-use assets	879	1,178
Total lease assets		$ 22,690	$ 22,224
Liabilities:			
Current:			
Operating lease liabilities	Other current liabilities	$ 7,767	$ 10,029
Finance lease liabilities	Other current liabilities	313	303
Total current lease liabilities		8,080	10,332
Non-current:			
Operating lease liabilities	Lease liabilities, non-current	13,861	11,009
Finance lease liabilities	Lease liabilities, non-current	581	895
Total non-current lease liabilities		$ 14,442	$ 11,904

Weighted average remaining lease term information related to leases is as follows:

	December 30, 2022	December 31, 2021
Weighted average remaining lease term (in years):		
Operating leases	4.1	2.8
Finance leases	2.1	3.1
Weighted average discount rates:		
Operating leases	5.3%	4.8%
Finance leases	3.2%	3.2%

Supplemental cash flow information related to leases is as follows:

(In thousands)	December 30, 2022	December 31, 2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 11,852	$ 9,836
Financing cash flows from finance leases	303	294
Right-of-use assets obtained in exchange for new operating leases	$ 11,300	$ 12,151

Total remaining lease payments under both the Company's operating and finance leases are as follows:

Year *(In thousands)*	Operating Leases	Finance Leases
2023	$ 8,672	$ 337
2024	5,161	583
2025	3,567	—
2026	2,475	—
2027	1,743	—
Thereafter	2,525	—
Total lease payments	24,143	920
Amounts representing interest	(2,515)	(26)
Total lease liabilities	$ 21,628	$ 894

Note 12. Intangible Assets

The following table presents the Company's finite-lived intangible assets, including the weighted- average useful lives for each major intangible asset category and in total:

	December 30, 2022			
(In thousands)	Weighted Average Remaining Useful Life	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net
Trademark	5	$ 10,600	$ (3,029)	$ 7,571
Customer contracts	4	6,709	(2,236)	4,473
Total		$ 17,309	$ (5,265)	$ 12,044

	December 31, 2021			
(In thousands)	Weighted Average Remaining Useful Life	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net
Trademark	6	$ 10,600	$ (1,514)	$ 9,086
Customer contracts	5	6,709	(1,118)	5,591
Total		$ 17,309	$ (2,632)	$ 14,677

Amortization of intangibles was $2.6 million for each of the fiscal years ended December 30, 2022 and December 31, 2021 and is recorded within selling, general and administrative expenses. The Company's estimated aggregate remaining amortization is as follows:

(In thousands)	Amortization Expense
2023	$ 2,632
2024	2,632
2025	2,632
2026	2,632
2027	1,516
Total	$ 12,044

Note 13. Commitments and Contingencies

In the Company's joint venture arrangements, the liability of each partner is usually joint and several. This means as each joint venture partner may become liable for the entire risk of performance guarantees provided by each partner to the customer. Typically, each joint venture partner indemnifies the other partners for any liabilities incurred in excess of the liabilities the other party is obligated to bear under the respective joint venture agreement. In addition, the Company may be required to guarantee performance directly to the customer. The Company is unable to estimate the maximum potential amount of future payments that the Company could be required to make under outstanding performance guarantees related to joint venture projects due to a number of factors, including but not limited to, the nature and extent of any contractual defaults by the other joint venture partners, resource availability, potential performance delays caused by the defaults, the location of the projects, and the terms of the related contracts.

In the ordinary course of business, the Company is subject to other claims, lawsuits, investigations and disputes arising out of the conduct of its business, including matters relating to commercial transactions, government contracts, and employment matters. The Company recognizes a liability for contingencies that are probable of occurrence and reasonably estimable. To date, no such matters are material to the consolidated statements of operations.

In certain contracts, there are provisions that require the Company to pay liquidated damages if the Company is responsible for the failure to meet specified contractual milestone dates and the applicable customer asserts a conforming claim under these provisions. These contracts define the conditions under which customers may make claims against the Company for liquidated damages. Based upon the evaluation of performance and other commercial and legal analysis, management has recognized relevant probable liquidated damages as of December 30, 2022 and December 31, 2021, and believes that the ultimate resolution of such matters will not materially affect the Company's consolidated financial position, results of operations, or cash flows.

Guarantees

The Company obtains bonding on construction contracts through third-party bonding companies. As is customary in the construction industry, the Company indemnifies the third-party bonding companies for any losses incurred by it in connection with bonds that are issued. The Company has granted the third-party bonding companies a security interest in accounts receivable, contract assets and contract rights for that obligation.

The Company typically indemnifies contract owners for claims arising during the construction process and carries insurance coverage for such claims.

Letters of Credit

In the ordinary course of business and under certain contracts, the Company is required to post standby letters of credit for its insurance carriers. At December 30, 2022 and December 31, 2021, the total amount of standby letters of credit outstanding were $8.2 million and $5.0 million, respectively.

Note 14. Subsequent Events

On June 30, 2023, the Company executed a Membership Interest Purchase Agreement with a third party to sell three of the Company's non-core business contracts. The total sale price defined within the agreement was $35.0 million.

The Company evaluated subsequent events through July 14, 2023, the date on which the financial statements were originally issued, and August 9, 2023, the date on which the financial statements were reissued (as to the segment and earnings per share disclosures described in Notes 1 and 10). No subsequent events were identified other than those disclosed above and within Note 6.

PART I FINANCIAL INFORMATION

Item 1. Financial Statements

Shimmick Corporation
Condensed Consolidated Balance Sheets
As of June 30, 2023 and December 30, 2022
(In thousands, except share data)
(unaudited)

	June 30, 2023	December 30, 2022
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 61,295	$ 77,762
Restricted cash	1,810	4,323
Accounts receivable, net	61,227	56,430
Costs and estimated earnings in excess of billings on uncompleted contracts	127,162	80,901
Prepaids and other current assets	11,785	14,060
TOTAL CURRENT ASSETS	263,279	233,476
Property, plant and equipment, net	50,811	55,208
Intangible assets, net	10,728	12,044
Costs and estimated earnings in excess of billings on uncompleted contracts, non-current	—	35,219
Retainage receivable	47,586	48,805
Lease right-of-use assets	27,641	22,690
Investment in unconsolidated joint ventures	21,924	17,363
Deferred tax assets	18,851	18,851
Other assets	2,934	3,143
TOTAL ASSETS	$ 443,754	$ 446,799
LIABILITIES AND STOCKHOLDER'S EQUITY		
CURRENT LIABILITIES		
Accounts payable	$ 76,815	$ 67,541
Billings on uncompleted contracts in excess of costs and estimated earnings	41,676	55,117
Forward loss reserve	86,483	108,608
Accrued salaries, wages and benefits	35,821	36,248
Construction accruals	41,422	60,758
Advance on sale of non-core business contracts	20,000	—
Other current liabilities	14,678	12,672
TOTAL CURRENT LIABILITIES	316,895	340,944
Long-term debt, net	29,668	—
Lease liabilities, non-current	18,073	14,442
Billings on uncompleted contracts in excess of costs and estimated earnings, non-current	3,237	1,846
Contingent consideration	16,012	15,662
Deferred tax liabilities	18,851	18,851
Other liabilities	7,975	3,459
TOTAL LIABILITIES	410,711	395,204
Commitments and Contingencies (Note 11)		
STOCKHOLDER'S EQUITY		
Common stock — authorized, 10,000,000 shares of $0.01 par value as of June 30, 2023 and December 30, 2022; issued and outstanding 8,000,000 shares as of June 30, 2023 and December 30, 2022	80	80
Additional paid-in-capital	4,531	3,480
Retained earnings	29,446	49,083
Non-controlling interests	(1,014)	(1,048)
TOTAL STOCKHOLDER'S EQUITY	33,043	51,595
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	$ 443,754	$ 446,799

See accompanying notes to the condensed consolidated financial statements.

Shimmick Corporation
Condensed Consolidated Statements of Operations
For the six months ended June 30, 2023 and July 1, 2022
(In thousands, except per share data)
(unaudited)

	Six Months Ended	
	June 30, 2023	July 1, 2022
Revenue	$ 319,297	$ 293,578
Cost of revenue	313,532	288,206
Gross margin	5,765	5,372
Selling, general and administrative expenses	32,502	28,929
Amortization of intangibles	1,316	1,316
Total operating expenses	33,818	30,245
Equity in earnings of unconsolidated joint ventures	6,993	38,776
Gain on sale of property, plant and equipment	1,680	10
(Loss) income from operations	(19,380)	13,913
Other expense, net	264	9,551
Net (loss) income before income taxes	(19,644)	4,362
Income tax expense	—	1,257
Net (loss) income	(19,644)	3,105
Net loss attributable to non-controlling interests	(7)	(605)
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710
Net (loss) income attributable to Shimmick Corporation per common share		
Basic	$ (2.45)	$ 0.46
Diluted	$ (2.45)	$ 0.46

See accompanying notes to the condensed consolidated financial statements.

Shimmick Corporation
Condensed Consolidated Statements of Stockholder's Equity
For the six months ended June 30, 2023 and July 1, 2022
(in thousands, except share data)
(unaudited)

	Common Stock		Additional Paid-in-Capital	Retained Earnings	Non-Controlling Interests	Total Stockholder's Equity
	Shares	Amount				
Beginning balance as of January 1, 2022	8,000,000	$ 80	$ 1,185	$45,323	$ 433	$ 47,021
Net income (loss)	—	—	—	3,710	(605)	3,105
Stock-based compensation	—	—	891	—	—	891
Balance at July 1, 2022	8,000,000	$ 80	$ 2,076	$49,033	$ (172)	$ 51,017

	Common Stock		Additional Paid-in-Capital	Retained Earnings	Non-Controlling Interests	Total Stockholder's Equity
	Shares	Amount				
Beginning balance as of December 31, 2022	8,000,000	$ 80	$ 3,480	$ 49,083	$ (1,048)	$ 51,595
Net loss	—	—	—	(19,367)	(7)	(19,644)
Stock-based compensation	—	—	1,051	—	—	1,051
Contributions from non-controlling interests	—	—	—	—	301	301
Distributions to non-controlling interests	—	—	—	—	(260)	(260)
Balance at June 30, 2023	8,000,000	$ 80	$ 4,531	$ 29,446	$ (1,014)	$ 33,043

See accompanying notes to the condensed consolidated financial statements.

Shimmick Corporation
Condensed Consolidated Statements of Cash Flows
For the six months ended June 30, 2023 and July 1, 2022
(In thousands)
(unaudited)

	Six Months Ended June 30, 2023	Six Months Ended July 1, 2022
Cash Flows From Operating Activities		
Net (loss) income	$ (19,644)	$ 3,105
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Stock-based compensation	1,051	891
Depreciation and amortization	8,549	7,851
Equity in earnings of unconsolidated joint ventures	(6,993)	(38,776)
Return on investment in unconsolidated joint ventures	11,437	29,803
Other	(1,271)	9,500
Changes in operating assets and liabilities:		
Accounts receivable, net	(4,797)	36,363
Due from unconsolidated joint ventures	295	6,904
Costs and estimated earnings in excess of billings on uncompleted contracts	(11,042)	(29,000)
Prepaid and other current assets	1,959	(14,703)
Retainage receivable	1,219	(942)
Other assets	(1,996)	136
Accounts payable	9,274	(9,043)
Billings on uncompleted contracts in excess of costs and estimated earnings	(12,031)	(29,343)
Forward loss reserve	(22,125)	(16,999)
Accrued salaries, wages and benefits	(427)	9,544
Construction accruals	(19,336)	13,373
Other liabilities	5,206	2,870
Net cash used in operating activities	(60,672)	(18,466)
Cash Flows From Investing Activities		
Net working capital settlement in association with business combination	—	32,000
Purchases of property, plant and equipment	(3,210)	(5,267)
Proceeds from sale of property, plant and equipment	4,881	889
Unconsolidated joint venture equity contributions	(13,310)	(13,275)
Proceeds from advance on sale of non-core business contracts	20,000	—
Return of investment in unconsolidated joint ventures	4,286	—
Net cash provided by investing activities	12,647	14,347
Cash Flows From Financing Activities		
Payments on finance lease obligation	(155)	(150)
Proceeds from revolving credit facility borrowings	30,000	—
Contributions from non-controlling interests	301	—
Distributions to non-controlling interests	(260)	—
Other	(841)	—
Net cash provided by (used in) financing activities	29,045	(150)
Net decrease in cash, cash equivalents and restricted cash	(18,980)	(4,269)
Cash, cash equivalents and restricted cash		
Beginning of period	82,085	81,903
End of period	$ 63,105	$ 77,634
Reconciliation of cash, cash equivalents and restricted cash to the Condensed Consolidated Balance Sheets		
Cash and cash equivalents	61,295	68,358
Restricted cash	1,810	9,276
Total cash, cash equivalents and restricted cash	$ 63,105	$ 77,634

See accompanying notes to the condensed consolidated financial statements.

Shimmick Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. Business, Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of Shimmick Corporation and its subsidiaries (Shimmick Corporation, "SCCI National Holdings", "we", "our", "us", "its" or the "Company"), unless otherwise indicated. On September 12, 2023, the Company changed its name from SCCI National Holdings, Inc. to Shimmick Corporation.

The accompanying condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States ("GAAP"), and in conformity with the rules and regulations of the Securities and Exchange Commission ("SEC"). The information furnished reflects all adjustments, consisting of normal recurring adjustments, that are, in the opinion of management, necessary for a fair statement of the results of operations, cash flows and financial position for the interim periods presented. A statement of comprehensive income is not presented as the Company's results of operations do not contain any items classified as comprehensive income. All intercompany accounts and transactions have been eliminated. The accompanying condensed consolidated interim financial statements are unaudited and should be read in conjunction with the annual consolidated financial statements, and the notes thereto for the fiscal year ended December 30, 2022. Because of the seasonal nature of the Company's operations, the results of operations for the period ended June 30, 2023 are not necessarily indicative of the results of operations to be expected for the full fiscal year.

Change in Presentation

Certain prior period balances in the condensed consolidated balance sheets and statements of cash flows have been combined to conform to current period presentation pursuant to Rule 10-01(a)(2) of Regulation S-X of the SEC. These changes had no impact on net (loss) income, cash flows, assets and liabilities, or equity previously reported.

In preparing these condensed consolidated financial statements, the Company evaluated subsequent events through September 14, 2023.

Summary of Significant Accounting Policies

Our significant accounting policies are described in more detail within the consolidated financial statements for the fiscal years ended December 30, 2022 and December 31, 2021.

Note 2. Significant Transaction

The Company executed a Membership Interest Purchase Agreement on June 30, 2023 for the sale of non-core business contracts. Of the total sale price of $35.0 million, $20.0 million in cash was received by the Company on June 30, 2023 and recorded in the condensed consolidated balance sheets as an advance on sale of non-core business contracts. The Company will record a note receivable for $15.0 million in the condensed consolidated balance sheets upon the closing of the sale, which is expected to occur on or around September 30, 2023.

Note 3. Revenue

The following tables present the Company's revenue disaggregated by contract types:

	Six Months Ended	
(In thousands)	**June 30, 2023**	**July 1, 2022**
Fixed-price	$ 286,838	$ 262,090
Cost reimbursable	28,893	24,956
Equipment and labor revenue	3,566	6,532
Total revenue	$ 319,297	$ 293,578

Remaining performance obligations

The Company had $1.3 billion of remaining performance obligations yet to be satisfied as of June 30, 2023. Our remaining performance obligations have a weighted average life of 2.1 years as of June 30, 2023.

Contract Balances

Contract assets, including costs and estimated earnings in excess of billings on uncompleted contracts and retainage receivable, were $174.7 million and $164.9 million at June 30, 2023, and December 30, 2022, respectively. Contract liabilities, including billings on uncompleted contracts in excess of costs and estimated earnings and forward loss reserves were $131.4 million and $165.6 million at June 30, 2023 and December 30, 2022, respectively. Contract liabilities represent amounts billed to customers in excess of revenue recognized to date and a reserve for loss contracts. The Company recognized revenue of $53.4 million during the six months ended June 30, 2023 that was included in contract liabilities as of December 30, 2022.

Contract terms with customers include the timing of billing and payment, which usually differs from the timing of revenue recognition. As a result, the Company carries contract assets and liabilities within the condensed consolidated balance sheets. These contract assets and liabilities are calculated on a contract-by-contract basis and reported on a net basis at the end of each period and are classified as current or non-current. The Company presents contract assets within the condensed consolidated balance sheets as costs and estimated earnings in excess of billings on uncompleted contracts ("CIE"). CIE consists of revenue recognized in excess of billings. The Company presents contract liabilities in the condensed consolidated balance sheets as billings on uncompleted contracts in excess of costs and estimated earnings ("BIE"). BIE consists of billings in excess of revenue recognized.

The following table provides information about CIE and BIE:

(In thousands)	June 30, 2023	December 30, 2022	Change
Costs and estimated earnings in excess of billings on uncompleted contracts	$ 127,162	$ 116,120	$ 11,042
Billings on uncompleted contracts in excess of costs and estimated earnings	(44,913)	(56,963)	12,050
Net	$ 82,249	$ 59,157	$ 23,092

The Company's timing of revenue recognition may not be consistent with its rights to bill and collect cash from its clients. Those rights are generally dependent upon advance billing terms, milestone billings based on the completion of certain phases of work or when services are performed. The Company's accounts receivable represents amounts billed to clients that have yet to be collected and represent an unconditional right to cash from its clients as presented below.

(In thousands)	June 30, 2023	December 30, 2022
Total accounts receivable, gross	$ 62,192	$ 57,395
Allowance for doubtful accounts	(965)	(965)
Accounts receivable, net	$ 61,227	$ 56,430

Substantially all contract assets as of June 30, 2023 and December 30, 2022 are expected to be collected within the Company's estimated operating cycle, except for retainage and claims pertaining to certain contracts. The Company's operating cycle may extend beyond one year.

The Company is in the process of negotiating or awaiting approval of unapproved change orders and claims with its customers. The Company is proceeding with its contractual rights to recoup additional costs incurred from its customers based on completing work associated with change orders, including change orders with pending change order pricing, or claims related to significant changes in scope which resulted in substantial delays and additional costs in completing the work. The Company may take legal action if it and the customer cannot reach a mutually acceptable resolution. Based on the Company's review of the provisions of its contracts, specific costs incurred, and other related evidence supporting the unapproved change orders and claims, the Company concluded it was appropriate to include in contract assets claims of $97.2 million and $134.9 million as of June 30, 2023 and December 30, 2022, respectively. Contract retentions represent amounts invoiced to clients where payments have been withheld from progress payments until the contracted work has been completed and approved by the client. These retention agreements vary from project to project and could be outstanding for several months or years. Contract assets included contract retainage receivable, which were $47.6 million and $48.8 million as of June 30, 2023 and December 30, 2022, respectively.

Information about significant customers

Significant Customers as a Percentage of Accounts Receivable

As of June 30, 2023	
Customer one	30.6%
Customer two	11.2%
As of December 30, 2022	
Customer one	31.4%
Customer two	21.4%
Customer three	14.4%

Significant Customers as a Percentage of Revenue

Six Months Ended June 30, 2023	
Customer one	15.6%
Customer two	14.3%
Customer three	12.2%
Six Months Ended July 1, 2022	
Customer one	13.0%
Customer two	11.5%
Customer three	10.1%

Revisions in Estimates

Changes in contract estimates resulted in net decreases in gross margin of $14.5 million for the six months ended June 30, 2023, primarily due to increased forecasted costs to complete and an agreed upon contract settlement lower than previously estimated. There were no material changes in estimates for the six months ended July 1, 2022.

Note 4. Joint Ventures and Variable Interest Entities

Summary of financial information of the consolidated joint ventures is as follows:

(In thousands)	June 30, 2023	December 30, 2022
Current assets	$ 31,455	$ 29,485
Non-current assets	8,655	8,235
Total assets	40,110	37,720
Current liabilities	$ 24,810	$ 22,603
Non-current liabilities	45,579	56,595
Total liabilities	$ 70,389	$ 79,198

Total revenue of the consolidated joint ventures for the six months ended June 30, 2023 and July 1, 2022 was $13.5 million and $14.1 million, respectively. The assets of the Company's consolidated joint ventures are restricted for use only by the particular joint venture and are not available for the general operations of the Company.

Summary of financial information of the unconsolidated joint ventures, as derived from their financial statements, is as follows:

(In thousands)	June 30, 2023	December 30, 2022
Current assets	$ 79,174	$ 78,228
Non-current assets	17,906	25,026
Total assets	97,080	103,254
Current liabilities	$ 45,500	$ 63,240
Total liabilities	$ 45,500	$ 63,240

As of June 30, 2023 and December 30, 2022, the Company's investment in unconsolidated joint ventures was $21.9 million and $17.4 million, respectively.

	Six Months Ended	
(In thousands)	June 30, 2023	July 1, 2022
Revenue	$ 42,596	$ 283,040
Cost of revenue	32,111	197,854
Gross margin	10,485	85,186
Net income	$ 10,051	$ 85,186

The Company recognized equity in earnings of unconsolidated joint ventures of $7.0 million and $38.8 million for the six months ended June 30, 2023 and July 1, 2022, respectively.

Contractually required support provided to the Company's joint ventures is discussed in Note 11.

Related Party Transactions

We often provide construction management and other subcontractor services to the Company's joint ventures and revenue includes amounts related to these services. For the six months ended June 30, 2023 and July 1, 2022, revenue included $2.1 million and $3.2 million, respectively, related to services provided to unconsolidated joint ventures.

Amounts included in the condensed consolidated balance sheets related to services provided to unconsolidated joint ventures for the periods ended June 30, 2023 and December 30, 2022 are as follows:

(In thousands)	June 30, 2023	December 30, 2022
Accounts receivable, net	$ 3,403	$ 5,045

Note 5. Property, Plant and Equipment

The following table summarizes the components of property, plant and equipment as of June 30, 2023 and December 30, 2022.

(In thousands)	June 30, 2023	December 30, 2022
Building and land	$ 3,916	$ 3,887
Machinery, equipment, and vehicles	71,352	67,698
Office furniture and equipment	6,766	7,891
Property, plant and equipment, gross	82,034	79,476
Accumulated depreciation	(31,223)	(24,268)
Property, plant and equipment, net	$ 50,811	$ 55,208

Depreciation expense for the six months ended June 30, 2023 and July 1, 2022 was $7.1 million and $6.4 million, respectively. Depreciation is recorded within cost of revenue and is calculated using the straight-line method over the estimated useful lives of the assets, or in the case of leasehold improvements and capitalized leases, the lesser of the remaining term of the lease or its estimated useful life.

Note 6. Debt

Total debt outstanding is presented on the condensed consolidated balance sheets as follows:

(In thousands)	June 30, 2023	December 30, 2022
Revolving Credit Facility	$ 30,000	$ —
Total debt	30,000	—
Unamortized debt issuance costs	(332)	—
Long-term debt, net	$ 29,668	$ —

Loan and Security Agreement

On September 13, 2023, we entered into a Loan and Security Agreement (“Loan Agreement”) with Hudson Bridge Capital, which provides a maximum commitment of $75.0 million and bears interest at an annual rate of 13.0%. Further, the Loan Agreement is subject to a closing fee of 1.50% from proceeds of the Loan. The Loan Agreement matures 36 months from the date of the first draw and repayment of principal does not commence until after the first twelve months of servicing the loan. The Company has not drawn any funds as of September 14, 2023.

Revolving Credit Facility

On March 27, 2023, we entered into a Revolving Credit Facility (the “Revolving Credit Facility”) with MidCap Financial Services, LLC, which originally provided a total commitment of $30.0 million. The Revolving Credit Facility was subsequently amended on June 30, 2023. As amended, the Revolving Credit Facility provides for a total commitment of $35.3 million and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%. Further, the Revolving Credit Facility is subject to an annual collateral management fee of 0.50% and an annual unused line fee of 0.50%. Key financial covenants under the Revolving Credit Facility include maintaining a leverage ratio that does not exceed 1.75 to 1.0 and a minimum cash balance of $25.0 million. The Revolving Credit Facility matures on March 27, 2028. The Company is not aware of any instances of noncompliance with the key financial covenants as of September 14, 2023.

Revolving Line of Credit

We had a $25.0 million Revolving Line of Credit with BMO Harris Bank, N.A., under which the Company had no outstanding borrowings as of June 30, 2023 or December 30, 2022. Borrowings under the Revolving Line of Credit bear interest at a rate based on SOFR or a combination of rates (prime rate, federal fund rate, and SOFR) at the Company's election, with an added margin depending on the Company's leverage ratio. The unused balance of the Revolving Line of Credit bears a commitment fee of between 0.25% and 0.40% per year, depending on the Company's leverage ratio. Key financial covenants under the Revolving Line of Credit include maintaining a leverage ratio that does not exceed 2.0 to 1.0 and a minimum cash balance of $35.0 million. The Revolving Line of Credit terminated on March 27, 2023 upon the Company entering into the Revolving Credit Facility. The Company is not aware of any instances of noncompliance with the key financial covenants as of December 30, 2022.

Note 7. Income Taxes

We compute the year-to-date income tax provision by applying our estimated annual effective tax rate to our year-to-date pre-tax income and adjust for discrete tax items in the period in which they occur.

The effective tax rate was 0% and 25.3% for the six months ended June 30, 2023 and July 1, 2022, respectively. For the six months ended June 30, 2023, the deferred tax expense resulting from the current year loss is completely offset by recording additional valuation allowance against the accompanying deferred tax asset, resulting in zero tax expense. For the six months ended July 1, 2022, income is primarily offset by release of valuation allowance against the net operating loss deferred tax assets.

The Company generally anticipates a zero effective tax rate due to a full valuation allowance. However, the Company may recognize a current tax expense in a specific period if its taxable income, net of available deferred tax assets in that period, exceeds the allowable utilization of tax attributes such as NOL carryforwards. The allowable limitation typically restricts the use of NOL carryforwards to 80% of taxable income.

Deferred Tax Assets and Liabilities

We recognize deferred tax assets and liabilities for future tax consequences arising from differences between the carrying amounts of existing assets and liabilities under U.S. GAAP and their respective tax bases, and for net operating loss carryforwards and tax credit carryforwards. We evaluate the recoverability of our deferred tax assets, weighing all positive and negative evidence, and are required to establish or maintain a valuation allowance for these assets if we determine that it is more likely than not that some or all of the deferred tax assets will not be realized.

As of each reporting date, we consider new evidence, both positive and negative, that could impact our view with regard to the future realization of deferred tax assets. We will maintain our positions with regard to future realization of deferred tax assets, including those with respect to which we continue maintaining valuation allowances, until there is sufficient new evidence to support a change in expectations. Such a change in expectations could arise due to many factors, including those impacting our forecasts of future earnings, as well as changes in the tax laws under which we operate and tax planning. It is not reasonably possible to forecast any such changes at the present time, but it is possible that, should they arise, our view of their effect on the future realization of deferred tax assets may impact materially our condensed consolidated financial statements.

After weighing all of the evidence, giving more weight to the evidence that was objectively verifiable, a valuation allowance of $137.6 million as of June 30, 2023 has been recorded to recognize only the portion of the deferred tax asset that is more likely than not to be realized. The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if the objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

Note 8. Stock-Based Compensation

On April 12, 2021, the Company's board approved the Company's 2021 Stock Plan (the "Plan"). The Plan reserves 2,000,000 of the Company's shares for issuance of incentive instruments, including Incentive Stock Options ("Stock Options"), Non-statutory Stock Options, Stock Appreciation Rights, Restricted Stock Awards, and Restricted Stock Unit Awards. Stock Options granted under the Plan have a term of 10 years and vest over four years of service.

For the six months ended June 30, 2023, stock option activity was as follows:

	Stock Options			
	Number of shares	Weighted average exercise price per share	Weighted average grant date fair value	Weighted average years of remaining contractual term
Outstanding as of December 30, 2022	1,639,193	$ 3.45	$ —	8.33
Forfeited	(1,941)	3.45	0.76	—
Vested	(2,393)	3.45	—	—
Outstanding as of June 30, 2023	1,634,859	3.45	—	7.84
Exercisable as of June 30, 2023	852,478	$ 3.45	$ —	7.83

Total compensation expense related to stock-based payments was $1.1 million and $0.9 million for the six months ended June 30, 2023 and July 1, 2022, respectively. Unrecognized compensation expense related to stock-based grants to employees of Shimmick outstanding as of June 30, 2023 and July 1, 2022 was $3.9 million and $5.1 million, respectively, to be recognized on a straight-line basis over the awards' weighted average remaining vesting period of 1.8 years and 2.8 years, respectively.

Note 9. Earnings Per Share

Basic earnings per share ("EPS") is calculated based on the weighted average shares outstanding during the period. Diluted earnings per share includes the dilutive effect of employee and director stock options. Stock options are considered dilutive whenever the exercise price is less than the average market price of the stock during the period and antidilutive whenever the exercise price exceeds the average market price of the common stock during the period. All 1.6 million employee stock options were excluded from the calculation of diluted earnings per share for the six months ended June 30, 2023 as they are antidilutive to the EPS calculation. The computation of basic and diluted EPS is as follows:

	Six Months Ended	
(In thousands, except per share data)	June 30, 2023	July 1, 2022
Numerator:		
Net (loss) income attributable to Shimmick Corporation	$ (19,637)	$ 3,710
Numerator for basic and diluted EPS	$ (19,637)	$ 3,710
Denominator:		
Denominator for basic EPS - weighted average shares	8,000	8,000
Effect of dilutive securities:		
Employee stock options	—	—
Dilutive potential common shares	—	—
Denominator for diluted EPS - adjusted weighted average shares and assumed conversions	8,000	8,000
Basic (loss) earnings per common share	$ (2.45)	$ 0.46
Diluted (loss) earnings per common share	$ (2.45)	$ 0.46

Note 10. Leases

Lease expenses recorded within the condensed consolidated statements of operations are comprised as follows:

(In thousands)	June 30, 2023	July 1, 2022
Operating lease cost		
Cost of revenue	$ 6,778	$ 5,502
Selling, general and administrative expenses	672	743
Finance lease cost (all in cost of revenue):		
Amortization of right-of-use assets	150	150
Interest on lease liabilities	13	18
Short term lease cost	318	201
Total lease cost	$ 7,931	$ 6,614

Additional condensed consolidated balance sheet information related to leases is as follows:

(In thousands)	Balance Sheet Classification	June 30, 2023	December 30, 2022
Assets:			
Operating lease assets	Lease right-of-use assets	$ 26,912	$ 21,811
Finance lease assets	Lease right-of-use assets	729	879
Total lease assets		$ 27,641	$ 22,690
Liabilities:			
Current:			
Operating lease liabilities	Other current liabilities	$ 9,139	$ 7,767
Finance lease liabilities	Other current liabilities	739	313
Total current lease liabilities		$ 9,878	$ 8,080
Non-current:			
Operating lease liabilities	Lease liabilities, non-current	$ 18,073	$ 13,861
Finance lease liabilities	Lease liabilities, non-current	—	581
Total non-current lease liabilities		$ 18,073	$ 14,442

Weighted average remaining lease term information related to leases is as follows:

	June 30, 2023	December 30, 2022
Weighted average remaining lease term (in years):		
Operating leases	3.7	4.1
Finance leases	0.6	2.1
Weighted average discount rate:		
Operating leases	5.9%	5.3%
Finance leases	3.2%	3.2%

Supplemental cash flow information related to leases is as follows:

(In thousands)	June 30, 2023	July 1, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 6,028	$ 6,003
Financing cash flows from finance leases	155	150
Right-of-use assets obtained in exchange for new operating leases	$ 11,044	$ 1,217

Total remaining lease payments under both the Company's operating and finance leases are as follows:

Year *(In thousands)*	Operating Leases	Financing Leases
2023	$ 6,018	$ 196
2024	9,077	555
2025	7,613	—
2026	3,132	—
2027	1,784	—
Thereafter	2,525	—
Total lease payments	30,149	751
Amounts representing interest	(2,937)	(12)
Total lease liabilities	$ 27,212	$ 739

Note 11. Commitments and Contingencies

In the Company's joint venture arrangements, the liability of each partner is usually joint and several. This means as each joint venture partner may become liable for the entire risk of performance guarantees provided by each partner to the customer. Typically, each joint venture partner indemnifies the other partners for any liabilities incurred in excess of the liabilities the other party is obligated to bear under the respective joint venture agreement. In addition, the Company may be required to guarantee performance directly to the customer. The Company is unable to estimate the maximum potential amount of future payments that the Company could be required to make under outstanding performance guarantees related to joint venture projects due to a number of factors, including but not limited to, the nature and extent of any contractual defaults by the other joint venture partners, resource availability, potential performance delays caused by the defaults, the location of the projects, and the terms of the related contracts.

In the ordinary course of business, the Company is subject to other claims, lawsuits, investigations and disputes arising out of the conduct of its business, including matters relating to commercial transactions, government contracts, and employment matters. The Company recognizes a liability for contingencies that are probable of occurrence and reasonably estimable. To date, no such matters are material to the condensed consolidated statements of operations.

In certain contracts, there are provisions that require the Company to pay liquidated damages if the Company is responsible for the failure to meet specified contractual milestone dates and the applicable customer asserts a conforming claim under these provisions. These contracts define the conditions under which customers may make claims against the Company for liquidated damages. Based upon the evaluation of performance and other commercial and legal analysis, management has recognized relevant probable liquidated damages as of June 30, 2023 and December 30, 2022, and believes that the ultimate resolution of such matters will not materially affect the Company's condensed consolidated financial position, results of operations, or cash flows.

The Company has recorded contingent consideration as of June 30, 2023 and December 30, 2022 at its estimated fair value. The Company is unable to reasonably determine an estimated range of amounts of the payments that could be made due to the uncertainty of future events.

Guarantees

The Company obtains bonding on construction contracts through third-party bonding companies. As is customary in the construction industry, the Company indemnifies the third-party bonding companies for any losses incurred by it in connection with bonds that are issued. The Company has granted the third-party bonding companies a security interest in accounts receivable, contract assets and contract rights for that obligation.

The Company typically indemnifies contract owners for claims arising during the construction process and carries insurance coverage for such claims.

Letters of Credit

In the ordinary course of business and under certain contracts, the Company is required to post standby letters of credit for its insurance carriers. At June 30, 2023 and December 30, 2022, the total amount of standby letters of credit outstanding were $14.1 million and $8.2 million, respectively.

Shares

Common Stock

PROSPECTUS

Sole Book-Running Manager

Roth Capital Partners

, 2023

Until , 2023 (25 days after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the dealers' obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the various expenses, other than the underwriting discounts and commissions, expected to be incurred by Shimmick Corporation (the "Registrant") in connection with the issuance and sale of common stock being registered. All amounts are estimated except for Securities and Exchange Commission ("SEC") registration fees, Financial Industry Regulatory Authority ("FINRA") filing fees and Nasdaq listing fees.

SEC registration fee	$ *
FINRA filing fee	*
Nasdaq listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky qualification fees and expenses	*
Transfer agent fees and expenses	*
Miscellaneous fees and expenses	*
Total	$ *

***** To be completed by amendment

Item 14. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation will provide for this limitation of liability.

Section 145 of the DGCL ("Section 145"), provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

Our amended and restated certificate of incorporation will provide that we must indemnify our directors and officers to the fullest extent authorized by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this section or otherwise.

We intend to enter into indemnification agreements with each of our current directors and officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

We expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

Item 15. Recent Sales of Unregistered Securities.

We have issued 1,800,000 stock options in fiscal year 2021 to certain employees to purchase common shares in our company with an exercise price of $3.45, of which 1,634,859 remain outstanding as of June 30, 2023. The issuances of the above securities were deemed to be exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”) in reliance upon Rule 701 promulgated under Section 3(b) of the Securities Act as transactions pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions.

Item 16. Exhibits and Financial Statement Schedules.

Exhibit No.	Description
1.1**	Form of Underwriting Agreement.
2.1*+	Purchase and Sale Agreement, dated, December 9, 2020, by and among AECOM, URS Holdings, Inc. and SCC Group, LLC.
3.1**	Form of Amended and Restated Certificate of Incorporation of Shimmick Corporation, to be in effect upon consummation of this offering.
3.2**	Form of Amended and Restated Bylaws of Shimmick Corporation, to be in effect upon consummation of this offering.
4.1**	Form of Stock Certificate.
5.1**	Opinion of King & Spalding LLP.
10.1**#	Form of Indemnification Agreement for Executive Officers and Directors.
10.2*#	SCCI National Holdings, Inc. 2021 Stock Plan.
10.3**#	Form of Shimmick Corporation 2023 Equity Incentive Plan.
10.4*+	Credit Agreement, dated February 26, 2021, by and among Shimmick Construction Company, Inc., BMO Harris Bank N.A. and the other parties thereto.

Exhibit No.	Description
10.5**	Revolving Credit Facility Agreement, dated March 27, 2023, by and between Shimmick Construction Company, Inc. and MidCap Financial Services, LLC.
10.6*+	Credit, Security and Guaranty Agreement, dated March 27, 2023, by and among Shimmick Construction Company, Inc., Rust Constructors Inc., The Leasing Corporation, SCCI National Holdings, Inc., MidCap Funding IV Trust and other parties thereto.
10.7*	Amendment No. 1 to Credit, Security and Guaranty Agreement, dated June 30, 2023, by and among Shimmick Construction Company, Inc., Rust Constructors, Inc., The Leasing Corporation, SCCI National Holdings, Inc., MidCap Funding IV Trust and other parties thereto.
10.8*	Amendment No. 2 to Credit, Security and Guaranty Agreement, dated September 22, 2023, by and among Shimmick Construction Company, Inc., Rust Constructors Inc., The Leasing Corporation, Shimmick Corporation (f/k/a SCCI National Holdings, Inc.), MidCap Funding IV Trust and other parties thereto.
10.9*+	Loan and Security Agreement, effective September 13, 2023, by and between Hudson Bridge Partners, LLC and/or its assigns and Shimmick Construction Company, Inc.
21.1**	List of Subsidiaries of Shimmick Corporation.
23.1*	Consent of Deloitte and Touche LLP
23.2**	Consent of King & Spalding LLP (included as part of Exhibit 5.1).
24.1	Powers of Attorney (included on signature page).
99.1*	Consent of Carolyn L. Trabuco to be listed as a director nominee.
99.2*	Consent of Geoffrey E. Heekin to be listed as a director nominee.
99.3*	Consent of J. Brendan Herron to be listed as a director nominee.
107*	Filing Fee Table.

* Filed herewith.
** To be Filed by Subsequent Amendment.
# Indicates management contract or compensatory plan.
+ Portions of this exhibit have been redacted in accordance with Item 601(b)(10)(iv) of Regulation S-K.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. For the purpose of determining liability of a registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of an undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the

undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

i. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424,

ii. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by an undersigned registrant,

iii. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant, and

iv. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on October 4, 2023.

Shimmick Corporation

/s/ Steven E. Richards
By: Steven E. Richards
Name: Chief Executive Officer

POWER OF ATTORNEY

Each of the undersigned officers and directors of Shimmick Corporation hereby constitutes and appoints each of Mitchell B. Goldsteen, Steven E. Richards and Devin J. Nordhagen as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign the Registration Statement of Shimmick Corporation on Form S-1, and any other registration statement relating to the same offering (including any registration statement, or amendment thereto, that is to become effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended), and any and all amendments thereto (including post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Steven E. Richards Steven E. Richards	Chief Executive Officer (Principal Executive Officer)	October 4, 2023
/s/ Devin J. Nordhagen Devin J. Nordhagen	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	October 4, 2023
/s/ Mitchell B. Goldsteen Mitchell B. Goldsteen	Executive Chairman	October 4, 2023

Exhibit 2.1

EXECUTION VERSION

**Portions of this exhibit have been redacted in accordance with Item 601(b)(10) of Regulation S-K. The information is not material and would cause competitive harm to the registrant if publicly disclosed. [***] indicates that information has been redacted. **

PURCHASE AND SALE AGREEMENT

BY AND AMONG

AECOM,

URS HOLDINGS, INC.

AND,

SCC GROUP, LLC

Dated as of December 9, 2020

TABLE OF CONTENTS

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT, dated as of December 9, 2020 (this "Agreement"), is by and among AECOM, a Delaware corporation ("Seller Parent"), URS Holdings, Inc., a Delaware corporation ("Seller") and SCC Group, LLC, a Delaware limited liability company ("Purchaser") and, together with Seller and Seller Parent, the "Parties").

WHEREAS, Seller and certain of its Subsidiaries are engaged in, among other things, the Business; and

WHEREAS, on the terms and subject to the conditions set forth herein, the Seller Entities shall sell, assign, transfer and convey to Purchaser, and Purchaser shall purchase and acquire from the Seller Entities, all of their right, title and interest in and to the Purchased Assets, and Purchaser shall assume the Assumed Liabilities (the "Transaction").

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, on the terms and subject to the conditions of this Agreement, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms have the meanings set forth below:

"Adjusted EBITDA" means the earnings before interest, taxes, depreciation, and amortization, of the Business, determined in accordance with GAAP and the principles set forth Section 1.1(a)(i) of the Seller Disclosure Schedules. Section 1.1(a)(ii) of the Seller Disclosure Schedules sets forth an illustrative calculation of the Adjusted EBITDA of the Business for the fiscal year ended September 30, 2020.

"Adjustment Amount" means (a) the Closing Working Capital *minus* (b) the Target Working Capital.

"AECOM Name and AECOM Marks" means the names, Marks or logos of Seller Parent or any of its Affiliates, including the "AECOM", "URS", "Hunt", "Tishman" and "Leeding Builders" names, at any time prior to the Closing, or any variations or derivatives thereof, either alone or in combination with other words, in each case other than those names, Marks or logos set forth in Section 1.1(b) of the Seller Disclosure Schedules.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise. For purposes of this Agreement, Seller and the other Seller Entities and their respective Affiliates shall be deemed not to be Affiliates of Purchaser or, from and after the Closing, of the Business or the Purchased Companies (or Subsidiaries thereof).

"Antitrust Laws" means statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws of any jurisdiction that are designed or intended to prohibit, restrict or regulate actions that may have the purpose or effect of creating a monopoly, lessening competition or restraining trade.

"Business" means, subject to the following sentence, Seller Parent's and its Subsidiaries' business, as of immediately prior to the Closing (including as conducted through joint ventures), of self-performing at risk heavy civil construction infrastructure projects and operation and maintenance of rail and highway facilities, as conducted by Seller Parent through its Civil Construction business of Seller Parent's Construction Services legacy reporting segment (as reflected in the segment financial reporting contained in Seller Parent's Annual Report on Form 10-K for the fiscal year ending September 30, 2019), including Shimmick Construction Company, Inc. and its Subsidiaries' businesses and Rust Constructors, Inc. and its Subsidiaries' businesses, as of the date hereof and immediately prior to the Closing (including as conducted through joint ventures) (it being understood that the operations, activities and assets of the Business are reflected in the Business Financial Information as of the dates therein specified and for the periods indicated). Seller and Purchaser agree that the "Business" shall include only the business described in the immediately prior sentence and not any other businesses, operations or activities of Seller Parent or any of its Subsidiaries (including as conducted through joint ventures) and including but not limited to (A) Seller Parent's and its Subsidiaries' business of providing construction, program and construction management services and design-build services for building and facility construction projects including sports arenas, office and residential towers, hotel and gaming facilities, meeting and exhibition spaces, performance venues, education facilities, mass transit terminals, data centers, health care facilities, industrial manufacturing facilities, aviation projects, terminals and roadways, light rail systems, corporate parks, residential projects, religious institutions, and interior works of all kinds (including, for the avoidance of doubt, Seller Parent's and its Subsidiaries' Tishman, Hunt and Leeding Builders Group businesses); (B) Seller Parent's and its Subsidiaries' business of planning, designing, engineering, consulting with respect to, constructing, improving, repairing, retrofitting, maintaining, operating, demolishing and decommissioning power- and energy-generating facilities, as well as systems that store, transmit and distribute electricity; (C) Seller Parent's and its Subsidiaries' business of engineering, developing, procuring, building, commercializing and installing technologies and treatment systems for the power, oil and gas and other industries designed to reduce emissions of pollutants and environmental liabilities; (D) Seller Parent's and its Subsidiaries' business of providing services relating to relief and restoration work in response to natural or other disasters; (E) Seller Parent's and its Subsidiaries' business of manufacturing fabricated production equipment and pressure vessels for the oil and gas industry; (F) Seller Parent's and its Subsidiaries' business of providing maintenance, turnaround and fabrication services to large scale industrial operators; and (G) all other businesses, operations and activities of Seller Parent and its Subsidiaries, including all those conducted through Seller Parent's AECOM Capital and Design and Consulting Services legacy reporting segments (as reflected in the segment financial reporting contained in Seller Parent's Annual Report on Form 10-K for the fiscal year ending September 30, 2019) (all of the foregoing businesses described in this sentence, collectively, the "Retained Businesses").

"Business Day" means any day, other than a Saturday, Sunday, or day on which commercial banks are required or authorized to be closed in Los Angeles, California.

"Business Employee" means (a) any Purchased Entity Employee and (b) each individual who is an employee of Seller or any of its Affiliates (other than a Purchased Entity or any of its Subsidiaries) and primarily provides services to or in connection with the Business, including in the case of clauses (a) and (b) any such employee who is on an approved leave of absence or has been furloughed. For the avoidance of doubt, "Business Employee" includes an individual identified in clause (a) or (b) who as of the Closing Date is providing services to a Purchased Venture through an expatriate, secondment or similar arrangement. Notwithstanding the foregoing, (i) each individual listed on Section 1.1(c)(i) of the Seller Disclosure Schedules shall be considered a Business Employee and (ii) no individual listed on Section 1.1(c)(ii) of the Seller Disclosure Schedules shall be considered a Business Employee. Section 1.1(c)(iii) of the Seller Disclosure Schedules lists each Business Employee current as of five (5) days prior to the date hereof, which list will be updated to reflect any terminated and newly hired employees as of two (2) days prior to the Closing Date.

"Business Material Adverse Effect" means any event, change, occurrence, development or effect that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Business taken as a whole; provided, however, that no such event, change, occurrence, development or effect resulting or arising from or in connection with any of the following matters shall be deemed, either alone or in combination, to constitute or contribute to a Business Material Adverse Effect: (a) the general conditions in the industries in which the Business operates; (b) general political, economic, business, monetary, financial or capital or credit market conditions or trends or changes therein (including interest rates or the price of commodities or raw materials); (c) any act of civil unrest, war or terrorism (including by cyberattack or otherwise), including an outbreak or escalation of hostilities involving the United States or any other country or the declaration by the United States or any other country or jurisdiction of a national emergency or war; (d) natural disasters or weather developments, including earthquakes, hurricanes, tsunamis, typhoons, lightning, hail storms, blizzards, tornadoes, droughts, floods, cyclones, arctic frosts, mudslides and wildfires, epidemics, pandemics (including COVID-19), manmade disasters or acts of God; (e) the failure of the financial or operating performance of Seller, the Seller Entities or the Business to meet internal, Purchaser or analyst projections, forecasts or budgets for any period (provided that (1) the underlying facts causing such failure, to the extent not otherwise excluded by this definition, may be deemed to constitute or contribute to a Business Material Adverse Effect and (2) this clause (e) shall not be construed as implying that Seller or Seller Parent is making any representation or warranty herein with respect to any internal, Purchaser or analyst projections, forecasts or budgets and no such representations or warranties are being made); (f) any action taken or omitted to be taken by or at the request or with the consent of Purchaser, or any failure to take actions due to Purchaser's failure to consent thereto following the request of Seller or Seller Parent, or compliance with applicable Law or the covenants and agreements contained in this Agreement; (g) the execution, announcement, pendency, performance or consummation of this Agreement, the Transaction, or the identity of Purchaser (including the impact on or any loss of Business Employees, customers, suppliers, relationships with Governmental Entities or other business relationships resulting from any of the foregoing, and including, for the avoidance of doubt, any event, change or effect resulting or arising from or in connection with any actions required to be taken pursuant to Section 5.1); or (h) changes in any Law (including any proposed Law) or GAAP or other applicable accounting principles or standard or any interpretations of any of the foregoing; provided that any adverse events, changes, occurrences, developments or effects resulting from the matters described in clauses (a), (b), (c), and (d) may be taken into account in determining whether there has been a Business Material Adverse Effect to the extent, and only to the extent, that they have a materially disproportionate effect on the Business relative to businesses in the industries in which the Business operates.

"Cash Amounts" means, of any Person and as of any time, all cash and cash equivalents, bank and other depositary accounts and safe deposit boxes, demand accounts, certificates of deposit, time deposits, checks, negotiable instruments, marketable securities and securities and brokerage accounts (including deposits in transfer and net of outstanding checks or transfers), in each case of such Person as of such time, such amounts calculated in a manner consistent with the Transaction Accounting Principles and the Sample Closing Statement.

"Closing Cash Amounts" means the greater of (a) Zero Dollars ($0) and (b) the amount (but not below Zero Dollars ($0)) by which the Cash Amounts of the Purchased Entities (and wholly-owned Subsidiaries thereof) as of 12:01 a.m. (Pacific Time) on the Closing Date exceed the Minimum Cash Amount.

"Closing Funded Debt" means an amount equal to the Funded Debt of the Purchased Entities (and wholly-owned Subsidiaries thereof) as of 12:01 a.m. (Pacific Time) on the Closing Date.

"Closing Purchase Price" means (a) the Base Purchase Price, *plus* (b) the lesser of (i) Zero Dollars ($0) and (ii) the Estimated Adjustment Amount (which may be a positive or negative number), *minus* (c) the Estimated Closing Funded Debt.

"Closing Working Capital" means the Working Capital as of 12:01 a.m. (Pacific Time) on the Closing Date.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Collective Bargaining Agreement" means any collective bargaining agreement or other Contract with a union, works council, or other employee-representative body.

"Combined Tax Return" means any combined, consolidated or unitary Tax Return that includes Seller Parent or any of its Affiliates (other than the Purchased Companies and their Subsidiaries), on the one hand, and any of the Purchased Companies or their respective Subsidiaries, on the other hand.

"Contamination" means the emission, discharge or release of any Hazardous Material to, on, onto or into the environment.

"Contract" means any written contract, lease, license, commitment, loan or credit agreement, instrument, indenture, or agreement, other than any Seller Benefit Plan or any Permit.

"Covered Losses" means losses, liabilities, Taxes, claims, fines, deficiencies, damages, assessments, charges, payments (including those arising out of any settlement or Judgment relating to any Proceeding), penalties and reasonable attorneys' and accountants' fees and disbursements; provided that Covered Losses shall not include any punitive or similar damages except to the extent such damages are awarded by a Judgment against, and paid by, an Indemnified Party pursuant to a Third Party Claim.

"Covered Taxes" shall mean (i) Taxes imposed on the Purchased Entities or any of their Subsidiaries for any Pre-Closing Tax Period, and (ii) Taxes of Seller or any of its Affiliates (other than any of the Purchased Companies or any of their respective Subsidiaries) for which any of the Purchased Entities (or any of their Subsidiaries) are liable (A) as a result of being or having been a member of any consolidated, combined, affiliated, unitary or other similar Tax group prior to the Closing by reason of Treasury Regulations Section 1.1502-6(a) or any analogous or similar foreign, state, or local Law or (B) as a transferee or successor, where the liability of such Purchased Entity or such Subsidiary as a transferee or successor, as applicable, results from an event or transaction occurring before the Closing; in each case, other than (x) any Transfer Taxes allocated to Purchaser pursuant to Section 7.8 and (y) any Taxes arising from any action, event or transaction taken or entered into by Purchaser or any of its Affiliates (including, after the Closing, the Purchased Companies or any of their Subsidiaries) on the Closing Date after the Closing.

"Environmental Laws" means, collectively, any and all Laws and Judgments relating to Contamination or Hazardous Materials.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"Excluded Business Taxes" means any Taxes imposed with respect to the Excluded Assets or the Retained Liabilities.

"Filings" means any registrations, applications, declarations, reports, submissions or other filings with, or any notices to, any Person (including any third party or Governmental Entity).

"Former Business Employee" means (a) each individual who was an employee of a Purchased Entity or any of its Subsidiaries (other than any individual who was an employee of a Purchased Entity or any of its Subsidiaries who did not primarily provide services to the Business as of immediately prior to his or her last day of employment) and as of the date of this Agreement or the Closing, as applicable, is no longer employed by a Purchased Entity or any of its Subsidiaries or Seller or any of its Affiliates, and (b) each individual who was an employee of Seller or its Affiliates (other than the Purchased Entities or their Subsidiaries) who terminated employment prior to the date of this Agreement or the Closing, as applicable, and primarily provided services to the Business as of immediately prior to his or her last day of employment. For the avoidance of doubt, "Former Business Employee" includes an individual identified in clause (a) or (b) who as of his or her last day of employment was providing services to a Purchased Venture through an expatriate or secondment arrangement.

"Funded Debt" means, of any Person and as of any time, the aggregate amount of the following obligations of such Person as of such time, without duplication, in each case such amount calculated in a manner consistent with the Transaction Accounting Principles and the Sample Closing Statement: (a) the outstanding principal amount of any indebtedness for borrowed money, including all accrued but unpaid interest thereon and any prepayment, redemption or change of control fees, premiums or penalties that would arise at Closing as a result of the discharge of such amount owed; (b) the outstanding principal amount of all other obligations evidenced by bonds, debentures, notes or similar instruments of indebtedness, including all accrued but unpaid interest thereon and any prepayment, redemption or change of control fees, premiums or penalties that would arise at Closing as a result of the discharge of such amount owed; (c) all capitalized lease obligations that are classified by such Person as a balance sheet liability in accordance with GAAP; (d) all direct obligations under letters of credit, bankers' acceptances, bank guarantees, surety bonds or similar credit instruments in each case solely to the extent drawn; and (e) deferred purchase price obligations (including earn outs and hold back amounts) in respect of the acquisition of any business of any Person, in the case of each of the foregoing clauses (a) through (e) excluding, for the avoidance of doubt, any trade payables arising in the ordinary course of business; provided, however, that in no event shall Funded Debt include (i) any Retained Liabilities, (ii) any Liabilities to be repaid or extinguished pursuant to this Agreement in connection with the Closing or (iii) any Liability in respect of Taxes.

"GAAP" means U.S. generally accepted accounting principles, consistently applied.

"GDB Claims" means any and all claims, disputes, controversies, Proceedings (including any settlements or compromises thereof) and any other rights or benefits arising out of, relating to or resulting from the Business's work or engagement in connection with the GDB Project, including any Contract relating thereto.

"GDB Project" means the business, operations and activities of the Purchased Companies' and their Affiliates' Gerald Desmond Bridge project.

"GGB Claims" means any and all claims, disputes, controversies, Proceedings (including any settlements or compromises thereof) and any other rights or benefits arising out of, relating to or resulting from the Business's work or engagement in connection with the GGB Project, including any Contract relating thereto.

"GGB Losses" means, as of the date of determination, the losses incurred by the Business from and after the Closing in respect of the GGB Project, determined in accordance with the principles set forth Section 1.1(d)(i) of the Seller Disclosure Schedules. Section 1.1(d)(ii) of the Seller Disclosure Schedules sets forth an illustrative calculation of the GGB Losses for the fiscal year ended September 30, 2020.

"GGB Project" means the business, operations and activities of the Purchased Companies' and their Affiliates' Golden Gate Bridge Physical Suicide Deterrent System project.

"Government Bid" means any offer, bid, quotation or proposal made by a Seller Entity or a Purchased Entity (or Subsidiary thereof) in each case with respect to the Business prior to the Closing Date which, if accepted, would result in a Government Contract.

"Government Contract" means any Contract between a Seller Entity or Purchased Entity (or Subsidiary thereof), on the one hand, and (a) a Governmental Entity, (b) any prime contractor to a Governmental Entity in its capacity as a prime contractor, or (c) any subcontractor with respect to any Contract described in clause (a) or clause (b) above, on the other hand, in the cases of each of clauses (a) through (c), with respect to the operation of the Business. A task, purchase or delivery order under a Government Contract shall not constitute a separate Government Contract, for purposes of this definition, but shall be part of the Government Contract to which it relates.

"Governmental Entity" means any federal, national, state, local, supranational or foreign government or any court of competent jurisdiction, administrative agency or commission or other federal, national, state, local, supranational or foreign governmental authority or instrumentality.

"Hazardous Material" means any substance, pollutant, contaminant, material or waste that is regulated or classified pursuant to any applicable Environmental Law as "hazardous," "toxic," "dangerous," "radioactive," a "pollutant," a "contaminant" or words of similar meaning, including asbestos, asbestos-containing materials, polychlorinated biphenyls, petroleum (including crude oil or any fraction thereof) or petroleum products, radioactive, radiological or nuclear materials and radon gas, pesticides or herbicides, heavy metals and used ordinance.

"Indebtedness" means, with respect to any Person and as of any time, any of the following obligations of such Person as of such time: (a) all Funded Debt of such Person, (b) all letters of credit, performance bonds, or similar credit instruments issued for the account of such Person, and (c) all guarantees issued by such Person with respect to the obligations described in clauses (a) through (b) of another Person.

"Information Technology" means any tangible or digital computer systems (including computers, screens, servers, workstations, routers, hubs, switches, networks, data communications lines and hardware) and telecommunications systems (including all computer programs, software, firmware and related documentation).

"Intellectual Property" means (a) Patents, (b) Marks, (c) copyrightable works, copyrights, moral rights, mask work rights, data, databases, database rights and design rights, in each case, other than software, whether or not registered, and registrations and applications for registration thereof, and (d) intellectual property rights arising from or in respect of the Know-How.

"Judgment" means any judgment, injunction, writ, order, award, or decree of any Governmental Entity.

"JV Cash" means, as of any time, all cash and cash equivalents, bank and other depositary accounts and safe deposit boxes, demand accounts, certificates of deposit, time deposits, checks, negotiable instruments, marketable securities and securities and brokerage accounts (including deposits in transfer and net of outstanding checks or transfers) of the Purchased Ventures, the Subsidiaries of the Purchased Entities (other than the wholly owned Subsidiaries of the Purchased Entities) and the Business's unincorporated joint ventures, in each case as of such time and calculated in a manner consistent with the Transaction Accounting Principles and the Sample Closing Statement.

"Know-How" means processes, methods, designs, formulae, technical information, trade secrets, know-how, drawings, blueprints, designs, quality assurance and control procedures, design tools, simulation capability, manuals and technical information provided to employees, customers, suppliers, agents or licensees.

"Knowledge" means, with respect to Seller, the actual knowledge of any Person listed in Section 1.1(e) of the Seller Disclosure Schedules, and, with respect to Purchaser, the actual knowledge of any Person listed in Section 1.1(e) of the Purchaser Disclosure Schedules.

"Law" means any national, state, local, supranational or foreign law, statute, code, order, Judgment, ordinance, rule, regulation or treaty (including any Tax treaty), in each case promulgated by a Governmental Entity.

"Liabilities" means all debts, liabilities, Taxes, guarantees, assurances, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability).

"Lien" means any mortgage, lien, pledge, security interest, charge, easement, or similar encumbrance of any kind, other than restrictions on transfer arising under applicable securities Laws and non-exclusive licenses granted in the ordinary course of business.

"Marks" means any trademark, service mark, trade dress, trade name, corporate name, business name, brand name, slogan, logo, domain name or online or other electronic identifier, social media name, tag or handle, service name, or other similar designation of source of origin, whether or not registered, together with all common law rights in any of the foregoing, all registrations and applications for registration of any of the foregoing, all reissues, extensions and renewals of any of the foregoing and all goodwill associated with the use of and symbolized by any of the foregoing.

"Minimum Cash Amount" means One Hundred Twenty Nine Million Nine Hundred Thousand Dollars ($129,900,000).

"Multiemployer Plan" means any "multiemployer plan" within the meaning of Section 3(37) of ERISA.

"Patents" means patents, patent applications and provisional applications, including reissues, divisions, continuations, continuations-in-part, extensions and reexaminations thereof.

"Permits" means permits, approvals, authorizations, consents, licenses or certificates issued by any Governmental Entity.

"Permitted Liens" means the following Liens: (a) Liens for Taxes, assessments or other governmental charges or levies that are not yet due or payable or that are being contested by appropriate Proceedings, that may thereafter be paid without penalty and for which an adequate reserve has been established and reflected in the Business Financial Information; (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other Liens imposed by Law in the ordinary course of business; (c) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security; (d) with respect to the Real Property, (i) minor defects or imperfections of title that would be shown on an accurate up-to-date survey; (ii) easements, declarations, covenants, rights-of-way, restrictions and other charges, instruments or encumbrances affecting title to property; (iii) zoning ordinances, variances, conditional use permits and similar regulations, permits, approvals and conditions (but not violations thereof); and (iv) Liens not created by Seller Parent or any of its Subsidiaries that affect the underlying fee interest of the Leased Real Property, including master leases or ground leases and any set of facts that an accurate up-to-date survey would show; provided, however, that with respect to this clause (d), any such item does not individually or in the aggregate materially interfere with the conduct of the Business or materially impair the continued use and operation of the Real Property for the purpose for which it is used as of the date hereof; (e) Liens set forth in the governing documents of any Person; (f) Liens set forth in the Seller Disclosure Schedules; (g) Liens deemed to be created by any of the Transaction Documents; and (h) Liens arising under the Seller Parent Credit Agreement or the other Loan Documents (as such term is defined in the Seller Parent Credit Agreement) in favor of the Secured Parties (as such term is defined in the Seller Parent Credit Agreement), which Liens will be released at or prior to the Closing.

"Person" means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity or other entity.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and, in the case of any Straddle Period, the portion of such period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date, and, in the case of any Straddle Period, the portion of such period ending on and including the Closing Date.

"Proceeding" means any judicial, administrative or arbitral action, claim, suit, audit, investigation, arbitration, or other proceeding by or before any Governmental Entity.

"Purchased Companies" means the Purchased Entities and the Purchased Ventures.

"Purchased Entity Benefit Plan" means (a) each Seller Benefit Plan that is sponsored or maintained by a Purchased Entity or any of its Subsidiaries (excluding, for the avoidance of doubt, the Purchased Ventures), and (b) each retention letter set forth on Section 3.19(a)(i) of the Seller Disclosure Schedules.

"Purchased Entity Employee" means any Business Employee who is employed by a Purchased Entity or any of its Subsidiaries (excluding, for the avoidance of doubt, the Purchased Ventures) and primarily provides services to or in connection with the Business.

"Purchaser Disclosure Schedules" means those certain Purchaser Disclosure Schedules dated as of the date of this Agreement, provided by Purchaser to Seller.

"Purchaser Material Adverse Effect" means any event, change, occurrence, development or effect that, individually or in the aggregate, materially impairs, hinders or delays or would reasonably be expected to materially impair, hinder or delay, the ability of Purchaser and its Affiliates to perform their obligations under this Agreement and the other Transaction Documents or to consummate the transactions contemplated hereby and thereby.

"Reference Period" means the thirty-six (36)-month period comprised of fiscal years ended September 30, 2021, 2022 and 2023 (including both the portion of the Reference Period prior to the Closing and the portion of the Reference Period from the Closing through the end of the Reference Period).

"Regulatory Approvals" means all Approvals from Governmental Entities that are required under applicable Law (including pursuant to any Antitrust Law) to permit the consummation of the Transaction and the other transactions contemplated by this Agreement.

"Representatives" of a Person means such Person's Affiliates and any officer, director, manager, managing member, general partner or employee of such Person or its Affiliates or any investment banker, attorney, accountant, consultant, tax advisor or other advisor or representative of such Person or its Affiliates.

"Retained Businesses" has the meaning set forth in the definition of "Business."

"Retained Claim" means any claim, cause of action, defense, right of offset or counterclaim, or settlement agreement (in any manner arising or existing, whether choate or inchoate, known or unknown, contingent or non-contingent) to the extent related to the Excluded Assets, Retained Liabilities or the Retained Businesses.

"Sale Process" means all matters relating to the sale of the Business and the review of strategic alternatives with respect to the Business, and all activities in connection therewith, including matters relating to (a) the solicitation of proposals from and negotiations with third parties in connection with the sale of the Business or Excluded Assets or (b) the drafting, negotiation or interpretation of any of the provisions of this Agreement or the other Transaction Documents, or the determination of the allocation of any assets or Liabilities pursuant to the foregoing agreements or the transactions contemplated thereby.

"Securities Act" means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller Benefit Plan" means any employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) and any bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree health or life insurance, supplemental retirement, superannuation, gratuity, jubilee, provident fund, employment, severance, retention, termination, change in control, welfare, post-employment, profit-sharing, disability, health, vacation, sick leave benefits, fringe benefits or other benefit plan, program or arrangement, (a) that is sponsored, maintained, contributed to or required to be maintained or contributed to by Seller or any of its Affiliates (but excluding any such plan, program or arrangement mandated by or maintained solely pursuant to applicable Law or any Multiemployer Plan), in each case providing compensation or benefits to any Business Employee or Former Business Employee or (b) under which any Purchased Entity or Subsidiary thereof has any Liability or any obligation to contribute (whether actual or contingent).

"Seller Disclosure Schedules" means those certain Seller Disclosure Schedules dated as of the date of this Agreement, provided by Seller to Purchaser.

"Seller Entities" means Seller Parent and all of its Subsidiaries that transfer Purchased Assets (including Purchased Entity Shares and Purchased Venture Interests) and/or Assumed Liabilities pursuant to this Agreement.

"Seller Parent Credit Agreement" means the Syndicated Facility Agreement, dated as of October 17, 2014, among Seller Parent, Bank of America, N.A. as administrative agent and the other parties thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Soft Revenue" means revenue in excess of approved contract value, including revenue represented by claims, pending claims and unapproved change orders.

"Solvent" means, with respect to any Person, that, as of any date of determination, (a) the amount of the "fair saleable value" of the assets of such Person on a going concern basis will, as of such date, exceed the sum of (i) the amount of all "liabilities of such Person, including contingent and other liabilities" as of such date, as such quoted terms are generally determined in accordance with applicable U.S. federal laws governing determinations of the insolvency of debtors and (ii) the amount that will be required to pay the probable liabilities of such Person on its existing debts (including contingent liabilities) as such debts become absolute and matured, (b) such Person will not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged following such date and (c) such Person will be able to pay its liabilities, including contingent and other liabilities, as they mature. For purposes of this definition, each of the phrases "not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged" and "able to pay its liabilities, including contingent and other liabilities, as they mature" means that such Person will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due.

"Straddle Period" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company or other entity, whether incorporated or unincorporated, of which such first Person directly or indirectly owns or controls a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions; provided that, from and after the Closing, no Purchased Company (or Subsidiary thereof) shall be deemed to be a Subsidiary of Seller or any of its Affiliates, including any other Seller Entity.

"Tangible Personal Property" means machinery, equipment, hardware, furniture, fixtures, tools, Information Technology and all other tangible personal property, it being understood that Tangible Personal Property shall not include any Intellectual Property.

"Target Working Capital" means the aggregate sum of Two Hundred Fifteen Million Five Hundred Thousand Dollars ($215,500,000), inclusive of Cash Amounts not less than the Minimum Cash Amount.

"Tax" means any and all federal, state, local or foreign taxes imposed by any Taxing Authority, including all net income, franchise, estimated, real property gains, registration, severance, disability, gross receipts, capital, sales, use, *ad valorem*, value added, goods and services, profits, license, withholding, payroll, employment, unemployment, excise, premium, property, net worth, capital gains, transfer, stamp, documentary, social security, environmental, alternative or add-on minimum, and occupation, taxes, together with all interest, penalties and additions to tax imposed by any Governmental Entity with respect to such amounts.

"Tax Proceeding" means any claim, audit, action, suit, examination, contest, litigation or other Proceeding with or against any Taxing Authority.

"Tax Return" means any return, declaration, report, claim for refund or information return or statement required to be filed with any Taxing Authority with respect to Taxes, including any amendment thereof.

"Taxing Authority" means any Governmental Entity responsible for the administration or the imposition of any Tax.

"Transaction Documents" means this Agreement, the Transition Services Agreement, the Seller Parent Conditional Guaranty and the Assignment Agreement and Bill of Sale (if applicable).

"Working Capital" means, as of any time, the net working capital of the Business calculated by subtracting (a) the sum of the amounts as of such time for the current liability line items shown on the Sample Closing Statement for the Business, from (b) the sum of the amounts as of such time for the current asset line items shown on the Sample Closing Statement for the Business, in each case calculated in a manner consistent with the Transaction Accounting Principles; provided, however, that in no event shall Working Capital include (i) any amount included within the definition of Cash Amounts (other than the Cash Amounts comprised of the JV Cash and other Cash Amounts not less than the Minimum Cash Amount, each of which shall be included in Working Capital) or Funded Debt, (ii) any Excluded Assets or Retained Liabilities, (iii) any Liabilities to be repaid or extinguished pursuant to this Agreement in connection with the Closing, (iv) any asset or liability in respect of Taxes (other than current assets and liabilities in respect of payroll Taxes, which shall be included in Working Capital), or (v) any current asset in respect of Soft Revenue in excess of One Hundred Sixteen Million Dollars ($116,000,000).

Section 1.2 Other Defined Terms. In addition, the following terms shall have the meanings ascribed to them in the corresponding section of this Agreement:

Term	Section
Account Purchase Agreements	5.18
Agreement	Preamble
Anti-Corruption Laws	3.16(b)
Approvals	2.10(a)
Assignment Agreement and Bill of Sale	2.8(a)(v)
Assumed Liabilities	2.6
Balance Sheet Date	3.7(c)
Base Purchase Price	2.2
Business Financial Information	3.7(a)
Business Insurance Policies	2.4(m)
Business Intellectual Property	2.4(d)
Business Permits	3.16(c)
Central States MEPP	5.19
Claim Expenses	2.13(f)
Claim Recovery	2.13(a)(ii)
Closing	2.3
Closing Date	2.3
Closing Statement	2.9(b)
Confidential Business Information	5.3(b)
Confidentiality Agreement	5.3(a)
Continuing Employee	6.1(c)
Contribution Amount	5.19
control	1.1
controlled by	1.1
Controlling Party	7.4(b)
Current Representation	11.15(a)
DC Employees	6.5
Deferred Payment Dispute Notice	2.12(b)
Designated Person	11.15(a)
Dispute Notice	2.9(d)

Dispute Resolution Period	2.9(d)
DOL	3.19(a)
Earn-Out Payment	2.11(a)
Earn-Out Statement	2.12(a)
EBITDA Target	2.11(a)
Estimated Adjustment Amount	2.9(b)
Estimated Closing Cash Amounts	2.9(b)
Estimated Closing Funded Debt	2.9(b)
Excess Allotment	2.13(a)(ii)
Excluded Assets	2.5
FAR	3.12(a)(xv)
Final Purchase Price	2.9(f)
GDB Claim Expenses	2.13(f)
GDB Claim Recoveries	2.13(a)(i)
GGB Claim Expenses	2.13(f)
GGB Claim Recoveries	2.13(a)(ii)
GGB Loss Statement	2.12(a)
Guarantees	5.7
HCERA	3.19(j)
Healthcare Reform Laws	3.19(j)
Indemnified Party	10.4(a)
Indemnifying Party	10.4(a)
Independent Accounting Firm	2.9(d)
Inside Date	2.3
IRS	3.19(a)
Leased Real Property	2.4(c)(ii)
Material Contracts	3.12(a)
New Plans	6.2(c)
Non-Controlling Party	7.4(b)
Old Plans	6.2(c)
Outside Date	9.1(d)
Owned Real Property	2.4(c)(i)
Parties	Preamble
Post-Closing Representation	11.15(a)
Post-Closing Statement	2.9(c)
PPACA	3.19(j)
Pre-Closing Separate Tax Return	7.2(a)
Privileged Communications	11.15(b)
Public Software	3.10(d)(i)
Purchased Assets	2.4
Purchased Entities	2.4(a)(i)
Purchased Entity	2.4(a)(i)
Purchased Entity Shares	2.4(a)(i)
Purchased Venture Interests	2.4(a)(ii)
Purchased Ventures	2.4(a)(ii)
Purchaser	Preamble

Purchaser Covered Person	5.12(b)
Purchaser DC Plans	6.5
Purchaser FSA Plan	6.2(e)
Purchaser Indemnified Parties	10.2(a)
Purchaser Licensed Intellectual Property	5.8(c)
Purchaser-Filed Tax Return	7.2(b)
Qualified Benefit Plan	3.19(b)
R&W Insurance Policy	5.15
Real Property	2.4(c)(ii)
Reimbursable Contribution Events	5.19
Retained Businesses	1.1
Retained Claim Recovery	2.13(a)
Retained Liabilities	2.7
Review Period	2.12(a)
Sale Process NDA	5.3(a)
Sample Closing Statement	2.9(a)
Seller	Preamble
Seller Covered Person	5.12(a)
Seller DC Plans	6.5
Seller Deferred Compensation Plans	Section 6.6
Seller FSA Plan	6.2(e)
Seller Indemnified Parties	10.3
Seller Insurance Policies	5.9
Seller Licensed Intellectual Property	5.8(b)
Seller Parent	Preamble
Seller Parent Conditional Guaranty	5.16
Seller Parent’s Applicable GDB Portion	2.13(a)(i)
Seller Parent’s Applicable Portion	2.13(a)(ii)
Seller Returns	7.2(a)
Shared Contract	2.10(e)
Statement	2.12(a)
Tax Claim	7.4
Third Party Claim	10.4(a)
TINA	3.12(a)(xv)
Transaction	Recitals
Transaction Accounting Principles	2.9(a)
Transfer Taxes	7.8
Transferred FSA Balances	6.2(e)
Transferred Tangible Personal Property	2.4(e)
Transition Services Agreement	2.8(a)(iii)
under common control with	1.1
Unreimbursed Claim Expenses	2.13(f)
Unreimbursed GDB Claim Expenses	2.13(f)
Unreimbursed GGB Claim Expenses	2.13(f)

ARTICLE II
PURCHASE AND SALE; CLOSING

Section 2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall, and shall cause the other Seller Entities to, sell, assign, transfer and convey to Purchaser, and Purchaser shall purchase and acquire from Seller and the other Seller Entities, all of Seller's and the other Seller Entities' right, title and interest as of the Closing in and to the Purchased Assets.

Section 2.2 Purchase Price. In consideration for the Purchased Assets and the other obligations of Seller and Seller Parent pursuant to this Agreement, Purchaser shall (a) pay to Seller the Final Purchase Price, comprised of One Dollar ($1.00) in cash (the "Base Purchase Price") as adjusted in accordance with Section 2.9 and paid in the manner set forth in Section 2.8 and Section 2.9, (b) pay to Seller the Earn-Out Payment in accordance with Section 2.11, if achieved, and (c) assume the Assumed Liabilities.

Section 2.3 Closing Date. The closing of the Transaction (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz located at 51 West 52nd Street, New York, New York 10019 at 10:00 a.m. New York City time on the third (3rd) Business Day following the date on which the last of the conditions set forth in Article VIII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) have been satisfied (or, to the extent permitted, waived by the Party entitled to the benefits thereof) or at such other place, time and date as may be agreed between Seller and Purchaser; provided, however, that, unless otherwise agreed in writing by Purchaser and Seller, the Closing will not occur prior to January 2, 2021 (the "Inside Date") (and if the Closing would otherwise be required to occur prior to the Inside Date pursuant to this Section 2.3 without giving effect to this proviso, the Closing shall instead occur on the Inside Date, subject to the satisfaction (or, to the extent permitted, waived by the Party entitled to the benefits thereof) of the conditions set forth in Article VIII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or at such other place, time and date as may be agreed between Seller and Purchaser). The date on which the Closing occurs is referred to in this Agreement as the "Closing Date." Unless the Parties agree otherwise, and notwithstanding the actual occurrence of the Closing at any particular time on the Closing Date, the Closing shall be deemed to occur and be effective as of 12:02 a.m. (Pacific Time) on the Closing Date.

Section 2.4 Purchased Assets. Subject to the terms and conditions of this Agreement, on the Closing Date and at the Closing, Seller shall, and Seller Parent shall, as applicable, cause the other Seller Entities to, sell, assign, transfer and convey to Purchaser, and Purchaser shall purchase, acquire and accept from the Seller Entities, all of the Seller Entities' right, title and interest as of the Closing in the following (the "Purchased Assets"):

(a) (i) One hundred percent (100%) of the equity interests (the "Purchased Entity Shares") in the entities listed on Section 2.4(a)(i) of the Seller Disclosure Schedules (each, a "Purchased Entity," and, collectively, the "Purchased Entities"); and

(ii) the issued and outstanding equity interests held by Seller Entities (the "Purchased Venture Interests") of each of the entities listed on Section 2.4(a)(ii) of the Seller Disclosure Schedules (the "Purchased Ventures").

(b) (i) Each Contract to which Seller or any Seller Entity or any Subsidiary thereof is a party that is exclusively related to the Business or set forth on Section 2.4(b)(i) of the Seller Disclosure Schedules; and

(ii) subject to Section 2.10, those portions, and only those portions (and preserving the meaning thereof), of any Shared Contract to which Seller or any Seller Entity or Subsidiary thereof is a party to the extent related to the Business;

(c) (i) The real property listed in Section 2.4(c)(i) of the Seller Disclosure Schedules, together with all improvements, fixtures and all appurtenances thereto and rights in respect thereof (the "Owned Real Property"), and

(ii) the leases listed in Section 2.4(c)(ii) of the Seller Disclosure Schedules (the real property governed by such leases, the "Leased Real Property" and together with the Owned Real Property, the "Real Property");

(d) The Intellectual Property exclusively used, or held exclusively for use, in the operation of the Business (the "Business Intellectual Property");

(e) Any and all Tangible Personal Property exclusively used, or held exclusively for use, in the operation of the Business (the "Transferred Tangible Personal Property");

(f) Any and all accounts receivable and other current assets of the Business as of immediately prior to the Closing and in each case included in the calculation of the Closing Working Capital, and all Cash Amounts of the Purchased Companies and their Subsidiaries as of immediately prior to the Closing;

(g) Any and all prepaid expenses and security deposits of the Business as of immediately prior to the Closing;

(h) Any and all raw materials, work-in-process, finished goods, supplies and other inventories exclusively used, or held exclusively for use, by the Business;

(i) Any and all Business Permits held by the Purchased Companies or any of their Subsidiaries;

(j) Any and all goodwill of the Business;

(k) Any and all claims and defenses, in each case, exclusively related to the Business (for the avoidance of doubt, other than any Retained Claim and any claims and defenses in respect of any assets identified as Excluded Assets in Section 2.5);

(l) Copies of any and all documents, instruments, papers, books, records (other than Tax Returns (or any portion of any Tax Return) and other books and records related to Taxes (other than Tax Returns and other books and records exclusively related to Taxes of the Purchased Companies and their respective Subsidiaries)), books of account, files and data (including customer and supplier lists, and repair and performance records), catalogs, brochures, sales literature, promotional materials, certificates and other documents, in each case, exclusively related to the Business and in the possession of the Seller Entities or any of their Subsidiaries, other than (i) any books, records or other materials that the Seller Entities are required by Law to retain (copies of which, to the extent permitted by Law, will be made available to Purchaser upon Purchaser's reasonable request), (ii) personnel and employment records (A) for employees and former employees of the Seller Entities and their respective Affiliates who are not Continuing Employees and (B) for Continuing Employees to the extent prohibited by Law, and (iii) for the avoidance of doubt any books, records or other materials that may be located in a facility of the Business (including the Owned Real Property and the Leased Real Property) to the extent not exclusively related to the Business; provided that, with respect to any such books, records or other materials that are Purchased Assets pursuant to this clause (l), the Seller Entities shall be permitted to keep (A) copies of such books, records or other materials to the extent required to demonstrate compliance with applicable Law or pursuant to internal compliance procedures, (B) copies of such books, records or other materials to the extent they are relevant to any Excluded Assets and (C) such books, records or other materials in the form of so-called "back-up" electronic tapes in the ordinary course of business consistent with past practice;

(m) The insurance policies and binders and interests in insurance pools and programs and self-insurance arrangements listed in Section 2.4(m) of the Seller Disclosure Schedules (the "Business Insurance Policies") for all periods before, through and after the Closing, including any and all refunds and credits due or to become due thereunder and any and all claims, rights to make claims and rights to proceeds on any such insurance policies, binders and interests for all periods before, through and after the Closing;

(n) Except as set forth in Article VI, any and all assets of the Purchased Entity Benefit Plans;

(o) The assets set forth on Section 2.4(o) of the Seller Disclosure Schedules; and

(p) Any other assets exclusively used, or held exclusively for use, in the operation of the Business (other than any assets identified as Excluded Assets in Section 2.5).

Any assets of the Purchased Companies and their Subsidiaries that constitute Purchased Assets hereunder shall be deemed Purchased Assets to the extent of the Purchased Entities' and their Subsidiaries' right, title and interest therein; provided that the transfer of such assets shall be effected solely by virtue of the transfer of the Seller Entities' right, title and interest in the Purchased Entity Shares and not through the direct transfer of such assets to Purchaser, and Seller and its Affiliates shall not be required to transfer any such assets of the Purchased Companies and their Subsidiaries other than through the transfer of the Seller Entities' right, title and interest in the Purchased Entity Shares. For the avoidance of doubt, Seller and its Affiliates shall not be required to transfer any assets of the Purchased Ventures (or their Subsidiaries) other than through the indirect transfer of the Seller Entities' right, title and interest in the Purchased Venture Interests.

The Parties acknowledge and agree that a single asset may fall within more than one of clauses (a) through (p) in this Section 2.4; such fact does not imply that (i) such asset shall be transferred more than once or (ii) any duplication of such asset is required.

Section 2.5 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, Purchaser expressly understands and agrees that it shall not acquire any interest in any of the assets and properties of the Seller Entities or any of their Affiliates which are not exclusively used, or held exclusively for use, in the operation of the Business (including all assets, business lines, properties, rights, Contracts and claims constituting ownership interests in, or that are used or held for use in or related to, the Retained Businesses), or any assets that are set forth on Section 2.5 of the Seller Disclosure Schedules, in each case wherever located, whether tangible or intangible, real, personal or mixed (the "Excluded Assets"). The Parties acknowledge and agree that neither Purchaser nor any of its Subsidiaries will acquire any direct or indirect right, title and interest in any Excluded Assets. Notwithstanding anything in this Agreement to the contrary, Seller may, upon prior written notice to Purchaser, take (or cause one or more of its Affiliates to take) such action as is necessary, advisable or desirable to transfer any Excluded Assets from the Purchased Companies and their Subsidiaries (and, if needed, from the Seller Entities) to Seller or one or more of its Affiliates for such consideration or for no consideration, as may be determined by Seller in its sole discretion.

Section 2.6 Assumed Liabilities. Subject to the terms and conditions of this Agreement, at the Closing, Purchaser shall assume and hereby agrees to, and to cause the Purchased Companies and their Subsidiaries to, pay, satisfy, discharge and perform only those Liabilities of the Seller Entities and their Affiliates (x) to the extent related to or arising out of the Purchased Assets, the Business or the Purchased Companies (or their Subsidiaries) or (y) to the extent (i) included in the calculation of the Closing Working Capital, or (ii) reflected or reserved against on the most recent balance sheet included in the Business Financial Information (the "Assumed Liabilities"), in each case whether accruing or arising prior to, on or after Closing.

Section 2.7 Retained Liabilities. The Seller Entities and their Affiliates shall retain, and Purchaser shall not assume, any Liabilities of the Seller Entities and their Affiliates which are not Assumed Liabilities, including the following (the "Retained Liabilities"):

(a) Any Indebtedness of the Seller Entities and their Subsidiaries (other than the Purchased Companies or their Subsidiaries, and without limiting Purchaser's obligations pursuant to Section 5.7);

(b) Liabilities for which any Seller Entity (other than the Purchased Companies or their Subsidiaries) expressly has responsibility pursuant to this Agreement;

(c) Liabilities arising out of or related to the Excluded Assets (other than any such Liabilities for which Purchaser or any of its Affiliates expressly has responsibility pursuant to the terms of this Agreement or any Transaction Document);

(d) Except as set forth in Article VI, Liabilities relating to or arising out of any Seller Benefit Plan (other than a Purchased Entity Benefit Plan);

(e) Except as set forth in Article VI or with respect to a Purchased Entity Benefit Plan, Liabilities related to the current and former employees of Seller and its Affiliates (other than the Purchased Entities), other than Business Employees and Former Business Employees (for the avoidance of doubt, Liabilities related to any employee or former employee of any Purchased Venture shall not be Retained Liabilities);

(f) Liabilities for Excluded Business Taxes; and

(g) Fees and expenses of brokers, finders, outside counsel, financial advisors, accountants, consultants and other professional advisors incurred by Seller or any of its Affiliates at or prior to the Closing specifically in connection with the negotiation, execution and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby.

Section 2.8 Closing Deliveries.

(a) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller (or one or more other Seller Entities designated by Seller) the following:

(i) payment, by wire transfer(s) to one or more bank accounts designated in writing by Seller (such designation to be made by Seller at least two (2) Business Days prior to the Closing Date), an amount in immediately available funds equal to the Closing Purchase Price;

(ii) the certificate to be delivered pursuant to Section 8.3(c);

(iii) a counterpart of the Transition Services Agreement, in substantially the form attached as Exhibit A hereto (the "Transition Services Agreement"), duly executed by Purchaser;

(iv) a counterpart of the Seller Parent Conditional Guaranty, duly executed by Purchaser;

(v) to the extent any Purchased Asset (other than the Purchased Entity Shares) or Assumed Liability is not held by a Purchased Company or Subsidiary thereof, a counterpart of an Assignment and Assumption Agreement and Bill of Sale providing for the transfer of the Seller Entities' right, title and interest as of the Closing in and to the Purchased Assets (other than the Purchased Entity Shares) and the assumption by Purchaser of the Assumed Liabilities in accordance with and subject to this Agreement, by and between the applicable Seller Entities and Purchaser, in customary form (the "Assignment Agreement and Bill of Sale"), duly executed by Purchaser, to the extent applicable; and

(vi) any other instruments necessary and appropriate to evidence Purchaser's assumption of the Assumed Liabilities pursuant to and in accordance with this Agreement, in each case duly executed by Purchaser, to the extent applicable.

(b) At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

(i) the certificate to be delivered pursuant to Section 8.2(c);

(ii) a counterpart of the Transition Services Agreement, duly executed by the Seller Entity named as a party thereto;

(iii) a counterpart of the Seller Parent Conditional Guaranty, duly executed by Seller Parent;

(iv) certificates evidencing the Purchased Entity Shares, to the extent that such Purchased Entity Shares are in certificate form, duly endorsed in blank or with stock powers duly executed in proper form for transfer, and, to the extent such Purchased Entity Shares are not in certificated form, other evidence of ownership or assignment;

(v) to the extent any Purchased Asset (other than the Purchased Entity Shares) or Assumed Liability is not held by a Purchased Company or Subsidiary thereof, a counterpart of the Assignment Agreement and Bill of Sale duly executed by each Seller Entity named as a party thereto, to the extent applicable;

(vi) a certificate substantially in the form provided in Treasury Regulations section 1.1445-2(b)(2)(iv)(B), certifying that Seller is not a foreign person within the meaning of Treasury Regulations section 1.1445-2(b)(2); and

(vii) any other instruments of transfer necessary and appropriate to evidence the transfer of the Seller Entities' right, title and interest in the Purchased Assets pursuant to and in accordance with this Agreement duly executed by each Seller Entity named as a party thereto, to the extent applicable.

Section 2.9 Adjustment to Base Purchase Price.

(a) Section 2.9(a) of the Seller Disclosure Schedules sets forth a calculation of the Working Capital, the Cash Amounts and the Funded Debt of the Business, in each case, as of September 30, 2020 (the "Sample Closing Statement"), including the asset and liability line items included in the calculation of Working Capital, prepared in accordance with GAAP, applied on a basis consistent with the accounting principles, practices, procedures, methodologies and policies that were employed in preparing the Business Financial Information (with consistent classifications, judgments, inclusions, exclusions and valuation and estimation methodologies), as modified by the accounting principles set forth on Section 2.9(a) of the Seller Disclosure Schedules (collectively, the "Transaction Accounting Principles").

(b) At least two (2) Business Days prior to the Closing Date, Seller shall cause to be prepared and delivered to Purchaser a closing statement (the "Closing Statement") setting forth Seller's good-faith estimate of (i) the Adjustment Amount (such estimate, the "Estimated Adjustment Amount"), (ii) the Closing Cash Amounts (such estimate, the "Estimated Closing Cash Amounts") and (iii) the Closing Funded Debt (such estimate, the "Estimated Closing Funded Debt"). The Closing Statement shall set forth the calculations of such amounts in a manner consistent with the Sample Closing Statement and be prepared in accordance with the Transaction Accounting Principles, including the use of the same line items and line item entries set forth on and used in the preparation of the Sample Closing Statement. The Estimated Adjustment Amount and the Estimated Closing Funded Debt shall be used to calculate the Closing Purchase Price to be paid by Purchaser to Seller at the Closing. Purchaser agrees that, following the Closing through the date that the Post-Closing Statement becomes final and binding in accordance with this Section 2.9, it will not take any actions with respect to any accounting books, records, policies or procedures on which the Sample Closing Statement or the Closing Statement is based, or on which the Post-Closing Statement is to be based, that are inconsistent with the ordinary course past practice of the Business (or of Seller or any of its Affiliates with respect to the Business) prior to the Closing or that would impede or delay the final determination of the Post-Closing Statement. Without limiting the generality of the foregoing, no changes shall be made (including any changes reflected in the Post-Closing Statement) in any reserve or other account existing as of the date of the most recent balance sheet included in the Business Financial Information or other amount reflected in such balance sheet, except as a result of events occurring after such date and prior to the Closing and, in such event, only in a manner consistent with the Transaction Accounting Principles.

(c) As promptly as reasonably possible and in any event within sixty (60) days after the Closing Date, Purchaser shall prepare or cause to be prepared, and will provide to Seller, a written statement (the "Post-Closing Statement"), setting forth a good-faith calculation of the Adjustment Amount, the Closing Cash Amounts and the Closing Funded Debt. The Post-Closing Statement shall set forth in reasonable detail Purchaser's calculations of such amounts in a manner consistent with the Sample Closing Statement and shall be prepared in accordance with the Transaction Accounting Principles, including the use of the same line items and line item entries set forth on and used in the preparation of the Sample Closing Statement.

(d) Within forty-five (45) days following receipt by Seller of the Post-Closing Statement, Seller shall deliver written notice to Purchaser of any dispute Seller has with respect to the calculation, preparation or content of the Post-Closing Statement (the "Dispute Notice"); provided, however, that if Seller does not deliver any Dispute Notice to Purchaser within such forty-five (45)-day period, the Post-Closing Statement will be final, conclusive and binding on the Parties. The Dispute Notice shall set forth in reasonable detail (i) any item on the Post-Closing Statement that Seller disputes, together with reasonable detail of the basis for such dispute and (ii) Seller's calculation of the amount of such item. Upon receipt by Purchaser of a Dispute Notice, Purchaser and Seller shall negotiate in good faith to resolve any dispute set forth therein. If Purchaser and Seller fail to resolve any such dispute within thirty (30) days after delivery of the Dispute Notice (the "Dispute Resolution Period"), then Purchaser and Seller jointly shall engage, within ten (10) Business Days following the expiration of the Dispute Resolution Period, a nationally recognized independent accounting firm selected jointly by Seller and Purchaser (the "Independent Accounting Firm") to resolve any such dispute; provided that, if Seller and Purchaser are unable to agree on the Independent Accounting Firm, then each of Seller and Purchaser shall select a nationally recognized independent accounting firm, and the two (2) firms will mutually select a third (3rd) nationally recognized independent accounting firm to serve as the Independent Accounting Firm. As promptly as practicable, and in any event not more than fifteen (15) days following the engagement of the Independent Accounting Firm, Purchaser and Seller shall each prepare and submit a presentation detailing such Party's complete statement of proposed resolution of each issue still in dispute to the Independent Accounting Firm (and such presentation, and all other communications with the Independent Accounting Firm, will be simultaneously made or delivered to the other Party). Purchaser and Seller shall instruct the Independent Accounting Firm to, as soon as practicable after the submission of the presentations described in the immediately preceding sentence and in any event not more than twenty (20) days following such presentations, make a final determination of the appropriate amount of each of the line items that remain in dispute as indicated in the Dispute Notice (and that have not been thereafter resolved by written agreement of the Parties). With respect to each disputed line item, such determination, if not in accordance with the position of either Seller or Purchaser, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by Seller or Purchaser, as applicable, in the Dispute Notice and the Post-Closing Statement, respectively. Notwithstanding the foregoing, the scope of the disputes to be resolved by the Independent Accounting Firm shall be limited to those line items that remain in dispute as indicated in the Dispute Notice (and that have not been thereafter resolved by written agreement of the Parties) and whether any disputed determinations of the Adjustment Amount, the Closing Cash Amounts and the Closing Funded Debt were properly calculated in accordance with the Transaction Accounting Principles and the provisions of this Agreement. All fees and expenses relating to the work, if any, to be performed by the Independent Accounting Firm shall be allocated between Seller and Purchaser in the same proportion that the aggregate dollar amount of line items unsuccessfully disputed or defended, as the case may be, by each such Party (as finally determined by the Independent Accounting Firm) bears to the total dollar amount of disputed line items presented by both Parties. All determinations made by the Independent Accounting Firm, and the Post-Closing Statement, as modified by the Independent Accounting Firm and to reflect any items resolved by written agreement of the Parties, will be final, conclusive and binding on the Parties absent manifest error.

(e) For purposes of complying with the terms set forth in this Section 2.9, each of Seller and Purchaser shall reasonably cooperate with and make available to each other, the Independent Accounting Firm and each of their respective Representatives all information, records, data and working papers, in each case to the extent related to the Purchased Assets, Assumed Liabilities, Business, or Purchased Companies (and Subsidiaries thereof), and shall permit access to its and their facilities and personnel, as may be reasonably required in connection with the preparation, analysis and review of the Post-Closing Statement and the resolution of any disputes thereunder.

(f) The "Final Purchase Price" means the Base Purchase Price, *plus* (i) the Closing Cash Amounts, *plus* (ii) the Adjustment Amount (which may be a positive or negative number), *minus* (iii) the Closing Funded Debt, in the case of each of clauses (i), (ii) and (iii), as finally determined pursuant to Section 2.9(d).

(g) If the Closing Purchase Price shall exceed the Final Purchase Price, then Seller shall pay or cause to be paid an amount in cash equal to such excess to Purchaser by wire transfer of immediately available funds to an account or accounts designated in writing by Purchaser to Seller; or if the Final Purchase Price shall exceed the Closing Purchase Price, then Purchaser shall pay or cause to be paid an amount in cash equal to such excess to Seller by wire transfer of immediately available funds to an account or accounts designated in writing by Seller to Purchaser. Any such payment is to be made within five (5) Business Days of the date on which the Adjustment Amount, the Closing Cash Amounts and the Closing Funded Debt are finally determined pursuant to this Section 2.9.

(h) The process set forth in this Section 2.9 shall be the sole and exclusive remedy of any of the Parties and their respective Affiliates for any disputes related to the Closing Working Capital, the Adjustment Amount, the Closing Cash Amounts, the Closing Funded Debt, the Closing Purchase Price, the Final Purchase Price and the calculations and amounts on which they are based or set forth in the related statements and notices delivered in connection therewith.

Section 2.10 Non-Assignment; Consents.

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to sell, assign, transfer or convey any Purchased Asset (other than any Purchased Entity Shares) if an attempted sale, assignment, transfer or conveyance thereof in connection with the Transaction or the other transactions contemplated by this Agreement would be prohibited by Law or would, without the approval, authorization or consent of, Filing with, or granting or issuance of any license, order, waiver or permit by, any third party or Governmental Entity (collectively, "Approvals"), (i) constitute a breach or other contravention in respect thereof, (ii) be ineffective, void or voidable, or (iii) adversely affect the rights thereunder of the Seller Entities, Purchaser, or any of their respective officers, directors, agents or Affiliates, unless and until such Approval is obtained.

(b) Seller and Purchaser shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to obtain, or cause to be obtained, at no cost to Seller or any of its Affiliates, any Approval (other than Regulatory Approvals, which shall be governed by Section 5.1) required to sell, assign or transfer any Purchased Asset (other than any Purchased Entity Shares) and to obtain the unconditional release of Seller and its Affiliates so that Purchaser and its Affiliates shall be solely responsible for the Assumed Liabilities. If any such Approval is not obtained prior to Closing, the Closing shall nonetheless take place subject only to the satisfaction or waiver of the conditions set forth in Article VIII, and until the earlier of (1) such time as such Approval or Approvals are obtained and (2) the later of (A) five (5) years following the Closing and (B) to the extent any such Approval is in respect of a Purchased Asset (other than any Purchased Entity Shares) that is or arises out of a Contract, the expiration of such Contract in accordance with its terms, the Parties will cooperate and use commercially reasonable efforts to implement any arrangement reasonably acceptable to the Parties intended to both (x) provide Purchaser, to the fullest extent practicable, the claims, rights and benefits of any such Purchased Assets and (y) cause Purchaser to bear all costs and Liabilities thereunder from and after the Closing in accordance with this Agreement (including by means of any subcontracting, sublicensing or subleasing arrangement). In furtherance of the foregoing, from and after the Closing, Purchaser will promptly pay, satisfy, perform and discharge when due any Liability (including any liability for Taxes) arising thereunder.

(c) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall require Seller or any of its Affiliates to sell, assign, transfer or convey any Excluded Asset from the Purchased Companies or their Subsidiaries (or from the Seller Entities) to Seller or one or more of its Affiliates if an attempted sale, assignment, transfer or conveyance thereof in connection with the Transaction or the other transactions contemplated by this Agreement would be prohibited by Law or would, without an Approval (i) constitute a breach or other contravention in respect thereof, (ii) be ineffective, void or voidable, or (iii) adversely affect the rights thereunder of the Seller Entities, or any of their respective officers, directors, agents or Affiliates, unless and until such Approval is obtained.

(d) If any such Approval referred to in Section 2.10(c) is not obtained prior to Closing, Seller will notify Purchaser of such fact and the Closing shall nonetheless take place subject only to the satisfaction or waiver of the conditions set forth in Article VIII, and until the earlier of (1) such time as such Approvals are obtained and (2) the later of (A) five (5) years following the Closing Date and (B) to the extent any such Approval is in respect of an Excluded Asset that is or arises out of a Contract, the expiration of such Contract in accordance with its terms, the Parties will cooperate and use commercially reasonable efforts to implement any arrangement reasonably acceptable to Purchaser and Seller intended to both (x) provide Seller and its Affiliates, to the fullest extent practicable, the claims, rights and benefits of any such Excluded Asset and (y) cause Seller to bear all costs and Liabilities thereunder from and after the Closing in accordance with this Agreement (including by means of any subcontracting, sublicensing or subleasing arrangement). In furtherance of the foregoing, from and after the Closing, Seller will promptly pay, satisfy, perform and discharge when due any Liability (including any liability for Taxes) arising thereunder.

(e) Any Contract entered into prior to the Closing with a third party to which Seller or any of its Affiliates is a party that does not exclusively relate to the Business (and is not otherwise set forth on Section 2.4(b)(i) of the Seller Disclosure Schedules) but inures to the benefit or burden of both the Business and the Retained Businesses, other than any enterprise-wide Contracts, Contracts with respect to off-the-shelf software and Contracts with any Taxing Authority (each, a "Shared Contract") shall constitute a Purchased Asset and be assigned, transferred and conveyed subject to the terms and conditions of this Agreement (including the other provisions of this Section 2.10) only with respect to (and preserving the meaning of) those parts that relate to the Business, to either a Purchased Entity (or Subsidiary thereof) or Purchaser, if so assignable, transferrable or conveyable, or appropriately amended prior to, on or after the Closing, so that Purchaser shall be entitled to the rights and benefits of those parts of the Shared Contract that relate to the Business and shall assume the related portion of any Liabilities contemplated by this Agreement; provided, however, that (i) in no event shall any Person be required to assign (or amend), either in its entirety or in part, any Shared Contract that is not assignable (or cannot be amended) by its terms without obtaining one or more Approvals and (ii) if any Shared Contract cannot be so partially assigned by its terms or otherwise, or cannot be amended, without such Approval or Approvals, until the earlier of such time as such Approval or Approvals are obtained or two (2) years following the Closing, the Parties will cooperate and use commercially reasonable efforts to establish an agency type or other similar arrangement reasonably satisfactory to Seller and Purchaser intended to both (x) provide Purchaser, to the fullest extent practicable under such Shared Contract, the claims, rights and benefits of those parts that relate to the Business and (y) cause Purchaser to bear all costs and Liabilities of those parts that relate to the Business from and after the Closing in accordance with this Agreement (including by means of any subcontracting, sublicensing or subleasing arrangement). In furtherance of the foregoing, from and after the Closing, Purchaser will promptly pay, satisfy, perform and discharge when due any Liability (including any liability for Taxes) arising under the parts of any such Shared Contract to the extent related to the Business.

(f) Purchaser shall indemnify and hold Seller, the Seller Entities and their respective Affiliates harmless from and against all Liabilities relating to or arising out of the portions of any Shared Contracts that relate to the Business, and Seller Parent shall indemnify and hold Purchaser and its Affiliates (which for avoidance of doubt shall include the Purchased Companies and their Subsidiaries) harmless from and against all Liabilities relating to or arising out of the portions of any Shared Contracts that do not relate to the Business. Notwithstanding anything in this Agreement to the contrary, any transfer or assignment to Purchaser of any Purchased Asset or any part of a Shared Contract that shall require an Approval as described above in this Section 2.10 shall be made subject to such Approval being obtained, and neither Seller nor any of its Affiliates shall be required to agree to any arrangement or take any action in connection with the matters contemplated by this Section 2.10 that would, in Seller's good-faith judgment, (i) constitute a breach or other contravention in respect of any Purchased Assets or Shared Contract, (ii) be ineffective, void or voidable, (iii) adversely affect the rights thereunder of the Seller Entities or any of their respective officers, directors, agents or Affiliates, or (iv) require Seller or any of its Affiliates to pay or commit to pay any amount or incur any obligation in favor of or offer or grant any accommodation (financial or otherwise, regardless of any provision to the contrary in the underlying Contract, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any Person. Without limiting Section 2.10(b), notwithstanding the fact that any applicable Approval is not obtained prior to the Closing, each of the assets described in Section 2.4 shall be deemed to be Purchased Assets under this Agreement and each of the Liabilities described in Section 2.6 shall be deemed to be Assumed Liabilities under this Agreement, including in each case for purposes of the calculation of Working Capital.

Section 2.11 Earn-Out Payment.

(a) Following the Closing, Seller shall be entitled to receive an additional cash payment (the "Earn-Out Payment") of (i) if the aggregate Adjusted EBITDA of the Business for the Reference Period is greater than or equal to One Hundred Twenty Seven Million Five Hundred Thousand Dollars ($127,500,000) but less than One Hundred Seventy Two Million Dollars ($172,000,000), then Forty-Five Million Dollars ($45,000,000) and (ii) if the aggregate Adjusted EBITDA of the Business for the Reference Period is greater than or equal to One Hundred Seventy Two Million Dollars ($172,000,000) (the "EBITDA Target"), then Seventy Million Dollars ($70,000,000). Purchaser shall deliver to Seller (or to any Affiliate of Seller designated by Seller) by wire transfer, to an account or accounts designated by Seller (or by such Affiliate), immediately available funds in an amount equal to the Earn-Out Payment within three (3) Business Days of the final determination of the Adjusted EBITDA of the Business for the Reference Period and the Earn-Out Payment pursuant to Section 2.12.

(b) From and after the Closing and until the completion of the Reference Period, Purchaser covenants and agrees that Purchaser shall, and shall cause its Affiliates (including the Purchased Companies and their Subsidiaries) to (i) operate the Business and the Purchased Companies and their Subsidiaries in good faith and not take any action or fail to take any action with the purpose of avoiding or reducing the Earn-Out Payment payable to Seller hereunder; (ii) operate the Business and the Purchased Companies and their Subsidiaries in substantially the same manner as Purchaser and its Affiliates would if all of the benefits and costs related to such operation (including the Earn-Out Payment) were for the sole benefit and account of Purchaser; and (iii) maintain separate records for the Business so as to enable Purchaser to prepare the Earn-Out Payment Statement and calculate the Earn-Out Payment accurately and correctly (and for Seller to review the same) and in accordance with Section 2.11 and this Section 2.12. The right of Seller to receive any Earn-Out Payment Amount is solely a contractual right (and not a fiduciary relationship) between Purchaser and Seller. For the avoidance of doubt, the Earn-Out Payment shall be considered a component of purchase price, including for tax and accounting purposes.

Section 2.12 Payment Procedures.

(a) Promptly following completion of the annual financial statements of the Business for the fiscal year ending September 30, 2023 and in no event later than January 31, 2024, Purchaser shall prepare in good faith and deliver to Seller a true and correct statement of the Adjusted EBITDA of the Business for the Reference Period, which shall be derived from the audited financial statements of the Business for the Reference Period and calculated in a manner consistent with the illustrative calculation and principles set forth on Section 1.1(a) of the Seller Disclosure Schedules, and the resulting Earn-Out Payment (the "Earn-Out Statement"). Promptly following completion of (i) the GGB Project and the final resolution of all GGB Claims and (ii) the receipt of any GGB Claim Recoveries (and in no event later than sixty (60) days following any such event), Purchaser shall prepare in good faith and deliver to Seller a true and correct statement of the aggregate GGB Losses as of such date, which shall be calculated in a manner consistent with the illustrative calculation and principles set forth on Section 1.1(d) of the Seller Disclosure Schedules, and the resulting amount of any Retained Claim Recovery payable to Seller Parent in respect of GGB Claim Recoveries in accordance with this Section 2.12 and Section 2.13 (the "GGB Loss Statement" and each such GGB Loss Statement or the Earn-Out Statement, a "Statement"). After receipt of a Statement, Seller shall have forty-five (45) days (in respect of each Statement, a "Review Period") to review such Statement. Each Statement shall set forth in reasonable detail Purchaser's calculations of the applicable amounts. Until the final determination of the Earn-Out Payment, the aggregate GGB Losses and the aggregate Retained Claim Recovery payable to Seller Parent (or its designated Subsidiaries) hereunder in respect of GGB Claim Recoveries, Seller and its Representatives shall be permitted to access and review the books, records and work papers of Purchaser and its Affiliates (including the Purchased Companies and their Subsidiaries) for the purpose of enabling Seller and its Representatives to review any Statement (and to prepare any objections to such Statement) and Purchaser's compliance with its applicable obligations under Section 2.11, this Section 2.12 and Section 2.13, or otherwise in connection with the Earn-Out Payment, the GGB Claims, the GGB Claim Recoveries, Seller Parent's Applicable GGB Portion or the GGB Losses, and Purchaser shall, and shall cause its Affiliates and its and their respective employees, accountants and other Representatives to, reasonably cooperate with and assist Seller and its Representatives in connection with such review, including by providing access to such books, records and work papers and making available personnel to the extent requested, in each case, upon reasonable notice and during normal business hours. In addition, promptly following the reasonable request of Seller Parent (and in no event later than thirty (30) days following any such reasonable request), Purchaser shall prepare and deliver to Seller Parent such information as Seller Parent reasonably requests, including a calculation of Adjusted EBITDA, GGB Losses, Seller Parent's Applicable Portion of GGB Claim Recoveries, expected GGB Claim Recoveries or any component of the foregoing, in each case as of a date no more than sixty (60) and no later than thirty (30) days prior to such request.

(b) In the event that Seller disputes the manner in which the Earn-Out Statement or a GGB Loss Statement has been prepared or the calculation of the Adjusted EBITDA of the Business for the Reference Period, the Earn-Out Payment, the GGB Losses, Seller Parent's Applicable GGB Portion or any Retained Claim Recovery in respect of GGB Claim Recoveries, Seller shall give written notice thereof to Purchaser within the Review Period (the "Deferred Payment Dispute Notice"). During the fifteen (15)-day period following Purchaser's receipt of the Deferred Payment Dispute Notice, Purchaser and Seller shall negotiate in good faith to resolve any differences that they may have with respect to the matters identified in the Deferred Payment Dispute Notice. If at the end of such fifteen (15)-day period Seller and Purchaser have been unable to resolve any such differences, Seller and Purchaser shall submit all matters that remain in dispute to the Independent Accounting Firm for resolution as though it were a dispute pursuant to Section 2.9, and the dispute resolution provisions of Section 2.9(d) and Section 2.9(e) shall apply *mutatis mutandis* to such dispute. The Adjusted EBITDA of the Business and resulting Earn-Out Payment or the GGB Losses and the resulting Retained Claim Recovery (i) as set forth in the applicable Statement, if Seller does not deliver to Purchaser a Deferred Payment Dispute Notice with respect thereto during the Review Period, (ii) as determined by the Independent Accounting Firm pursuant to this Section 2.12(b) (absent manifest error) or (iii) as agreed in writing between Seller and Purchaser, as the case may be, shall constitute the final determination of the Adjusted EBITDA of the Business, the Earn-Out Payment, GGB Losses (as of the date of determination), or any Retained Claim Recovery in respect of a GGB Claim Recovery (as of the date of determination) as applicable, and shall be final and binding upon the Parties, and the Earn-Out Payment or such Retained Claim Recovery, if any, as so determined shall be paid to Seller in accordance with Section 2.11 or Section 2.13, as applicable.

Section 2.13 Retained Claim Reimbursement.

(a) Subject to the other terms and conditions of this Agreement, Purchaser shall from time to time deliver to Seller Parent or its designated Subsidiaries in cash an aggregate amount (each such payment, a "Retained Claim Recovery") equal to:

(i) With respect to the GDB Project: (A) the Seller Parent's Applicable GDB Portion *multiplied by* (B) the amount of any cash, cash equivalents or other assets paid to, received by or otherwise recovered (including, for the avoidance of doubt, from clients, subcontractors, joint venture partners or insurers) by Purchaser or any of its Affiliates or any of its or their successors or assigns, in each case to the extent arising out of, relating to or resulting from, any GDB Claims ("GDB Claim Recoveries") as and when any such GDB Claim Recoveries are received or recovered at the time set forth in Section 2.13(b) below; provided that, for the purpose of determining any Retained Claim Recovery, the amount of any GDB Claim Recovery shall, without duplication, be reduced (but not below Zero Dollars ($0)) by any Unreimbursed GDB Claim Expenses, in each case that have been incurred by Purchaser or its Affiliates but not reimbursed in accordance with Section 2.13(e) as of immediately prior to Purchaser's or its Affiliates' or any of its or their applicable successor's or assign's receipt of such GDB Claim Recovery (it being understood and agreed that any such Unreimbursed GDB Claim Expenses that reduce any payment of Retained Claim Recovery shall not be subsequently applied to reduce any future payment of Retained Claim Recovery). "Seller Parent's Applicable GDB Portion" means, with respect to any GDB Claim Recovery, eighty percent (80%) until Seller Parent has received Sixty Four Million Dollars ($64,000,000) solely in respect of GDB Claim Recoveries and thereafter fifty percent (50%).

(ii) With respect to the GGB Project: (A) the Seller Parent's Applicable GGB Portion *multiplied by* (B) the amount of any cash, cash equivalents or other assets paid to, received by or otherwise recovered (including, for the avoidance of doubt, from clients, subcontractors, joint venture partners or insurers) by Purchaser or any of its Affiliates or any of its or their successors or assigns, in each case to the extent arising out of, relating to or resulting from, any GGB Claims ("GGB Claim Recoveries" and any GDB Claim Recovery or GGB Claim Recovery, a "Claim Recovery") as and when any such GGB Claim Recoveries are received or recovered at the time set forth in Section 2.13(b) below; provided that, except as set forth below, for the purpose of determining any Retained Claim Recovery, the amount of any GGB Claim Recovery shall, without duplication be reduced (but not below Zero Dollars ($0)) by any Unreimbursed GGB Claim Expenses, in each case that have been incurred by Purchaser or its Affiliates but not reimbursed in accordance with Section 2.13(e) as of immediately prior to Purchaser's or its Affiliates' or any of its or their applicable successor's or assign's receipt of such Claim Recovery (it being understood and agreed that any such Unreimbursed Claim Expenses that reduce any payment of Retained Claim Recovery shall not be subsequently applied to reduce any future payment of Retained Claim Recovery). "Seller Parent's Applicable GGB Portion" means with respect to any GGB Claim Recovery, Seventy Five Percent (75%) until Seller Parent has received Seventy Million Dollars ($70,000,000) solely in respect of GGB Claim Recoveries; provided that if the amount (which, for the avoidance of doubt, shall not be a negative number) by which GGB Losses exceed Fifty Million Dollars ($50,000,000) is greater than Eighty Percent (80%) of the aggregate GGB Claim Recoveries (gross of GGB Claim Expenses), then to the extent that the payment of all or a portion of Retained Claim Recovery with respect to any such GGB Claim Recovery would cause the aggregate Retained Claim Recovery received by Seller Parent (or its designated Subsidiaries) hereunder solely in respect of GGB Claim Recoveries to exceed Twenty Percent (20%) of the aggregate GGB Claim Recoveries (net of Unreimbursed GGB Claim Expenses) (an "Excess Allotment"), then Purchaser may withhold such portion and only such portion that would cause such Excess Allotment from the payment of Retained Claim Recovery with respect to such GGB Claim Recovery until such time as the payment thereof would not cause an Excess Allotment based on all GGB Claim Recoveries and payments of Retained Claim Recovery in respect of GGB Claim Recoveries as of such time. To the extent that, following the payment of any Retained Claim Recovery in respect of GGB Claim Recoveries, subsequent events would (i) result in a different Seller Parent's Applicable GGB Portion with respect to GGB Claim Recoveries than that used to calculate such payment of Retained Claim Recovery because of a change in GGB Losses or (ii) make the proviso of the immediately preceding sentence inapplicable to any payment of Retained Claim Recovery (or reduce its impact thereon) if such payment were re-determined as of a subsequent date, the Parties agree that, upon completion of the GGB Project and the final resolution of all GGB Claims, the previous payments of Retained Claim Recovery solely in respect of GGB Claim Recoveries shall be re-determined at such time and the Parties shall make such payments to one another as are necessary to give effect to such re-determination.

(b) If any Claim Recovery is in the form of cash or cash equivalents, Purchaser shall deliver to Seller Parent or its designated Subsidiaries, by wire transfer in immediately available funds, an amount equal to the Retained Claim Recovery in respect of such Claim Recovery within three (3) Business Days of Purchaser's or its Affiliates' or any of its or their applicable successor's or assign's receipt of such Claim Recovery. If any Claim Recovery is in a form other than cash or cash equivalents, the Retained Claim Recovery in respect of such Claim Recovery shall be determined based on the fair market value of such Claim Recovery (determined by a mutually agreed independent expert if the Parties cannot otherwise agree on such value) as of the date of Purchaser's or its Affiliates' or their applicable successor's or assign's receipt of such Claim Recovery and be paid as promptly as practicable and in no event more than thirty (30) days following the date on which it would have been paid pursuant the preceding sentence if in the form of cash or cash equivalents.

(c) From and after the Closing and until the final resolution of all GDB Claims and GGB Claims (as applicable), Purchaser shall, and shall cause its Affiliates to, (i) not knowingly take any action or fail to take any action with the purpose of avoiding or reducing any Retained Claim Recovery payable to Seller Parent or its designated Subsidiaries hereunder and (ii) continue to pursue all GDB Claims and GGB Claims in substantially the same manner as Purchaser and its Affiliates would if all of the benefits related to the GDB Claims and GGB Claims (including the full value of any Claim Recoveries) were for the sole benefit of Purchaser and its Affiliates.

(d) Notwithstanding anything to the contrary in this Agreement, Purchaser shall use reasonable efforts to keep Seller Parent informed of developments with respect to Purchaser's pursuit, prosecution or settlement of, any GDB Claim or GGB Claim; provided, that all decisions which in any way relate to the pursuit or prosecution of any GDB Claim or GGB Claim shall be made by Purchaser; provided that Purchaser shall keep Seller Parent reasonably informed of, and shall provide Seller Parent and its Representatives with reasonable advance notice and opportunity to comment on (and shall consider in good faith any such comments), any of the following items in connection with any GDB Claim or GGB Claim: (i) the engagement or modification or termination of the engagement of, outside counsel or any other third-party advisor; (ii) the making of any filing with or other submission to any Governmental Entity, including in any Proceeding, or the provision of any substantive written correspondence to or engage in any substantive communications with any counterparty to any GDB Claim or GGB Claim (or any Representative of any such counterparty); or (iii) any settlement, resolution, compromise or consent to the entry of any Judgment. In addition, Purchaser shall provide Seller Parent with reasonable advance notice and the opportunity for Seller Parent or its Representatives to attend or participate in any settlement discussions with any Governmental Entity or counterparty to any GDB Claim or GGB Claim (or any Representative of the foregoing), in each case with respect to any GDB Claim or GGB Claim.

(e) From and after the Closing and until the final resolution of all GDB Claims and GGB Claims, the Parties shall, and shall cause their respective Affiliates and Representatives to, reasonably cooperate with one another and their Affiliates (including the Purchased Companies) and Representatives in connection with the pursuit, prosecution or settlement of any GDB Claim or GGB Claim. If reasonably requested by either Party, Seller Parent and Purchaser and/or their respective Affiliates shall enter into one or more customary common interest agreements to facilitate the sharing of any information provided pursuant to this Section 2.13(e).

(f) For the avoidance of doubt, Purchaser's reasonable and documented out-of-pocket third party costs and expenses (including fees of outside counsel) incurred following the Closing in connection with the pursuit, prosecution or settlement of any GDB Claims ("GDB Claim Expenses") and GGB Claims ("GGB Claim Expenses," and collectively with GDB Claim Expenses, "Claim Expenses") shall be borne by Purchaser; provided, that, upon Purchaser's or its Affiliates' or any of its or their applicable successor's or assign's receipt of a (x) GDB Claim Recovery, Purchaser shall be entitled to retain from such GDB Claim Recovery, as reimbursement for Purchaser's or its Affiliates' GDB Claim Expenses, or (y) GGB Claim Recovery, Purchaser shall be entitled to retain from such GGB Claim Recovery, as reimbursement for Purchaser's or its Affiliates' GGB Claim Expenses, in each case that have been (i) incurred and paid but not reimbursed or (ii) incurred and are due and owing but have not yet been paid, in each case as of immediately prior to such receipt, an amount equal to the lesser of (A) the amount of such Claim Recovery and (B) the amount of such incurred but unreimbursed reasonable and documented out-of-pocket Claim Expenses in respect of, as applicable, the applicable GDB Claim (such amount, the "Unreimbursed GDB Claim Expenses") or the applicable GGB Claim (such amount, the "Unreimbursed GGB Claim Expenses" and collectively with Unreimbursed GDB Claim Expenses, "Unreimbursed Claim Expenses"). For the avoidance of doubt, in no event shall Purchaser or its Affiliates be entitled to retain from any GDB Claim Recoveries any amounts as reimbursement for any GGB Claim Expenses or from any GGB Claim Recoveries any amounts as reimbursement for any GDB Claim Expenses.

(g) For the avoidance of doubt, the Retained Claim Recovery, Seller Parent's Applicable GDB Portion of any GDB Claim Recoveries, Seller Parent's Applicable GGB Portion of any GGB Claim Recoveries, and the rights to collect such amounts pursuant to underlying contracts, are Excluded Assets. Purchaser and Seller Parent acknowledge and agree that Purchaser will act as agent of Seller Parent or its relevant Subsidiaries for the collection of such amounts and that Purchaser shall not acquire any interest in the Retained Claim Recovery, except to the extent of its Unreimbursed Claim Expenses. To the extent permitted by applicable Law, the Parties shall, and shall cause their respective Affiliates to, treat Seller Parent or its relevant Subsidiaries as the owner of the Retained Claim Recovery, Seller Parent's Applicable GDB Portion of any GDB Claim Recoveries and Seller Parent's Applicable GGB Portion of any GGB Claim Recoveries as of the Closing Date for Tax purposes, and none of Seller Parent, Purchaser or any of their respective Affiliates shall take any position inconsistent with such treatment on any Tax Return or in any Tax Proceeding, in each case, except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of state, local or foreign Law).

Section 2.14 Withholding. Notwithstanding anything in this Agreement to the contrary, each of Purchaser, Seller and their respective Affiliates shall be entitled to withhold and deduct from any amounts otherwise payable pursuant to this Agreement only such amounts as Purchaser, Seller or such Affiliate is required to withhold and deduct with respect to the making of such payment under applicable Tax Laws. Purchaser, Seller or their respective Affiliates, as applicable, shall pay any such withheld or deducted amounts to the appropriate Taxing Authority within the time periods required under applicable Tax Laws. To the extent that amounts are so withheld or deducted and timely paid over to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Notwithstanding the foregoing, (a) at least ten (10) days prior to making any payment pursuant to this Article II, Purchaser shall provide Seller with (x) written notice of any proposed deduction or withholding (which notice shall include a statement of the amounts Purchaser or its Affiliates intend to deduct or withhold in respect of making such payment and the applicable provision of Law requiring such deduction or withholding) and (y) a reasonable opportunity for Seller to provide such forms or other evidence that would eliminate or reduce any such deduction and withholding and (b) Purchaser and Seller (and their respective Affiliates) shall cooperate and consult in good faith to reduce or eliminate the amount of any such deduction and withholding.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Seller Disclosure Schedules, Seller hereby represents and warrants to Purchaser as follows:

Section 3.1 Organization and Standing. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each other Seller Entity is, or will be as of the Closing, a corporation, partnership or other legal entity duly organized, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its organization.

Section 3.2 Purchased Companies; Capital Structure.

(a) Each of the Purchased Entities is, or will be as of the Closing, a corporation, partnership or other legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, with corporate or other similar applicable power and authority to own, lease and operate its properties and assets related to the Business and to carry on its respective business as it pertains to the Business, as currently conducted. Each of the Purchased Entities is, or will be as of the Closing, duly qualified to do business and, where applicable, in good standing in each jurisdiction where the nature of its business or properties makes such qualification necessary, except where the failure to be so qualified or in good standing would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

(b) All of the outstanding equity interests of each of the Purchased Entities are, or will be as of the Closing, validly issued, fully paid and, in the case of any Purchased Entity which is a corporation, non-assessable and, in each case, have not been issued in violation of any preemptive or similar rights. As of the Closing, there will be no outstanding warrants, options, agreements, subscriptions, convertible or exchangeable securities or other commitments pursuant to which any of the Purchased Entities is or may become obligated to issue, sell, purchase, return, redeem or otherwise acquire any equity interests of the Purchased Entities. As of the Closing, there will be no rights of first refusal, rights of first offer, voting trust, stockholder agreements or proxies, to which any Seller Entity is a party with respect to the sale or voting of the equity interests of the Purchased Entities. The Seller Entities own of record and beneficially as of the date of this Agreement, or will own of record and beneficially as of immediately prior to the Closing, the Purchased Entity Shares free and clear of all Liens except for Permitted Liens. Assuming Purchaser has the requisite power and authority to be the lawful owner of the Purchased Entity Shares, at the Closing, good and valid title to the Purchased Entity Shares shall pass to Purchaser, free and clear of any Liens other than those arising under the Securities Act or any applicable state securities Laws.

(c) (i) Section 3.2(c)(i) of the Seller Disclosure Schedules sets forth, as of the date hereof, (A) the name and the jurisdiction of organization of each of the Purchased Entities, (B) the authorized and outstanding equity interests of each of the Purchased Entities and (C) the record owners of such outstanding equity interests and (ii) Section 3.2(c)(ii) of the Seller Disclosure Schedules sets forth, as of the date hereof, the name and the jurisdiction of organization of each Subsidiary of the Purchased Entities. Each such Subsidiary is, or will be as of the Closing, a corporation, partnership or other legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its respective organization, with corporate or other similar applicable power and authority to own, lease and operate its properties and assets related to the Business and to carry on its respective business as it pertains to the Business, as currently conducted. Except as set forth in Section 3.2(c)(ii) of the Seller Disclosure Schedules, all of the outstanding equity interests of each Subsidiary of a Purchased Entity are owned of record and beneficially by such Purchased Entity (or a Subsidiary thereof) as of the date of this Agreement, or will be owned of record and beneficially by such Purchased Entity (or a Subsidiary thereof) as of immediately prior to the Closing. All of the outstanding equity interests of each Subsidiary of a Purchased Entity are, or will be as of the Closing, validly issued, fully paid and, in the case of any such Subsidiary which is a corporation, non-assessable and, in each case, have not been issued in violation of any preemptive or similar rights. As of the Closing, there will be no outstanding warrants, options, agreements, subscriptions, convertible or exchangeable securities or other commitments pursuant to which any Subsidiary of a Purchased Entity is or may become obligated to issue, sell, purchase, return, redeem or otherwise acquire any equity interests of such Subsidiary. As of the Closing, there will be no rights of first refusal, rights of first offer, voting trust, stockholder agreements or proxies (other than pursuant to joint venture agreements set forth in Section 3.2(c)(iii) of the Seller Disclosure Schedules), to which any Seller Entity or Purchased Company (or Subsidiary thereof) is a party with respect to the sale or voting of the equity interests of any Subsidiary of a Purchased Entity.

(d) Section 3.2(d) of the Seller Disclosure Schedules sets forth, as of the date hereof, (i) the name and the jurisdiction of organization of each of the Purchased Ventures, (ii) the authorized and outstanding equity interests of each of the Purchased Ventures and (iii) the record owners of such outstanding equity interests. All of the outstanding Purchased Venture Interests are, or will be as of the Closing, validly issued, fully paid and, in the case of any Purchased Venture Interests with respect to any Purchased Venture which is a corporation, non-assessable. The Seller Entities or a Purchased Entity or Subsidiary thereof own of record and beneficially as of the date of this Agreement, or will own of record and beneficially as of immediately prior to the Closing and have as of the date of this Agreement, or will have as of immediately prior to the Closing, good and valid title to the Purchased Venture Interests free and clear of all Liens except for Permitted Liens. Assuming Purchaser has the requisite power and authority to be the lawful owner of the Purchased Venture Interests, at the Closing, good and valid title to the Purchased Venture Interests owned by any Seller Entity shall pass to Purchaser, free and clear of any Liens other than those arising under the Securities Act or any applicable state securities Laws.

Section 3.3 Authority; Enforceability.

(a) Seller has all requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it will be a party and to perform its obligations hereunder and thereunder, including the consummation of the Transaction and the other transactions contemplated by this Agreement. The execution and delivery by Seller of this Agreement and each such Transaction Document, and the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the Transaction and other transactions contemplated by this Agreement, have been, or will have been as of the Closing, duly authorized by all requisite corporate action. Each other Seller Entity has, or will have as of the Closing, all requisite corporate or other similar applicable power and authority to execute and deliver each Transaction Document to which it will be a party and to perform its obligations thereunder. The execution and delivery by each other Seller Entity of each Transaction Document to which it will be a party, if applicable, and the performance by it of its obligations thereunder, have been, or will have been as of the Closing, duly authorized by all requisite corporate or other similar applicable action.

(b) Each of Seller and each other Seller Entity has, or will have as of the Closing, all requisite corporate or other similar applicable power and authority to carry on its respective business as it pertains to the Business as currently conducted and to own, lease and operate its properties and assets related to the Business, except where the failure to have such power and authority would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

(c) This Agreement has been duly executed and delivered by Seller and Seller Parent and, assuming this Agreement has been duly executed and delivered by Purchaser, constitutes a valid and binding obligation of Seller and Seller Parent, and each other Transaction Document will be as of the Closing duly executed and delivered by each Seller Entity that will be a party thereto and will, assuming such Transaction Document has been duly executed and delivered by Purchaser, constitute a valid and binding obligation of such Seller Entity, in each case enforceable against such Seller Entity in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law).

Section 3.4 No Conflicts; Consents. The execution, delivery and performance of this Agreement by Seller and Seller Parent and the consummation of the transactions contemplated hereby by Seller and Seller Parent do not and will not (a) violate in any material respect any provision of the certificate of incorporation or bylaws of Seller or Seller Parent or the comparable organizational documents of any of the other Seller Entities or any of the Purchased Entities (or any Subsidiary thereof), (b) subject to obtaining the consents set forth in Section 3.4(b) of the Seller Disclosure Schedules, conflict with, constitute a default under, or result in the breach or termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of the Seller Entities or the Purchased Entities (or any Subsidiary thereof) under, or to a loss of any benefit of the Business to which the Seller Entities or the Purchased Entities (or their Subsidiaries) is entitled under any Material Contract, and (c) assuming compliance with the matters set forth in Section 3.5 and Section 4.4, violate or result in a breach of or constitute a default under any Law or other restriction of any Governmental Entity to which any Seller Entity or Purchased Entity (or Subsidiary thereof) is subject; except, with respect to clauses (b) and (c), as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.5 Governmental Authorizations. The execution, delivery and performance of this Agreement by Seller and Seller Parent does not require any Approval of, or Filing with, any Governmental Entity, except for (a) the Approvals and Filings set forth in Section 3.5 of the Seller Disclosure Schedules and (b) Approvals and Filings which if not obtained or made would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.6 Proceedings.

(a) Except as set forth in Section 3.6(a) of the Seller Disclosure Schedules, there is no Proceeding pending or, to the Knowledge of Seller, threatened against (i) a Purchased Entity or any Subsidiaries thereof or (ii) with respect to the Business, the Seller Entities or any properties or rights of a Purchased Entity or its Subsidiaries, in each case before any Governmental Entity, other than Proceedings which if determined in a manner adverse to the applicable Purchased Entity, Subsidiary of a Purchased Entity or Seller Entity or the Business would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

(b) Except as set forth in Section 3.6(b) of the Seller Disclosure Schedules, none of (i) the Purchased Entities or any Subsidiaries thereof or (ii) with respect to the Business, the Seller Entities is, in each case, subject to any outstanding Judgment of any Governmental Entity other than those Judgments that would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.7 Financial Statements; Absence of Undisclosed Liabilities.

(a) Section 3.7(a) of the Seller Disclosure Schedules sets forth copies of (i) pro forma unaudited combined pre-Tax income statement information of the Business for the fiscal years ended September 30, 2020 and September 30, 2019 and the eleven (11) months ended August 31, 2020, and (ii) pro forma unaudited combined pre-Tax balance sheet information of the Business as of September 30, 2020 and September 30, 2019 and as of August 31, 2020 (collectively, and together with any notes thereto, the "Business Financial Information").

(b) The Business Financial Information (i) has been derived from the books and records of Seller and prepared in all material respects in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, subject to normal year-end adjustments and (ii) fairly presents in all material respects (A) the pre-Tax financial condition, assets and liabilities of the Business as of the dates therein specified and (B) the pre-Tax results of operations of the Business for the periods indicated; provided that the Business Financial Information does not reflect certain acquisition-related intangible assets and liabilities of the Business and does not include footnote disclosure; provided, further, that the Business Financial Information and the foregoing representations and warranties are qualified by the fact that the Business has not operated as a separate standalone entity and has received certain allocated charges and credits, including working capital transactions, which do not necessarily reflect amounts that would have resulted from arm's-length transactions or that the Business would incur on a standalone basis.

(c) The Business does not have any Liabilities that would be required by GAAP to be reflected on a balance sheet of the Business, other than Liabilities that: (i) are reflected or reserved against in the most recent balance sheet included in the Business Financial Information as of September 30, 2020 ("Balance Sheet Date"), (ii) were incurred since the Balance Sheet Date in the ordinary course of business consistent with past practice, (iii) are Retained Liabilities or will be reflected, reserved, accrued, recorded or included in the Closing Working Capital, the Adjustment Amount or the Closing Funded Debt, (iv) are expressly permitted by this Agreement or expressly disclosed in the Seller Disclosure Schedules, or (v) would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.8 Absence of Changes or Events. Except in connection with or in preparation for the Transaction and the other transactions contemplated by this Agreement:

(a) since the Balance Sheet Date, the Business has been conducted in all material respects in the ordinary course of business consistent with past practice; and

(b) since the Balance Sheet Date, there has not been any Business Material Adverse Effect.

Section 3.9 Title; Sufficiency of Assets.

(a) Except as otherwise provided in this Agreement or as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, the Seller Entities or the Purchased Companies (or their Subsidiaries) will (assuming all Approvals as may be required in connection with the consummation of the Transaction and the other transactions contemplated by this Agreement have been obtained) have as of the Closing good and valid title to, or other legal rights to possess and use, all of the Purchased Assets, free and clear of all Liens other than Permitted Liens.

(b) Except (i) as set forth in Section 3.9(b) of the Seller Disclosure Schedules and (ii) as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, the Purchased Assets (assuming all Approvals as may be required in connection with the consummation of the Transaction and the other transactions contemplated by this Agreement have been obtained), together with the rights and benefits to be provided pursuant to the Transaction Documents and any assets that are the subject of any of the Shared Contracts, shall, in the aggregate, constitute all of the assets, properties and rights necessary and sufficient for Purchaser and its Subsidiaries (including the Purchased Entities and their Subsidiaries) to conduct the Business as conducted as of the date of this Agreement.

Section 3.10 Intellectual Property.

(a) Section 3.10(a)(i) of the Seller Disclosure Schedules sets forth a true and complete list of all material registered Intellectual Property, including applications therefor, included in the Business Intellectual Property, as of the date of this Agreement. Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, the applicable maintenance fees necessary to maintain the items listed in Section 3.10(a)(i) of the Seller Disclosure Schedules have been paid to the extent due. Section 3.10(a)(ii) of the Seller Disclosure Schedules sets forth a true and complete list of all material unregistered Intellectual Property included in the Business Intellectual Property, as of the date of this Agreement.

(b) Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole: (i) none of the Business Intellectual Property is subject to any Judgment adversely affecting the use thereof or rights thereto by Seller and its Subsidiaries; (ii) there is no opposition or cancellation Proceeding pending against Seller and its Subsidiaries concerning the ownership, validity, enforceability or infringement of any Business Intellectual Property; (iii) to the Knowledge of Seller, there is no infringement or misappropriation, or other violation of any Business Intellectual Property by any other Person; (iv) since October 1, 2017, Seller has not made any written claims alleging any such infringement or misappropriation by any other Person and (v) since October 1, 2017, neither Seller nor any of its Subsidiaries has received any written notice alleging that any of the Business Intellectual Property infringes, misappropriates, or violates the Intellectual Property of any other Person.

(c) Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, the applicable Seller Entities or Purchased Companies (or their Subsidiaries) exclusively own all right, title and interest in, are licensed or otherwise possess rights to use or exploit all Business Intellectual Property necessary to conduct the Business as presently conducted free and clear of all Liens other than Permitted Liens, and the transactions contemplated by this Agreement will not violate the terms of any such license.

(d) Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole:

(i) All of the Information Technology used by the Business is in good working condition, and to Seller's Knowledge, in the past three (3) years, such Information Technology has not been subject to any breach of security or any unauthorized access that has resulted in a material disruption or interruption in the operation of the Business. No Public Software is incorporated into or integrated with any software that is Business Intellectual Property that (i) requires the licensing, disclosure or distribution of any source code of such software that is Business Intellectual Property (other than source code that is a part of such Public Software), (ii) prohibits or limits the receipt of consideration in connection with licensing or otherwise distributing such software that is Business Intellectual Property, (iii) except as specifically permitted by Law, allows any Person to decompile, disassemble or otherwise reverse-engineer such software that is Business Intellectual Property, or (iv) requires the licensing or other distribution of such software that is Business Intellectual Property to any other Person for the purpose of making derivative works. "Public Software" means any Software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, "copyleft," open source code Software (e.g., Linux) or similar licensing or distribution models, including Software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) GNU General Public License (GPL) or Lesser/Library GPL (LGPL), (b) the Artistic License, (c) the Mozilla Public License, (d) the Netscape Public License, (e) the Sun Community Source License (SCSL), (f) the Sun Industry Standards Source License (SISSL), (g) the BSD License, (h) the Apache License, or (i) any other license described by the Open Source Initiative as set forth at www.opensource.org. No product or service developed, sold, licensed, delivered or otherwise provided by the Business is sold, licensed, distributed or otherwise made available by any Seller Entity as Public Software. All Public Software used, sold, licensed or distributed by any Seller Entity is and has been used, sold, licensed and distributed in compliance in all material respects with all underlying open source license agreements.

(ii) Each Seller Entity and Purchased Entity (or Subsidiary thereof) has taken reasonable steps to maintain, protect, enforce and preserve the Business Intellectual Property, including to protect and preserve the confidentiality of all material trade secrets and other material confidential information contained in the Business Intellectual Property. To Seller's Knowledge, no unauthorized disclosure of any such material Trade Secrets or other confidential information has occurred. To Seller's Knowledge, there has been no violation of any Seller Entity or Purchased Entity policies or practices related to the protection of such trade secrets relating to the Business Intellectual Property.

(iii) To Seller's Knowledge, no present or former officer, employee, consultant or independent contractor of a Seller Entity or Purchased Entity or their Subsidiaries has claimed any right, title or interest in or to any Business Intellectual Property.

Section 3.11 Real Property.

(a) The Seller Entities or the Purchased Companies (or their Subsidiaries) have, or will have as of the Closing, insurable title in fee simple to the Owned Real Property, free and clear of any Liens, other than Permitted Liens. Section 3.11(a)(i) of the Seller Disclosure Schedules sets forth a true and correct list as of the date hereof of all of the Owned Real Property. Section 3.11(a)(ii) of the Seller Disclosure Schedules sets forth a true and correct list as of the date hereof of all of the Leased Real Property.

(b) Except (x) as set forth in Section 3.11(b) of the Seller Disclosure Schedules or (y) as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, (i) each lease governing Leased Real Property is valid and binding on the Seller Entity or Purchased Entity (or Subsidiary thereof) that is a party thereto and, to the Knowledge of Seller, each other party thereto and is in full force and effect, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), and (ii) no Seller Entity or Purchased Entity (or Subsidiary thereof) or, to the Knowledge of Seller, any other party thereto is in breach of, or default under, any such lease beyond the applicable cure period.

(c) Since October 1, 2017, neither Seller nor any of its Subsidiaries has received any written notice of any pending or threatened condemnation or eminent domain proceeding affecting any Owned Real Property or Leased Real Property, and, to the Knowledge of Seller, there are no currently ongoing condemnation or eminent domain proceedings reasonably expected to be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

(d) Seller has furnished or made available to Purchaser complete and correct copies of the Leases (as amended to date), in each case as in effect on the date of this Agreement.

Section 3.12 Contracts.

(a) Except (x) for intercompany agreements or (y) as set forth in Section 3.12(a) of the Seller Disclosure Schedules (for the avoidance of doubt, subject to Section 11.13), as of the date hereof none of the Purchased Entities (or any Subsidiary thereof) or, with respect to the Business, any Seller Entity is a party to or bound by any of the following (other than sales or purchase orders, statements of work, or standard terms and conditions entered into or used in the ordinary course of business consistent with past practice) (the "Material Contracts"):

(i) the fifteen (15) largest Contracts (measured by dollar value based on the fiscal year ended September 30, 2020) with customers of the Business;

(ii) the fifteen (15) largest Contracts (measured by dollar value based on the fiscal year ended September 30, 2020) for the supply of services, products or materials for use in the Business;

(iii) any Contract relating to the acquisition or disposition by the Business of any business division, business unit, or equity interests of any Person (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which a Purchased Entity or any of its Subsidiaries has material continuing earn-out, indemnification or similar obligations following the date of this Agreement;

(iv) any Contract that is material to the Business concerning a joint venture, teaming, fee-sharing or partnership agreement or similar Contract with a third party;

(v) any Contract relating to Indebtedness in excess of $2,000,000 with respect to which a Purchased Entity (or Subsidiary thereof) is an obligor, other than (A) any Indebtedness to the extent owing from any of the Purchased Entities (or Subsidiaries thereof) to any of the other Purchased Entities (or Subsidiaries thereof) or (B) any Indebtedness to be repaid or extinguished pursuant to this Agreement at or prior to the Closing;

(vi) any Contract requiring future capital commitments or contributions or expenditure obligations of the Business in excess of $2,000,000;

(vii) any licenses with respect to Intellectual Property that are material to the Business and are granted (A) on an exclusive basis to any third party with respect to any Business Intellectual Property or (B) to any of the Purchased Entities (or Subsidiary thereof) or Seller Entities with respect to Intellectual Property of third parties for use exclusively in the Business; provided that, for clarity, the foregoing clauses (A) and (B) shall exclude any licenses for off-the-shelf software and all non-disclosure agreements, employee invention assignment agreements, customer end user agreements and similar agreements entered into in the ordinary course of business consistent with past practice;

(viii) any Contract that by its express terms materially limits or materially impairs the ability of the Seller Entities or the Purchased Entities (or Subsidiaries thereof) to compete or operate in any line of business or with any Person or in any geographic area (including through non-compete, exclusivity, right of first refusal, right of first negotiation, right of first offer or “most-favored nation” provisions) during any time period, in each case, that relates to the Business as conducted on the date of this Agreement (other than any limitations in respect of the pursuit of a discrete project);

(ix) any Contract that relates to any material settlement of any legal proceeding under which any Purchased Company (or any Subsidiary thereof) has any continuing liabilities in excess of $1,000,000;

(x) any Contracts related to Leased Real Property;

(xi) any Contracts related to Owned Real Property;

(xii) any outstanding Government Bid with an anticipated total Contract value in excess of $5,000,000;

(xiii) any teaming agreement entered into in connection with an outstanding Government Bid with an anticipated total Contract value in excess of $5,000,000;

(xiv) any current Government Contract (A) the terms of which provide for the Purchased Entities and their Subsidiaries to generate revenue in excess of $10,000,000 in any twelve (12)-month period from and after the date of this Agreement or (B) awarded on cost-reimbursement, cost-sharing, or similar basis under which the amount paid to a Purchased Entity or any of its Subsidiaries under such Contract is based on the costs incurred by a Purchased Entity or any of its Subsidiaries (1) for which the period of performance has not yet expired or been terminated or for which final payment has not yet been received or which remains subject to audit and (2) pursuant to which a Purchased Entity or any of its Subsidiaries reasonably expects to receive payments after the date of this Agreement in excess of $5,000,000; and

(xv) any current federal Government Contract awarded since October 1, 2016 (A) that is subject to the United States Truth in Negotiations Act ("TINA") (10 U.S.C. 2306a and 41 U.S.C. chapter 35) and Federal Acquisition Regulations ("FAR") 52.215-12, 52.215-20, 52.215-21, 15.403-4, or 15.403-5 or (B) for which a Purchased Entity or any of its Subsidiaries or, with respect to the Business, any Seller Entity provided certified cost or pricing data to a Governmental Entity or to a prime contractor or higher-tier subcontractor to a Governmental Entity, in each case of clauses (A) and (B), pursuant to which the Purchased Entity and/or the Subsidiaries reasonably expects to receive payments after the date of this Agreement in excess of $2,000,000.

(b) Except as set forth in Section 3.12(b) of the Seller Disclosure Schedules, (i) except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, each Material Contract is valid and binding on the Seller Entity or Purchased Entity (or Subsidiary thereof) that is a party thereto and, to the Knowledge of Seller, each other party thereto, and is in full force and effect, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), and (ii) no Seller Entity or Purchased Entity (or Subsidiary thereof) or, to the Knowledge of Seller, any other party thereto, is in breach of, or default under, any such Material Contract and no condition exists or event has occurred that (whether with or without notice or lapse of time or both) would constitute a breach or default by any Seller Entity, Purchased Entity (or Subsidiary thereof), or, to the Knowledge of Seller, any counterparty to any such Material Contract, except for such breaches or defaults as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.13 Government Contracts.

(a) Except as set forth in Section 3.13(a) of the Seller Disclosure Schedules, with respect to each Government Contract that applies to the operation of the Business: (i) the applicable Seller Entity or Purchased Entity (or Subsidiary thereof) is in compliance with all applicable Laws, terms, and conditions of such Government Contract; and (ii) the applicable Seller Entity or Purchased Entity (or Subsidiary thereof) is in compliance in all material respects with all requirements of applicable Law pertaining to such Government Contract including TINA, FAR and the Cost Accounting Standards.

(b) Except as set forth in Section 3.13(b) of the Seller Disclosure Schedules, since October 1, 2017, (i) none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, has received any written notice or, to the Knowledge of Seller, any oral notice, from a Governmental Entity with respect to, and (ii) none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, is or has been a party to any litigation which would reasonably be expected to give rise to, any liability under (A) the False Claims Act, (B) TINA or (C) Government Contract clauses or regulations relating to price reductions or defective pricing. Since October 1, 2017, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), (x) has received any notice from employees, consultants, independent contractors, or agents of such Seller Entity or Purchased Entity (or Subsidiary thereof), in each case with respect to the Business, or (y) has conducted or initiated any internal investigation for which it engaged outside counsel, a forensic accounting firm or any Person, or made any voluntary or involuntary disclosure under the FAR mandatory disclosure provisions to any Governmental Entity, in each case with respect to or concerning any actual, alleged or potential violation under clauses (A), (B) or (C) of the immediately preceding sentence.

(c) Except as set forth in Section 3.13(c) of the Seller Disclosure Schedules, with respect to each Government Contract under which final payment was received by a Seller Entity or Purchased Entity (or Subsidiary thereof), in each case with respect to the Business, since October 1, 2017, Seller has not had credible evidence that a Principal, Employee, Agent, or Subcontractor (as such terms are defined by FAR 52.203-13(a)) of such Seller Entity or Purchased Entity (or Subsidiary thereof) has committed a violation of federal criminal Law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act.

(d) Except as set forth in Section 3.13(d) of the Seller Disclosure Schedules, since October 1, 2017, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof) or, to the Knowledge of Seller, any of their respective officers or directors, in each case, with respect to the Business, has been or is under indictment, or civil, administrative or criminal investigation by a Governmental Entity involving a Government Contract or Government Bid. Since October 1, 2017, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case, with respect to the Business, has entered into any consent order or administrative agreement relating directly or indirectly to any Government Contract or Government Bid.

(e) To the Knowledge of Seller, since October 1, 2017, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof) or any of their respective directors or officers, in each case, with respect to the Business, is or has been suspended, debarred, proposed for suspension or debarment by a Governmental Entity, or otherwise excluded from participation in the award of Contracts with any Governmental Entity or has been declared ineligible for contracting with any Governmental Entity. To the Knowledge of Seller, no suspension or debarment Proceeding with respect to Government Contracts or Government Bids is pending or threatened against any of the Seller Entities or Purchased Entities (or Subsidiaries thereof) or any of their respective directors or officers.

(f) Except as set forth on Section 3.13(f) of the Seller Disclosure Schedules, the Seller Entities and Purchased Entities (and Subsidiaries thereof), in each case with respect to the Business, have no Government Contracts that were awarded as small business set-asides (total or partial).

(g) Except as set forth on Section 3.13(g) of the Seller Disclosure Schedules, since October 1, 2017, (i) none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, has received any written or, to the Knowledge of Seller, oral, show cause, cure, deficiency, default, termination or similar notice relating to any Government Contract, (ii) no notice of termination for default or convenience, cure notice or show cause notice relating to any Government Contract has been issued to or threatened, in writing or, to the Knowledge of Seller, orally, against any of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, and (iii) to the Knowledge of Seller, no event, condition or omission has occurred or exists that would constitute grounds for any of the actions described in clauses (i) and (ii) above.

(h) Since October 1, 2017, no Governmental Entity has withheld or setoff an amount in excess of $2,000,000 otherwise due or payable to the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, under any Government Contract. To the Knowledge of Seller, all invoices and claims (including, without limitation, requests for progress payments and provisional costs payments) submitted under any Government Contract were current, accurate and complete in all respects.

(i) Except as set forth on Section 3.13(i) of the Seller Disclosure Schedules, since October 1, 2017, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof) has received any written notice or, to the Knowledge of Seller, oral notice, of any claims or contract disputes valued over $2,000,000 that are currently outstanding against or involve the Seller Entities or the Purchased Entities (or Subsidiaries thereof), in each case in respect of the Business, relating to any Government Contract or Government Bid.

(j) None of the Seller Entities or Purchased Entities, in each case with respect to the Business, performs any activities under Government Contracts, or has any other relationship with any Person, that could result in an “organizational conflict of interest” as defined in FAR Subpart 9.5 and agency supplements thereto.

(k) Each Seller Entity and Purchased Entity is in compliance with all applicable national security obligations, including those specified in the National Industrial Security Program Operating Manual and any supplements, amendments or revised editions thereof.

Section 3.14 Warranties. Except as set forth in Section 3.14 of the Seller Disclosure Schedules or as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, no product sold by the Business or project designed, constructed or supervised by the Business, in each case, on or prior to the Closing Date, is subject to any guaranty, warranty or other indemnity beyond the applicable terms and conditions of the applicable Contract governing such sale or project.

Section 3.15 Backlog. Section 3.15 of the Seller Disclosure Schedules sets forth Seller's estimated backlog of the Business as of October 31, 2020, including the estimate as of such date of the total revenues remaining to be earned. Such estimates have been prepared by the Business on a basis consistent with its past practice of preparing and tracking the backlog of the Business. For the avoidance of doubt, without limiting Section 3.25, neither Seller nor any other Person makes any representation or warranty as to whether the amounts included in such estimated backlog will be earned or achieved.

Section 3.16 Compliance with Applicable Laws; Permits.

(a) None of the Seller Entities (with respect to the Business) or the Purchased Entities (or Subsidiaries thereof) is or, since October 1, 2017, has been in violation of any applicable Law, except for violations that would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

(b) Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, since October 1, 2017: (i) none of the Seller Entities or Purchased Entities (or Subsidiaries thereof) or any of their respective officers, directors, employees, joint ventures, representatives, or agents, in each case, with respect to the Business, has made or accepted any gift, bribe, payoff or kickback to from any person or has taken any action, directly or indirectly, in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010 or any other anti-corruption Laws applicable to the Business (collectively, "Anti-Corruption Laws") and (ii) to the Knowledge of Seller, none of the Seller Entities or Purchased Entities (or Subsidiaries thereof), in each case with respect to the Business, is under Governmental Entity investigation for, or has received any written notice from a Governmental Entity regarding, any violation of any Anti-Corruption Laws. Since October 1, 2017, the Seller Entities and the Purchased Companies (or Subsidiaries thereof), in each case with respect to the Business, have instituted and maintained policies and procedures intended to ensure compliance with applicable Anti-Corruption Laws.

(c) The Seller Entities and/or the Purchased Companies (or Subsidiaries thereof) hold all Permits necessary for the conduct of the Business as presently conducted, other than any such Permits the absence of which would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole (the "Business Permits"). The Seller Entities, the Purchased Entities (and their Subsidiaries) and the Business are and have been at all times since October 1, 2017, in compliance with the terms of the Business Permits, except, in each case, as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole.

Section 3.17 Environmental Matters. Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries),, taken as a whole (i) the Seller Entities and the Purchased Entities (and their Subsidiaries) are in compliance with all applicable Environmental Laws applicable to the conduct of the Business as presently conducted, (ii) the Seller Entities and the Business have obtained and are in compliance with all Permits pursuant to Environmental Laws required for the operation of the Business as presently conducted and (iii) there are no Proceedings pending against the Seller Entities or the Purchased Entities (or their Subsidiaries) alleging or, to the Knowledge of Seller, threatened, with respect to a violation of Environmental Laws with respect to the Business.

Section 3.18 Taxes. Except as would not be, individually or in the aggregate, material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole:

(a) All Tax Returns required to be filed with respect to the Purchased Assets, the Assumed Liabilities and the Business and by the Purchased Entities and their Subsidiaries have been timely filed (taking into account extensions) and all such Tax Returns are correct and complete;

(b) All Taxes due and payable with respect to the Business and the Purchased Assets and owed by the Purchased Entities and their respective Subsidiaries (whether or not shown on such Tax Returns) have been paid in full or will be timely paid in full by the due date thereof, other than those for which adequate reserves have been established in accordance with GAAP or that are being contested in good faith by appropriate Proceedings;

(c) None of the Purchased Entities or their Subsidiaries have extended or waived any statute of limitations in respect of Taxes due and payable by the Purchased Entities or their Subsidiaries, or Tax Returns required to be filed by the Purchased Entities or their Subsidiaries, or agreed to any extension of time with respect to any assessment or deficiency with respect to such Taxes or Tax Returns (in each case, other than (i) automatic or automatically granted extensions or (ii) extensions as a result of ongoing Tax Proceedings);

(d) As of the date of this Agreement, there is no ongoing or pending Tax Proceeding with respect to any Taxes of the Purchased Entities or their Subsidiaries or with respect to the Purchased Assets;

(e) As of the date of this Agreement, no assessment, deficiency, or adjustment relating to Taxes has been asserted or proposed in writing by a Taxing Authority with respect to any of the Purchased Assets or the Purchased Entities or their Subsidiaries, in each case, that has not been fully paid;

(f) Within the past three (3) years, none of the Purchased Entities or their Subsidiaries have been subject to a written claim by a Taxing Authority in a jurisdiction where such Purchased Entity (or its applicable Subsidiary) does not file income or franchise Tax Returns that such Purchased Entity (or its applicable Subsidiary) is or may be subject to taxation in that jurisdiction;

(g) Each of the Purchased Entities and their Subsidiaries has complied with all applicable Laws relating to the withholding of Taxes;

(h) Within the past two (2) years none of the Purchased Entities or their respective Subsidiaries has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Code;

(i) None of the Purchased Entities or their Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of: (A) an adjustment under either Section 481(a) of the Code by reason of a change in method of accounting made for a taxable period ending on or prior to the Closing Date; (B) an installment sale or open transaction disposition made prior to the Closing; (C) a prepaid amount received prior to the Closing; or (D) an inclusion under Section 965 of the Code;

(j) The Purchased Entities and their Subsidiaries are not party to or bound by any Tax allocation, sharing or indemnity agreements or arrangements for which they will have any obligation after the Closing (other than (A) any agreements or contracts the principal subject matter of which is not Tax or (B) any agreement among or between only the Purchased Entities (and their Subsidiaries));

(k) The Purchased Entities and their Subsidiaries do not have any liability for the Taxes of any Person (other than the Purchased Entities and their Subsidiaries) as a result of being or having been part of any consolidated, combined, affiliated, aggregate, unitary, or similar group for purposes of filing Tax Returns or paying Taxes under Treasury Regulations Section 1.1502-6 (or any corresponding provisions of state, local or foreign Tax Law), or as a transferee or successor, or by contract (other than contracts the principal subject matter of which is not Tax);

(l) Other than any group the common parent of which was Seller Parent or any of its Subsidiaries (including the Purchased Entities), in the past four (4) years, none of the Purchased Entities or their Subsidiaries have been a member of an "affiliated group" within the meaning of Section 1504(a) of the Code filing a consolidated federal income Tax Return;

(m) Section 3.18(m) of the Seller Disclosure Schedules lists whether an entity classification election under Treasury Regulations Section 301.7701-3 is in effect with respect to any of the Purchased Companies or their respective Subsidiaries and, if so, the classification so elected;

(n) None of the Purchased Entities or their respective Subsidiaries has made any election to defer any portion of any payroll, social security, unemployment, withholding Taxes pursuant to the Coronavirus Aid, Relief, and Economic Security Act, as in effect on the date hereof;

(o) None of the Purchased Entities or their respective Subsidiaries has made an election pursuant to Section 965(h) of the Code;

(p) None of the Purchased Entities or their respective Subsidiaries has participated in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4; and

(q) There are no Liens for Taxes upon any of the Purchased Assets or the assets of the Purchased Entities and their Subsidiaries other than Permitted Liens.

Section 3.19 Benefit Plans.

(a) Section 3.19(a) of the Seller Disclosure Schedules sets forth a list of each Purchased Entity Benefit Plan and each material Seller Benefit Plan. With respect to each Purchased Entity Benefit Plan, Seller has made available to Purchaser (i) the summary plan description (or the plan document if there is not a summary plan description for any such plan), (ii) the current and complete written document evidencing such plan and all amendments or material supplements to such plan (or, with respect to any such plan that is not in writing, a written description of the material terms thereof), (iii) if it is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion, or advisory letter from the Internal Revenue Service (the "IRS") (or a copy of any pending application for a determination letter and any related correspondence from the IRS), (iv) the annual report (Form 5500), if any, filed with the IRS for the last two (2) plan years (with schedules and financial statements attached), and a copy of the two (2) most recently distributed summary annual reports, (v) any related trust agreements or other funding arrangements, insurance contracts and policies, (vi) the most recent nondiscrimination and top-heavy tests performed under the Code, (vii) copies of material notices, letters, or other correspondence received on or after January 1, 2019 from the IRS, Department of Labor ("DOL"), Department of Health and Human Services, Pension Benefit Guaranty Corporation, or other governmental authority, (viii) copies of IRS or DOL audits or inquiries received on or after January 1, 2019, and (ix) any filings received on or after January 1, 2019, under any amnesty, voluntary compliance, self-correction, or similar program sponsored by the IRS or DOL, including the Employee Plans Compliance Resolution System, Voluntary Fiduciary Correction Program, or Delinquent Filer Voluntary Correction Program.

(b) Each Purchased Entity Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "Qualified Benefit Plan") has received a favorable determination letter as to its qualification or is covered by a prototype plan opinion letter, and to the Knowledge of Seller nothing has occurred that could reasonably be expected to adversely affect the qualified status of any such Qualified Benefit Plan.

(c) Each Purchased Entity Benefit Plan (i) has been established, administered and operated in all material respects in compliance with its terms and any applicable Law; and (ii) all contributions, premiums and expenses required to be made by Law or the terms of any applicable Purchased Entity Benefit Plan have been timely made, or to the extent not made, have been accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. No Purchased Entity Benefit Plan is a "single-employer plan" within the meaning of Section 4001(a)(15) of ERISA, a "multiple employer plan" within the meaning of Section 413(c) of the Code, or a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(d) Section 3.19(d)(i) of the Seller Disclosure Schedules identifies each Multiemployer Plan that is a "employee pension benefit plan" (as defined in Section 3(2) of ERISA) to which any of the Purchased Entities or any Subsidiaries thereof (a) have an obligation to contribute with respect to the Business Employees pursuant to a Collective Bargaining Agreement covering such Business Employees or (b) are contributing. With respect to such Multiemployer Plan, all contributions required to be paid by any Purchased Entity or Subsidiary thereof have been timely paid to the applicable union or Multiemployer Plan.

(e) In the six (6) years prior to the date hereof, no Purchased Entity or a Subsidiary thereof has withdrawn from a Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 and 4205 of ERISA, respectively, so as to result in a Liability of the Purchased Entities or any of their respective Subsidiaries that has not been fully paid.

(f) Except as set forth in Section 3.19(f) of the Seller Disclosure Schedules or as required by applicable Law, neither the execution of this Agreement nor the consummation of the Transaction will (either alone or upon the occurrence of any additional or subsequent event) (i) result in any payment becoming due to a Business Employee under a Purchased Entity Benefit Plan, (ii) increase any benefits payable to a Business Employee under a Purchased Entity Benefit Plan or (iii) result in the acceleration of the time of payment or vesting of benefits of a Business Employee under a Purchased Entity Benefit Plan.

(g) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Purchased Entity Benefit Plan provides post-termination or retiree medical benefits to any individual for any reason, and none of the Purchased Entities has any Liability to provide post-termination or retiree medical benefits to any Business Employee or Former Business Employee.

(h) There are no actions, suits, claims or disputes pending, or, to the Knowledge of Seller, threatened, anticipated or expected to be asserted against or with respect to any Purchased Entity Benefit Plan or the assets of any such plan (other than routine claims for benefits and appeals of denied routine claims). No civil or criminal action brought pursuant to the provisions of Title I, Subtitle B, Part 5 of ERISA is pending or, to the Knowledge of Seller, is threatened, anticipated, or expected to be asserted against any of the Purchased Entities or any fiduciary of any Purchased Entity Benefit Plan. Since January 1, 2019, no Purchased Entity Benefit Plan nor, to the Knowledge of Seller, any fiduciary thereof (in connection with such fiduciary's service to a Purchased Entity Benefit Plan) who a Purchased Entity has an obligation to indemnify, has been the direct or indirect subject of an audit, investigation or examination by any governmental or quasi-governmental agency.

(i) Each Purchased Entity Benefit Plan that is subject to Section 409A of the Code has been administered in all material respects in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings, and proposed and final regulations) thereunder. None of the Purchased Entities nor any of their respective Subsidiaries has any obligation to gross up, indemnify, or otherwise reimburse any individual for any excise taxes, interest, or penalties incurred under Section 409A of the Code.

(j) Except as would not reasonably be expected, individually or in the aggregate, to result in a material liability of the Purchased Entities or their Subsidiaries, each Purchased Entity (and each Subsidiary thereof) is currently in compliance with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 ("PPACA"), the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 ("HCERA"), and all regulations and guidance issued thereunder (collectively, with PPACA and HCERA, the "Healthcare Reform Laws"), and, to the Knowledge of Seller, each Purchased Entity has been in compliance with all applicable Healthcare Reform Laws since January 1, 2019. To the Knowledge of Seller, no event has occurred, and no condition or circumstance exists, that could reasonably be expected to subject any of the Purchased Entities or any of their respective Subsidiaries, or any Purchased Entity Benefit Plan that is a "group health plan" as defined in Section 733(a)(1) of ERISA, to any material penalties or excise taxes under Sections 4980D, 4980H, or 4980I of the Code or any other provision of the Healthcare Reform Laws.

(k) Except as would not reasonably be expected, individually or in the aggregate, to result in a material liability of the Purchased Entities or their Subsidiaries, the Purchased Entities and their respective Subsidiaries have classified all individuals who perform services for them correctly under each Purchased Entity Benefit Plan, ERISA, the Code, and any other applicable Law as common law employees, independent contractors or leased employees, including for purposes of eligibility to participate in any Purchased Entity Benefit Plan.

Section 3.20 Labor Matters.

(a) Section 3.20(a) of the Seller Disclosure Schedules sets forth a list of each Collective Bargaining Agreement to or by which any Purchased Entity (or a Subsidiary thereof) is a party or bound with respect to any Business Employee's services to the Business. As of the date of this Agreement, Seller has provided Purchaser a copy of each such Collective Bargaining Agreement. No Purchased Entity (nor any of their Subsidiaries) nor any Seller Entity (with respect to the Business) is currently negotiating any Collective Bargaining Agreement.

(b) To the Knowledge of Seller, (i) there is no organizational effort currently being made or threatened by, or on behalf of, any labor organization, works council, or similar employee-representative body to organize any Business Employees, (ii) there is no union decertification effort by or relating to any Business Employees, (iii) no such efforts have occurred within the past three (3) years relating to Business Employees or Former Business Employees, and (iv) no other question concerning representation exists with respect to Business Employees. No demand for recognition relating to any Business Employees or Former Business Employees has been made by, or on behalf of, any labor union, works council, or similar employee-representative body.

(c) Since October 1, 2019, there have been no strikes, work stoppages, walkouts, pickets, or lockouts involving Business Employees or Former Business Employees or other material labor disputes against or involving any Purchased Entity (or any Subsidiary thereof). There are no pending or, to the Knowledge of Seller, threatened material grievances, arbitrations, or other Proceedings against any Purchased Entity (or any Subsidiary thereof) arising under or relating to any Collective Bargaining Agreement covering Business Employees. There are no pending or, to the Knowledge of Seller, threatened unfair labor practice charges or complaints against or involving any Purchased Entity (or any Subsidiary thereof) with respect to the Business Employees, except as would not reasonably be expected to result in a material liability of the Purchased Entities. Within the past three (3) years, no Purchased Entity (nor any of their Subsidiaries) nor any Seller Entity (with respect to the Business) has implemented any employee layoffs, furloughs, or similar actions that required notice under the Worker Adjustment and Retraining Notification Act or any similar or related Law (collectively, the "WARN Act") without complying in all material respects with the WARN Act, and no such action is currently contemplated, planned or announced.

Section 3.21 Intercompany Arrangements. Other than the Transaction Documents, Section 3.21 of the Seller Disclosure Schedules lists all material Contracts in effect as of the date of this Agreement that are solely between or among Seller and/or its Subsidiaries (other than the Purchased Entities and their Subsidiaries), on the one hand, and the Purchased Entities (or their Subsidiaries), on the other hand, with respect to the conduct of the Business, other than the organizational documents of the Purchased Entities and their Subsidiaries.

Section 3.22 Brokers. Other than Persons whose fees and expenses will be borne by Seller, no broker, investment banker, or financial advisor is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction and the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or its Affiliates.

Section 3.23 Insurance. Except as would not reasonably be expected, individually or in the aggregate, to be material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole, (a) all of the Business Insurance Policies are in full force and effect as of the date hereof; (b) as of the date hereof, all premiums due thereon have been paid in full and the Seller Entities and the Purchased Companies (and Subsidiaries thereof) are in compliance in all material respects with the terms of such policies; (c) there are no claims arising out of the conduct of the Business pending under the Business Insurance Policies as to which coverage has been questioned, denied or disputed (other than a customary reservation of rights notice); and (d) neither Seller nor any of its Subsidiaries has received any written notice of cancellation that any Business Insurance Policy is no longer in full force or effect, and no event has occurred that would reasonably be expected to result in the cancellation of coverage under any Business Insurance Policy.

Section 3.24 Privacy; Data Security. Except as would not reasonably be expected, individually or in the aggregate, to be material to the Business and the Purchased Companies (and their Subsidiaries), taken as a whole:

(a) the data, privacy and information security practices of the Purchased Companies (and Subsidiaries thereof) are, and since October 1, 2017, have been, in compliance with the Purchased Companies' data, privacy and information security policies and plans and contractual requirements and applicable Laws;

(b) the Purchased Companies (and Subsidiaries thereof) or Seller and its Subsidiaries have implemented and maintain reasonable and appropriate organizational, physical, administrative and technical safeguards designed to protect the operation, confidentiality, integrity and security of all Business information and Information Technology constituting Transferred Tangible Personal Property against unauthorized access, acquisition, interruption, alteration, modification, or use; and

(c) since October 1, 2017, there has been no data security breach or other third-party unauthorized access of Information Technology systems of Seller, Seller Parent or any of their Subsidiaries that related to, or otherwise involved the Purchased Companies (or their Subsidiaries) or the Business.

Section 3.25 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither Seller, the other Seller Entities nor any of their respective Affiliates, Representatives or any other Person makes any express or implied representation or warranty with respect to Seller, the other Seller Entities, the Purchased Companies or any of their respective Subsidiaries or Affiliates, the Purchased Assets, the Business or with respect to any other information provided, or made available, to Purchaser or any of its Affiliates or Representatives in connection with the Transaction and the other transactions contemplated by this Agreement. Neither Seller nor any of its Affiliates, Representatives or any other Person has made any express or implied representation or warranty with respect to the prospects of the Business or its profitability for Purchaser, or with respect to any forecasts, projections or business plans or other information (including any Evaluation Material (as defined in the Confidentiality Agreement)) delivered to Purchaser or any of its Affiliates or Representatives in connection with Purchaser's review of the Business and the negotiation and execution of this Agreement, including as to the accuracy or completeness thereof or the reasonableness of any assumptions underlying any such forecasts, projections or business plans or other information. Except as expressly set forth in this Agreement, neither Seller, the other Seller Entities nor any of their respective Affiliates, Representatives or any other Person will have, or be subject to, any Liability to Purchaser or any of its Affiliates or Representatives or any other Person resulting from Purchaser's use of, or the use by any of its Affiliates or Representatives of, any information, including information, documents, projections, forecasts, business plans or other material (including any Evaluation Material (as defined in the Confidentiality Agreement)) made available to Purchaser, its Affiliates or Representatives in any virtual data room, confidential information memorandum, management presentations, offering materials, site tours or visits, diligence calls or meetings or any documents prepared by, or on behalf of, Seller, the other Seller Entities or any of their respective Affiliates or Representatives, or Purchaser or its Affiliates or Representatives or any of Purchaser's potential financing sources in connection with Purchaser's financing activities with respect to the transactions contemplated by this Agreement. Each of Seller and the other Seller Entities and their respective Affiliates disclaims any and all representations and warranties, whether express or implied, except for the representations and warranties contained in this Article III. Notwithstanding anything in this Agreement to the contrary, neither Seller, the other Seller Entities nor any of their respective Affiliates makes any express or implied representation or warranty with respect to the Excluded Assets or the Retained Liabilities.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the Purchaser Disclosure Schedules, Purchaser hereby represents and warrants to Seller and Seller Parent as follows:

Section 4.1 Organization and Standing. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 4.2 Authority; Enforceability.

(a) Purchaser has all requisite corporate or other similar applicable power and authority to execute and deliver this Agreement and each other Transaction Document to which it will be a party, and to perform its obligations hereunder and thereunder, including the consummation of the Transaction and the other transactions contemplated by this Agreement. The execution and delivery by Purchaser of this Agreement and each other Transaction Document to which it will be a party, and the performance by Purchaser of its obligations hereunder and thereunder, and the consummation by Purchaser of the Transaction and the other transactions contemplated by this Agreement, have been, or will have been as of the Closing, duly authorized by all requisite corporate or other similar applicable action. No vote of any stockholders or other equity holders of Purchaser or any of its Affiliates is required for the execution of this Agreement or the consummation of the Transaction or the other transactions contemplated hereby.

(b) Purchaser has all requisite corporate or other similar applicable power and authority to carry on its business as it is now being conducted and to own, lease and operate its properties and assets, except where the failure to have such power and authority would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(c) This Agreement has been duly executed and delivered by Purchaser and, assuming this Agreement has been duly executed and delivered by Seller, constitutes a valid and binding obligation of Purchaser, and each other Transaction Document will be duly executed and delivered by Purchaser and will, assuming such Transaction Document has been duly executed and delivered by each Seller Entity that will be a party thereto, constitute a valid and binding obligation of Purchaser, in each case enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law).

Section 4.3 No Conflicts; Consents. The execution, delivery and performance by Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not (a) violate in any material respect any provision of the certificate of incorporation, bylaws or other organizational documents of Purchaser or any of its Affiliates, (b) conflict with, constitute a default under, or result in the breach or termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of Purchaser or any of its Affiliates under any material Contract to which Purchaser or any of its Affiliates is a party or is subject or (c) assuming compliance with the matters set forth in Section 3.5 and Section 4.4, violate or result in a breach of or constitute a default under any Law or other restriction of any Governmental Entity to which Purchaser or any of its Affiliates is subject, except, with respect to clauses (b) and (c), as would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 4.4 Governmental Authorizations. The execution, delivery and performance of this Agreement by Purchaser does not require any Approval of, or Filing with, any Governmental Entity, except for (a) the Approvals and Filings set forth in Section 4.4 of the Purchaser Disclosure Schedules and (b) Approvals and Filings which if not obtained or made would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 4.5 Purchaser's Business. There is no fact relating to Purchaser's or any of its Affiliates' businesses, operations, financial condition or legal status that would or would reasonably be expected to: (a) prevent or prohibit the obtaining of, impose any material delay in the obtaining of or increase the risk of not obtaining the Regulatory Approvals or (b) have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 4.6 Proceedings. There is no Proceeding pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Affiliates before any Governmental Entity or arbitration tribunal other than Proceedings which would not have, individually or in the aggregate, a Purchaser Material Adverse Effect. Neither Purchaser nor any of its Affiliates is subject to any outstanding Judgment of any Governmental Entity or arbitration tribunal which would have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 4.7 Compliance with Laws. Purchaser and its Affiliates are in compliance with all Laws applicable to their respective businesses, as currently conducted, except to the extent that the failure to comply therewith would not have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser and its Affiliates collectively possess all Permits necessary for the conduct of their respective businesses, as currently conducted, except where the failure to possess any such Permit would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 4.8 Brokers. Other than Persons whose fees and expenses will be borne by Purchaser, no broker, investment banker or financial advisor is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction and the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser or its Affiliates.

Section 4.9 Solvency. Immediately after the Closing, assuming the conditions set forth in Section 8.1 and Section 8.2 are satisfied and after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, Purchaser and its Subsidiaries (including the Purchased Entities and their Subsidiaries) will be Solvent. No transfer of property is being made, and no obligation is being incurred by Purchaser or its Affiliates in connection with the transactions contemplated by this Agreement or the other Transaction Documents with the intent to hinder, delay or defraud either present or future creditors of Purchaser, any Seller Entity or any Purchased Entity or any of their respective Subsidiaries.

Section 4.10 Securities Act. Purchaser is acquiring the Purchased Entity Shares and Purchased Venture Interests solely for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Purchaser acknowledges that the Purchased Entity Shares and Purchased Venture Interests are not registered under the Securities Act, any applicable state securities Laws or any applicable foreign securities Laws, and that such Purchased Entity Shares and Purchased Venture Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act and applicable state and foreign securities Laws or pursuant to an applicable exemption therefrom. Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Purchased Entity Shares and Purchased Venture Interests and is capable of bearing the economic risks of such investment.

Section 4.11 Acknowledgment of No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article IV, neither Purchaser nor its Affiliates, Representatives or any other Person makes any express or implied representation or warranty to the Seller Entities in connection with the Transaction and the other transactions contemplated by this Agreement (other than any representations or warranties contained in the Commitment Letter or any other Transaction Document).

(b) Purchaser acknowledges and agrees that, except for the representations and warranties contained in Article III, neither Seller, the other Seller Entities nor any of their respective Affiliates, Representatives or any other Person makes any express or implied representation or warranty with respect to Seller, the other Seller Entities, the Purchased Companies or any of their respective Subsidiaries or Affiliates, the Purchased Assets, the Business or with respect to any other information provided, or made available, to Purchaser or any of its Affiliates or Representatives in connection with the transactions contemplated hereby. Purchaser acknowledges and agrees that neither Seller, the other Seller Entities nor any of their respective Affiliates, Representatives or any other Person will have, or be subject to, any Liability to Purchaser, its Affiliates or Representatives or any other Person resulting from Purchaser's use of, or the use by any of its Affiliates or Representatives, of any information, including information, documents, projections, forecasts, business plans or other material (including any Evaluation Material (as defined in the Confidentiality Agreement)) made available to Purchaser, its Affiliates or Representatives in any virtual data room, confidential information memorandum, management presentations, offering materials, site tours or visits, diligence calls or meetings or any documents prepared by, or on behalf of, Seller, the other Seller Entities or any of their respective Affiliates or Representatives, or Purchaser or its Affiliates or Representatives, or any of Purchaser's potential financing sources in connection with Purchaser's financing activities with respect to the transactions contemplated by this Agreement. Purchaser acknowledges and agrees that it is not relying on any representation or warranty of Seller, the other Seller Entities, or any of their Affiliates or Representatives or any other Person, other than those representations and warranties specifically set forth in Article III. Purchaser acknowledges and agrees that each of Seller and the other Seller Entities and their respective Affiliates disclaims any and all representations and warranties, whether express or implied, except for the representations and warranties contained in Article III. Purchaser acknowledges and agrees that neither Seller, the other Seller Entities nor any of their respective Affiliates makes any express or implied representation or warranty with respect to the Excluded Assets or the Retained Liabilities.

ARTICLE V
COVENANTS

Section 5.1 Efforts.

(a) From and after the date hereof, Purchaser and Seller shall, and shall cause their respective Affiliates to, use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective as promptly as reasonably practicable the Transaction and the other transactions contemplated by this Agreement, including (i) the preparation and filing of all forms, registrations, Filings and notices required to be filed to satisfy the conditions precedent to this Agreement (including those set forth in Section 8.1) and to consummate the Transaction and the other transactions contemplated by this Agreement as soon as practicable and (ii) the execution and delivery of any additional instruments necessary to consummate the Transaction and the other transactions contemplated by this Agreement and to fully carry out the purposes of this Agreement. Without limiting the foregoing, Purchaser and Seller shall, and shall cause their respective Affiliates to, take all actions necessary to obtain (and shall cooperate with each other in obtaining) any Regulatory Approvals (which actions shall include furnishing all information required in connection with such Regulatory Approvals) required to be obtained or made by Purchaser, Seller, the other Seller Entities or the Purchased Entities (or Subsidiaries thereof) or any of their Affiliates in connection with the Transaction or the other transactions contemplated by this Agreement. Additionally, Purchaser and Seller shall not, and shall cause their respective Affiliates not to, take any action after the date of this Agreement that would reasonably be expected to impair or materially delay the obtaining of, or result in not obtaining, any Regulatory Approval necessary to be obtained prior to the Closing.

(b) Prior to the Closing, Purchaser and Seller shall each keep the other apprised of the status of matters relating to the completion of the Transaction and the other transactions contemplated by this Agreement and work cooperatively in connection with obtaining all required Regulatory Approvals. In that regard, prior to the Closing, subject to the Confidentiality Agreement and Section 5.3, each Party shall promptly consult with the other Party to provide any necessary information with respect to (and, in the case of correspondence, provide the other Party (or its counsel) copies of) all Filings made by such Party or any of its Affiliates with any Governmental Entity or any other information supplied by such Party or any of its Affiliates to, or correspondence with, a Governmental Entity in connection with this Agreement, the Transaction and the other transactions contemplated by this Agreement. Subject to the Confidentiality Agreement and Section 5.3, each Party shall promptly inform the other Party, and if in writing, furnish the other Party with copies of (or, in the case of oral communications, advise the other Party orally of) any communication received by such Party or any of its Affiliates or Representatives from any Governmental Entity regarding the Transaction and the other transactions contemplated by this Agreement, and permit the other Party to review and discuss in advance, and consider in good faith the views of the other Party in connection with, any proposed communication with any such Governmental Entity. If either Party or any Affiliate or Representative of such Party receives a request for additional information or documentary material from any Governmental Entity with respect to the Transaction or the other transactions contemplated by this Agreement, then such Party will make, or cause to be made, promptly and after consultation with the other Party, an appropriate response in compliance with such request. None of Purchaser, its Affiliates or its Representatives shall participate in any meeting with any Governmental Entity in connection with this Agreement and the Transaction or the other transactions contemplated by this Agreement (or make oral submissions at meetings or in telephone or other conversations) unless it consults with Seller in advance and, to the extent not prohibited by such Governmental Entity, gives Seller the opportunity to attend and participate thereat. Subject to the Confidentiality Agreement and Section 5.3, each Party shall furnish the other Party with copies of all correspondence and Filings (and memoranda setting forth the substance thereof) between it or any of its Affiliates or Representatives, on the one hand, and any Governmental Entity, on the other hand, with respect to this Agreement and the Transaction or the other transactions contemplated by this Agreement, and furnish the other Party with such necessary information and reasonable assistance as the other Party may reasonably request in connection with its preparation of Filings to any such Governmental Entity. Purchaser and Seller may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Agreement as “outside counsel only.” Such materials and the information contained therein shall be given only to the outside legal counsel and will not be disclosed by such outside counsel to employees, officers or directors of the recipient unless express permission is obtained in advance from the source of the materials (Purchaser or Seller, as the case may be) or its legal counsel; provided, however, that materials provided pursuant to this Agreement may be redacted (i) to remove references concerning the valuation of or future plans for the Business or the Sale Process, (ii) as necessary to comply with contractual obligations or applicable Law and (iii) as necessary to address reasonable privilege concerns.

(c) Purchaser agrees to provide such security and assurances as to financial capability, resources and creditworthiness as may be reasonably requested by any Governmental Entity or other third party whose Approval is sought in connection with the Transaction and the other transactions contemplated by this Agreement. Whether or not the Transaction is consummated, Purchaser shall be responsible for all fees and payments (including filing fees and legal and professional fees) to any third party or any Governmental Entity in order to obtain any Approvals pursuant to this Agreement, other than the fees of and payments to Seller's legal and professional advisors.

(d) Notwithstanding anything in this Agreement to the contrary, none of Seller, the other Seller Entities or any of their respective Affiliates shall under any circumstance be required to pay or commit to pay any amount or incur any obligation in favor of or offer or grant any accommodation (financial or otherwise, regardless of any provision to the contrary in the underlying Contract, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any Person to obtain any Approval. None of Seller, the other Seller Entities or any of their respective Affiliates shall have any Liability whatsoever to Purchaser or any of its Affiliates arising out of or relating to the failure to obtain any Approvals that may be required in connection with the Transaction and the other transactions contemplated by this Agreement or because of the termination of any Contract or any default under, or acceleration or termination of or loss of any benefit under, any Contract or other Purchased Asset as a result thereof. Purchaser acknowledges that no representation, warranty or covenant of Seller contained herein shall be breached or deemed breached, and no condition to Purchaser's obligations to consummate the transactions contemplated by this Agreement (other than as a result of the failure to satisfy a condition expressly set forth in Section 8.1(a)) shall be deemed not satisfied, as a result of (i) the failure to obtain any Approval, (ii) any such termination, default, acceleration or loss of benefit, or (iii) any Proceeding commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such Approval or any of the foregoing. For the avoidance of doubt, Seller's and its Affiliates' obligations under this Section 5.1 shall be subject in all respects to the applicable provisions of Section 2.10.

Section 5.2 Covenants Relating to Conduct of Business.

(a) Except as set forth in Section 5.2 of the Seller Disclosure Schedules or as required by applicable Law or as otherwise expressly contemplated by the terms of this Agreement, or to the extent related to the Excluded Assets, the Retained Liabilities or the Retained Businesses, from the date of this Agreement to the Closing, and except as Purchaser may otherwise consent in writing to (such consent not to be unreasonably withheld, conditioned or delayed), Seller shall, and shall cause each other Seller Entity and each Purchased Entity (and Subsidiary thereof) to, use reasonable best efforts to, and shall vote its interest in any Purchased Ventures (to the extent any relevant matter is voted upon by the holders of interests in the applicable Purchased Venture and the organizational documents of the applicable Purchased Venture grant Seller or such other Seller Entity or Purchased Entity or Subsidiary thereof the right to vote on such matter) and take such other action to the extent within its control so as to cause such Purchased Venture to use reasonable best efforts to, conduct the Business in all material respects in the ordinary course of business consistent with past practice; provided, however, that no action by Seller or its Affiliates with respect to matters specifically addressed by any other provision of this Section 5.2 shall be deemed a breach of this Section 5.2(a) unless such action would constitute a breach of such other provision.

(b) Except as set forth in Section 5.2 of the Seller Disclosure Schedules or as required by applicable Law or as otherwise expressly contemplated by the terms of this Agreement, or to the extent related to the Excluded Assets or the Retained Liabilities, from the date of this Agreement to the Closing, Seller shall not, and shall cause each Seller Entity and each Purchased Entity (and Subsidiary thereof) not to, and shall vote its interests in any Purchased Venture (to the extent any relevant matter is voted upon by the holders of interests in the applicable Purchased Venture or the organizational documents of the applicable Purchased Venture grant Seller or any Seller Entity or Purchased Entity or Subsidiary thereof the right to vote on such matter) and take such other action to the extent within its control so as to cause such Purchased Venture not to, in each case solely with respect to the Business, do any of the following without the prior consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed):

(i) except as may be required under applicable Law or the terms of any Seller Benefit Plan as of the date hereof or in the ordinary course of business consistent with past practices, or in connection with any action that applies uniformly to Business Employees and other similarly situated employees of Seller or its Affiliates, (A) grant to any Business Employee who has a title of Vice President or above any increase in compensation or benefits or (B) adopt, enter into, amend, or terminate any Purchased Entity Benefit Plan;

(ii) (A) modify or amend the job duties or responsibilities of any Business Employee such that they no longer primarily provide services to or in connection with the Business, or (B) modify or amend the job duties of any non-Business Employee such that they commence primarily providing services to or in connection with the Business.

(iii) authorize or effect any amendment to, or change, the organizational documents of any Purchased Entity (or any Subsidiary thereof), or consent to any amendment to the organizational documents of any Purchased Venture;

(iv) enter into, materially amend or modify, or cancel or terminate any Collective Bargaining Agreement, other than entering into and renewals of Collective Bargaining Agreements on terms consistent with industry practice in the ordinary course of business;

(v) issue, sell, pledge, redeem, repurchase or transfer or propose to issue, sell, pledge, redeem, repurchase or transfer any equity interests of any of the Purchased Entities (or any of their Subsidiaries) or consent to the issuance, sale, pledge, redemption, repurchase or transfer of any Purchased Venture Interests, or securities convertible into, or exchangeable or exercisable for, or options with respect to, or warrants to purchase, or rights to subscribe for, equity interests of any of the Purchased Entities (or any of their Subsidiaries) or the Purchased Ventures (or any of their Subsidiaries), as applicable, in each case other than (A) to Seller, a Seller Entity or a Purchased Entity (or any of their respective Subsidiaries) or (B) the granting of Permitted Liens;

(vi) incur, create or assume any Lien, other than Permitted Liens, with respect to any asset of the Business other than (A) those that may be discharged at or prior to the Closing or (B) in the ordinary course of business consistent with past practice;

(vii) incur, create or assume, or consent to any Purchased Venture (or any Subsidiary thereof) incurring, creating or assuming, any indebtedness for borrowed money (including debt evidenced by loans, notes, bonds, debentures or other similar instruments) in excess of $2,000,000 in the aggregate, other than in the ordinary course of business or that will be settled at or prior to the Closing;

(viii) acquire any material assets, make any material investments in other Persons or dispose of any material assets of the Business, in each case, outside of the ordinary course of business consistent with past practice, other than (A) transactions where the amount of upfront consideration paid or transferred in connection with such transactions would not exceed $2,000,000 in the aggregate and (B) acquisitions or dispositions from or to Seller, a Seller Entity or a Purchased Entity (or any of their respective Subsidiaries);

(ix) (A) amend any material term of, or waive any material right under, fail to use reasonable efforts to enforce or voluntarily terminate (other than upon expiration in accordance with its terms), any Material Contract or Business Permit, or (B) enter into any Contract that, if in effect on the date hereof, would be a Material Contract (or make any Government Bid which, if accepted, would result in a Material Contract), other than, in each case of clauses (A) and (B), in the ordinary course of business consistent with past practice;

(x) make any material change in any method of financial accounting or financial accounting practice or policy applicable to the Business, other than such changes as are required by GAAP or applicable Law;

(xi) implement any early retirement programs or other voluntary employee termination programs, or any other layoffs or schedule reductions that would require notice under the WARN Act;

(xii) sell, assign, transfer, license, dispose of, terminate, cancel or abandon any material right or material license in any Business Intellectual Property, in each case other than the grant of non-exclusive licenses in the ordinary course of business consistent with past practice;

(xiii) make any capital expenditures or commitments for capital expenditures in excess of $2,000,000 in the aggregate;

(xiv) settle or compromise any material Proceeding (other than any Proceeding in respect of Taxes or Tax matters) other than in the ordinary course of business to the extent such settlement or compromise imposes material ongoing restrictions on the operations of the Business;

(xv) terminate the coverage of any Business Insurance Policy (other than upon the expiration or exhaustion of such coverage in accordance with its terms);

(xvi) make any material change to its policies or practices regarding collection of accounts receivable or payment of accounts;

(xvii) make, change or revoke any Tax election, change any annual Tax accounting period, change any Tax accounting method, amend any Tax Return, enter into any closing agreement with any Taxing Authority in respect of Tax, settle any Tax claim or assessment, surrender any right to claim a Tax refund, or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment (other than (A) automatic or automatically granted extensions or (B) extensions in connection with ongoing Tax Proceedings); in each case, except if such action would not reasonably be expected to result in a material increase in the Tax liability of a Purchased Entity or any of its Subsidiaries following the Closing Date; or

(xviii) authorize any of, or commit or agree to take, whether in writing or otherwise, or do any of, the foregoing actions.

(c) Nothing contained in this Agreement shall be construed to give to Purchaser, directly or indirectly, rights to control or direct the Business's operations prior to the Closing. Prior to the Closing, Seller (and its Affiliates) shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of the operations of the Business. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that nothing in this Section 5.2 shall be deemed to limit the transfer of the Excluded Assets or the Retained Liabilities prior to, at or after the Closing.

Section 5.3 Confidentiality.

(a) Purchaser acknowledges that the information being provided to it in connection with the Transaction and the other transactions contemplated hereby is subject to the terms of that certain confidentiality agreement between Oroco Capital, LLC and Seller Parent, dated as of July 22, 2020 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference in their entirety and shall survive the Closing. Effective upon, and only upon, the Closing, the Confidentiality Agreement shall terminate with respect to information relating solely to the Business; provided, however, that Purchaser acknowledges that its obligations of confidentiality and non-disclosure with respect to any and all other information provided to it by or on behalf of Seller, the other Seller Entities, the Purchased Entities or any of their respective Affiliates or Representatives, concerning the Retained Businesses, Seller, the other Seller Entities or any of their respective Affiliates (other than solely with respect to the Business and the Purchased Entities (and Subsidiaries thereof)) shall continue to remain subject to the terms and conditions of the Confidentiality Agreement, any termination of the Confidentiality Agreement that has occurred or would otherwise occur notwithstanding. The Parties expressly agree that, notwithstanding any provision of the Confidentiality Agreement to the contrary, including with respect to termination thereof, if, for any reason, the Closing does not occur and this Agreement is terminated, and the remaining term of the Confidentiality Agreement is less than twenty-four (24) months, the Confidentiality Agreement shall continue in full force and effect for a period of twenty-four (24) months following termination of this Agreement and otherwise in accordance with its terms, and this Agreement shall constitute the requisite consent of the Parties to amend the Confidentiality Agreement accordingly. As soon as reasonably practicable after the date hereof, Seller and its Affiliates shall request each counterparty (other than Purchaser or any of its Affiliates) to a confidentiality agreement to which Seller or any of its Affiliates is a party that was entered into with a potential purchaser of the Business (or a material portion thereof) in connection with the Sale Process (a "Sale Process NDA") and to whom confidential information about the Business was furnished within the last year by or on behalf of Seller in connection with any actual or potential proposal by such Person to acquire the Business (or any material portion thereof), to, and to cause such Person's applicable representatives to, promptly return or destroy all such confidential information to the extent required by such Sale Process NDAs. Prior to the termination of this Agreement, without Purchaser's prior written consent, Seller shall not release any third party from, or waive, amend or modify any provision of, any Sale Process NDA. From and after the Closing, to the extent such Sale Process NDAs are not assigned to a Purchased Entity prior to Closing, Seller agrees to use its reasonable best efforts to enforce its rights under any Sale Process NDA for the benefit of Purchaser, as Purchaser reasonably requests in writing, at the sole cost and expense of Purchaser.

(b) Seller hereby agrees with Purchaser that it shall not, and shall not permit its Affiliates or their respective Representatives to, for a period of sixty (60) months from and after the Closing Date, directly or indirectly, without the prior written consent of Purchaser, disclose to any third party (other than Seller's Affiliates and its and their respective Representatives) any confidential or proprietary information included in the Purchased Assets or related to the Business ("Confidential Business Information"); provided, however, that the term "Confidential Business Information" will not include any information (i) that becomes available to Seller or its Affiliates or their respective Representatives from and after the Closing, from a third party source that is not known by Seller to be under any obligations of confidentiality in respect of such information, (ii) that is or becomes generally available to, or known by, the public (other than as a result of disclosure in violation hereof) or (iii) that is or was derived independently by Seller, its Affiliates or any of their respective Representatives without use of Confidential Business Information. In addition, the foregoing shall not prohibit Seller, its Affiliates or any of their respective Representatives (A) from using Confidential Business Information for the purpose of complying with the terms of this Agreement or any of the Transaction Documents or any Contract that has not been assigned or transferred pursuant to Section 2.10, or (B) from disclosing Confidential Business Information that Seller, any of its Affiliates or its or their Representatives are required by Law (by oral questions, interrogatories, requests for information, subpoena, civil investigative demand, or similar process) or requested by any Governmental Entity with jurisdiction over such Person to disclose (provided that Seller will, to the extent not legally prohibited, provide Purchaser with prompt written notice of such request so that Purchaser may seek, at its sole expense, an appropriate protective order and/or waive compliance with this Section 5.3(b)). Furthermore, the provisions of this Section 5.3(b) will not prohibit any retention of copies of records or any disclosure in connection with the preparation and filing of financial statements or Tax Returns of Seller or its Affiliates or any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement, the other Transaction Documents or the transactions contemplated hereby and thereby. The Parties acknowledge and agree that (x) Seller, the Seller Entities and their respective Affiliates currently, and following the Closing may continue to, maintain and expand business and commercial relationships (whether as a customer, supplier or otherwise) with the same Persons and engage in commercial relationships with such Persons and with Purchaser, and may employ, or continue to employ, individuals who previously worked in or with the Business and possess knowledge and Know-How used in, relating to, or arising from the Business and (y) nothing in this Section 5.3(b) shall prohibit or restrict the maintenance or expansion of any such relationships or employment of any such individuals; provided that Confidential Business Information is not disclosed in violation hereof.

Section 5.4 Access to Information.

(a) Seller shall afford to Purchaser and its Representatives reasonable access, upon reasonable notice during normal business hours, consistent with applicable Law and in accordance with the procedures established by Seller, during the period prior to the Closing, and solely for purposes of integration planning and in furtherance of the Transaction and the other transactions contemplated by this Agreement, to the properties, books, Contracts, assets, officers, agents, records and personnel of Seller and its Subsidiaries related to the Business and the Purchased Entities (and Subsidiaries thereof) that constitute Purchased Assets; provided, however, that (i) neither Seller nor any of its Affiliates shall be required to violate any obligation of confidentiality to which it or any of its Affiliates may be subject in discharging their obligations pursuant to this Section 5.4; (ii) Seller shall make available, or cause its Subsidiaries to make available, Business Employee personnel files only after the Closing Date and, with respect to any Business Employees, if and when Purchaser provides Seller with notice that the applicable Business Employees have provided Purchaser with a release permitting transfer of those files (provided that Seller shall not make, or cause to be made, available medical records, workers compensation records or the results of any drug testing; and that Purchaser shall indemnify and hold Seller and its Affiliates (including the other Seller Entities) harmless from any Liabilities arising out of or relating to the access to and/or transfer of such personnel files); and (iii) prior to the Closing Date, Purchaser shall not conduct any Phase II Environmental Site Assessment or conduct any invasive testing or any sampling of soil, sediment, surface water, ground water or building material at, on, under or within any facility on the Owned Real Property or the Leased Real Property, or any other property of Seller, the other Seller Entities, the Purchased Entities or any of their respective Affiliates.

(b) Purchaser agrees that any investigation undertaken pursuant to the access granted under Section 5.4(a) shall be conducted in such a manner as not to unreasonably interfere with the operation of the Business, and none of Purchaser or any of its Affiliates or Representatives shall communicate with any of the employees of the Business without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Agreement to the contrary, neither Seller nor any of its Affiliates shall be required to provide access to or disclose information (i) where, based on the advice of counsel, such access or disclosure would jeopardize attorney-client or other applicable privilege or protection, or contravene any Laws or contractual obligations (it being agreed that, in the event that the restrictions of this sentence apply, Seller shall inform Purchaser as to the general nature of what is being withheld and shall cooperate in good faith to attempt to design and implement alternative disclosure arrangements to enable Purchaser to evaluate any such information without violating an obligation of confidentiality to any third party, jeopardizing the attorney-client or other applicable privilege or protection or contravening any Laws or contractual obligations), or (ii) if such information concerns the Sale Process.

(c) At and after the Closing, for a period of four (4) years, Purchaser shall, and shall cause its Affiliates to, afford Seller, its Affiliates and their respective Representatives, during normal business hours, upon reasonable notice, access to the properties, books, Contracts, records and employees of the Business and the Purchased Entities (and Subsidiaries thereof) to the extent that such access may be reasonably requested by Seller, including (and without limiting any of the rights of Seller or its Affiliates under Section 2.12 and Section 2.13) in connection with the Earn-Out Payment, the GDB Claims, the GGB Claims, the Claim Recoveries, Seller Parent's Applicable GDB Portion, Seller Parent's Applicable GGB Portion, the GGB Losses, the matters contemplated by Section 7.7, financial statements, taxes, reporting obligations and compliance with applicable Laws or other legitimate non-competitive purposes; provided, however, that (x) nothing in this Agreement shall limit any of Seller's or any of its Affiliates' rights of discovery in connection with any Proceeding and (y) this Section 5.4(c) shall not apply with respect to access to Tax Returns or cooperation with respect to Taxes or Tax matters, which shall be governed exclusively by Section 7.1; provided, further, that, notwithstanding anything else to the contrary herein, solely in connection with the Earn-Out Payment, the GDB Claims, the GGB Claims, the Claim Recoveries, Seller Parent's Applicable GDB Portion, Seller Parent's Applicable GGB Portion, the GGB Losses, the Retained Claim Recoveries or any amounts payable pursuant to Section 7.7, Purchaser's obligations pursuant to this Section 5.4(c) shall not terminate after a period of four (4) after Closing, but shall continue until the applicable amounts are finally determined hereunder.

(d) At and after the Closing, for a period of three (3) years, Seller shall, and shall cause its Affiliates to, afford Purchaser, its Affiliates, the Purchased Companies (and Subsidiaries thereof) and their respective Representatives, during normal business hours, upon reasonable notice, access to the records of the Seller and its Subsidiaries to the extent that such access may be reasonably requested by Purchaser in connection with any services required to be provided by Seller and its Subsidiaries pursuant to the Transition Services Agreement; provided, however, that (x) Purchaser agrees that any confidential or proprietary information made available to Purchaser by Seller pursuant to this Section 5.4(d) concerning the Retained Businesses, Seller, the other Seller Entities or any of their respective Affiliates (other than solely with respect to the Business and the Purchased Companies (and Subsidiaries thereof)) shall continue to remain subject to the confidentiality obligations set forth in the proviso to the second sentence of Section 5.3(a) for a period of twenty-four (24) months from the date when such information is made available to Purchaser and (y) this Section 5.4(d) shall not apply with respect to access to Tax Returns or cooperation with respect to Taxes or Tax matters, which shall be governed exclusively by Section 7.1.

(e) Purchaser agrees to hold all the books and records of the Business existing on the Closing Date and not to destroy or dispose of any thereof for a period of five (5) years from the Closing Date or such longer time as may be required by Law, and thereafter, if it desires to destroy or dispose of such books and records other than in accordance with its then current retention policy, to offer first in writing at least thirty (30) days prior to such destruction or disposition to surrender them to Seller.

Section 5.5 Publicity. Neither Party nor any Affiliate or Representative of such Party shall issue or cause the publication of any press release or public announcement in respect of this Agreement, the Transaction or the other transactions contemplated by this Agreement without the prior written consent of the other Party, except as may be required by Law or stock exchange rules, in which case the Party required to publish such press release or public announcement shall use reasonable efforts to provide the other Party a reasonable opportunity to comment on such press release or public announcement in advance of such publication; provided that the foregoing shall not apply to any press release or public announcement so long as any statements contained therein concerning the Transaction or the other transactions contemplated by this Agreement are consistent with previous releases or announcements made by the applicable Party with respect to which such Party has complied with the provisions of this Section 5.5. Notwithstanding the foregoing, Seller Parent shall be permitted to publicly announce this Agreement, the Transaction and the other transactions contemplated by this Agreement in a press release and/or Current Report on Form 8-K and in other applicable securities filings, provided that Seller Parent shall furnish Purchaser with an initial draft of the portion of any such press release related to this Agreement and the Transaction prior to publication thereof and reasonably consider any comments of Purchaser in good faith.

Section 5.6 Intercompany Accounts and Intercompany Arrangements.

(a) Immediately prior to the Closing (or prior thereto, if so determined by Seller), all intercompany balances and accounts (other than intercompany balances and accounts set forth in Section 5.6 of the Seller Disclosure Schedules) between the Seller Entities and any of their Affiliates (other than the Purchased Entities (and Subsidiaries thereof)), on the one hand, and the Purchased Entities (and Subsidiaries thereof), on the other hand, shall be settled or otherwise eliminated in such a manner as the Seller Entities shall determine in their sole discretion (including, if so determined by Seller, by the Seller Entities or any of their Affiliates removing from any Purchased Entity (or Subsidiary thereof) any or all Cash Amounts or funds from cash pools by means of dividends, distributions, contribution, the creation or repayment or refinancing of intercompany debt, increasing or decreasing of cash pool balances or otherwise). Any such intercompany balances and accounts that are settled after 12:01 a.m. (Pacific Time) on the Closing Date but in connection with the Closing shall be deemed for purposes of this Agreement to have been settled as of immediately prior to 12:01 a.m. (Pacific Time) on the Closing Date. Intercompany balances and accounts solely among any of the Purchased Entities (or Subsidiaries thereof) shall not be affected by the above provisions of this Section 5.6. Immediately prior to the Closing (or prior thereto, if so determined by Seller), except for the Transaction Documents to be entered into in connection with this Agreement and any arrangements, understandings or Contracts set forth in Section 5.6 of the Seller Disclosure Schedules, all arrangements, understandings or Contracts, including all obligations to provide goods, services or other benefits, between the Seller Entities, on the one hand, and the Purchased Entities (or Subsidiaries thereof), on the other hand, shall automatically be terminated without further payment or performance and cease to have any further force and effect, such that no party thereto shall have any further obligations or Liabilities therefor or thereunder.

(b) Except to the extent provided to the contrary in this Section 5.6, effective as of the Closing, Purchaser, on behalf of itself and its Affiliates, including the Purchased Companies and their Subsidiaries, hereby releases Seller and each of its Affiliates (and their respective officers, directors and employees, acting in their capacities as such) from any Liability, obligation or responsibility to any of them for any and all past actions or failures to take action prior to the Closing directly or indirectly relating to or arising out of the Business, the Retained Businesses, or the operations of the Purchased Companies (or their Subsidiaries) prior to the Closing, or relating to or arising out of Seller’s or its Affiliate’s ownership of the Purchased Assets, except for any obligation pursuant to the provisions of this Agreement or the other Transaction Documents.

(c) Except to the extent provided to the contrary in this Section 5.6, effective as of the Closing, Seller, on behalf of itself and its Affiliates, hereby releases the Purchased Companies and their Subsidiaries (and their respective officers, directors and employees, acting in their capacities as such) from any Liability, obligation or responsibility to any of them for any and all past actions or failures to take action prior to the Closing directly or indirectly relating to or arising out of the Business, the Retained Businesses, or the operations of the Purchased Companies (or their Subsidiaries) prior to the Closing, or relating to or arising out of the Purchased Companies' (or their Subsidiaries') ownership of the Purchased Assets, except for any obligation pursuant to the provisions of this Agreement or the other Transaction Documents.

Section 5.7 Financial Obligations. At or prior to the Closing, Purchaser and Seller shall cooperate and use their reasonable best efforts to arrange for substitute letters of credit, surety bonds, Purchaser guarantees, advance payment guarantees, or other obligations of Purchaser or its Affiliates (or any combination of the foregoing) to replace the outstanding letters of credit, surety bonds, guarantees, advance payment guarantees and other contractual obligations entered into by or on behalf of Seller or any of its Affiliates (other than the Purchased Entities (and Subsidiaries thereof)) (or by or on behalf of any former Affiliates of Seller to the extent Seller or any of its Affiliates retains any indemnification or similar contractual obligations in respect thereof, including pursuant to the Purchase and Sale Agreement, dated as of October 12, 2019, as amended or supplemented from time to time, by and between AECOM and Maverick Purchaser Sub, LLC) in each case to the extent arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities (together, the "Guarantees") and Purchaser and its applicable Affiliates shall assume all obligations under each Guarantee and use commercially reasonable efforts to obtain from the creditor or other counterparty a full and irrevocable release of Seller and its Affiliates that are liable, directly or indirectly, for reimbursement to the creditor or fulfillment of other Liabilities to a counterparty in connection with the Guarantees. Purchaser further agrees that to the extent Seller or any of its Affiliates incurs any cost or expense, or is required to make any payment, or is subject to any claim or Proceeding, in connection with such Guarantees on or after the Closing, Purchaser shall indemnify and hold harmless Seller and its Affiliates against, and reimburse Seller and its Affiliates for, any and all Liabilities or amounts paid, including costs or expenses in connection with such Guarantees, including Seller's and any of its Affiliates' expenses in maintaining such Guarantees, whether or not any such Guarantee is drawn upon or required to be performed, and shall in any event promptly and in no event later than three (3) Business Days after written demand therefor from Seller, reimburse Seller and any of its Affiliates to the extent that any Guarantee is called upon and Seller or any of its Affiliates makes any payment or incurs any Liability in respect of any such Guarantee. For any Guarantees for which Purchaser or any of its Affiliates, as applicable, is not substituted in all respects for Seller and its Affiliates (or for which Seller and its Affiliates are not fully released) effective as of the Closing and that cannot otherwise be terminated effective as of the Closing (with Seller and its Affiliates to be fully released in respect thereof), Purchaser and Seller shall cooperate and use their reasonable best efforts to effect such substitution or termination and release as promptly as practicable after the Closing in accordance with the foregoing provisions of this Section 5.7. Without limiting the foregoing, neither Purchaser nor any of its Affiliates shall extend or renew any Contract containing or underlying a Guarantee unless, prior to or concurrently with such extension or renewal, Purchaser or its Affiliates are substituted in all respects for Seller and its Affiliates, and Seller and its Affiliates are fully released, in respect of all Liabilities under such Guarantees.

Section 5.8 IP Matters.

(a) Neither Purchaser nor any of its Affiliates (including the Purchased Companies or any of their Subsidiaries) shall acquire any rights in, or use, or have the right to use, the AECOM Name and AECOM Marks or any name or mark that is similar to or embodying the AECOM Name and AECOM Marks. As promptly as reasonably practicable following the Closing, Purchaser shall cause each of the Purchased Companies (and Subsidiaries thereof) having a name, Mark or logo that includes the AECOM Name and AECOM Marks to change its name to a name that does not include the AECOM Name and AECOM Marks, including making any Filings necessary to effect such change within sixty (60) days following the Closing, and shall complete the removal of the AECOM Name and AECOM Marks (i) within sixty (60) days following the Closing from all websites, social and mobile media or other digital content in their possession or control and (ii) within six (6) months following the Closing from all products, signage, vehicles, properties, technical information, stationery and promotional or other marketing materials and other assets. Seller and Purchaser agree to the matters set forth in Section 5.8 of the Seller Disclosure Schedules. Seller Parent hereby grants to the Purchased Companies and their Subsidiaries a royalty-free, fully paid-up, non-exclusive, non-sublicensable, non-assignable, limited right and license to use the AECOM Name and AECOM Marks solely for the above time periods and purposes. Purchaser agrees that any use of the AECOM Name and AECOM Marks by any of the Purchased Companies or their Subsidiaries pursuant to such license will be in a manner consistent with past practice and transitional "phase out" use and that the Purchased Companies and their Subsidiaries will maintain quality standards at least as high as those in effect as of the Closing Date with respect to any goods or services provided or delivered using the AECOM Name and AECOM Marks and shall cease to hold themselves out as having any affiliation with Seller Parent or its Subsidiaries from and after the Closing.

(b) Seller Parent and its applicable Subsidiaries hereby grant to Purchaser and the Purchased Entities (and their Subsidiaries), effective as of the Closing, a perpetual, irrevocable, royalty-free, fully paid-up, non-exclusive, non-sublicensable, non-assignable, limited, personal license to use the Intellectual Property (excluding the AECOM Name and AECOM Marks and any other Marks and excluding any Business Intellectual Property) used or held for use in the Retained Businesses and that Purchaser can demonstrate was used by Seller Parent or its Subsidiaries (including the Purchased Entities and their Subsidiaries) in operating the Business during the twelve (12)-month period prior to the Closing (the "Seller Licensed Intellectual Property") solely to the extent and in the manner as such Seller Licensed Intellectual Property was used in the operation of the Business during such twelve (12)-month period. The Seller Licensed Intellectual Property shall be licensed on an "as-is, where-is" basis without any representation or warranty whatsoever, and all implied warranties are hereby disclaimed by Seller Parent and its Subsidiaries. Purchaser, on behalf of itself and its Subsidiaries, and following the Closing, the Purchased Companies and their Subsidiaries, acknowledges that except as may be expressly provided in the Transition Services Agreement, Seller Parent and its Subsidiaries are not obligated to furnish or make available to Purchaser or the Purchased Companies or their Subsidiaries any updates to the Seller Licensed Intellectual Property or any technical information or support of any kind. Purchaser acknowledges and agrees that nothing in this Section 5.8(b) shall constitute a transfer of ownership of any Intellectual Property from Seller Parent or any of its Subsidiaries to Purchaser or any of its Subsidiaries (including, following the Closing, the Purchased Companies and their Subsidiaries).

(c) Purchaser hereby grants, and as of the Closing will cause the applicable Purchased Entities (and their Subsidiaries) to grant, effective as of the Closing, a perpetual, irrevocable, royalty-free, fully paid-up, non-exclusive, non-sublicensable, non-assignable, limited, personal license to use the Business Intellectual Property that Seller Parent can demonstrate was used by Seller Parent or its Subsidiaries in operating the Retained Businesses during the twelve (12)-month period prior to the Closing (the "Purchaser Licensed Intellectual Property") solely to the extent and in the manner as such Purchaser Licensed Intellectual Property was used in the operation of the Retained Businesses during such twelve (12)-month period. The Purchaser Licensed Intellectual Property shall be licensed on an "as-is, where-is" basis without any representation or warranty whatsoever, and all implied warranties are hereby disclaimed by Purchaser. Seller Parent and its Subsidiaries acknowledge that except as may be expressly provided in the Transition Services Agreement, Purchaser and its Subsidiaries (including the Purchased Entities and their Subsidiaries) are not obligated to furnish or make available to Seller Parent or its Subsidiaries any updates to the Purchaser Licensed Intellectual Property or any technical information or support of any kind. Seller Parent acknowledges and agrees that nothing in this Section 5.8(c) shall constitute a transfer of ownership of any Business Intellectual Property from Purchaser or any of its Subsidiaries (including, following the Closing, the Purchased Entities and their Subsidiaries) to Seller Parent or any of its Subsidiaries.

Section 5.9 Insurance. From and after the Closing, the Business, the Purchased Companies, the Purchased Assets, the Assumed Liabilities, and the operations and assets and Liabilities in respect thereof, shall cease to be insured by Seller's or its Affiliates' insurance policies or by any of their self-insured programs (other than the Business Insurance Policies), and neither Purchaser nor its Affiliates (including the Business and the Purchased Companies and their Subsidiaries) shall have any access, right, title or interest to or in any such insurance policies (including to all claims and rights to make claims and all rights to proceeds) to cover the Business, the Purchased Companies, the Purchased Assets, the Assumed Liabilities, or the operations or assets or Liabilities in respect thereof (other than the Business Insurance Policies). Notwithstanding the foregoing, following the Closing, with respect to events or circumstances to the extent relating to the Business, the Purchased Assets and Assumed Liabilities that occurred or existed prior to the Closing that are covered by third-party occurrence-based insurance policies of Seller or its Affiliates (the "Seller Insurance Policies"), Seller shall cooperate with Purchaser to submit any claims under the Seller Insurance Policies solely to the extent such coverage is available under the Seller Insurance Policies and Purchaser elects to submit such claims. For the avoidance of doubt, Purchaser shall be entitled to any proceeds arising out of any such claim, and Seller and its Affiliates shall cause any such proceeds to be paid or remitted to Purchaser or its designee, whether by delivering notices or other instruments to the applicable insurers that Purchaser or its designee is the payee with respect to the applicable claim, remitting such proceeds directly to Purchaser or its designee upon receipt by Seller or its applicable Affiliate, entering into escrow, trust or security arrangements with respect to such proceeds (or anticipated proceeds), or otherwise. Purchaser shall indemnify, hold harmless and reimburse Seller or its applicable Affiliates for any deductibles, self-insured retention, fees, indemnity payments, settlements, judgments, legal fees, allocated claims expenses and claim handling fees and other costs or expenses (including any increased costs or premiums incurred by Seller or any of its Affiliates) as a result of any such claims or Purchaser's access to such Seller Insurance Policies following the Closing. Seller or its Affiliates may amend any insurance policies in the manner that Seller or its Affiliates deem appropriate to give effect to this Section 5.9. Except as expressly provided in this Section 5.9, from and after the Closing, Purchaser shall be responsible for securing all insurance it considers appropriate for the Business, the Purchased Companies, the Purchased Assets, the Assumed Liabilities, and the operations and assets and Liabilities in respect thereof, including maintenance of project-specific insurance policies. Except as expressly provided in this Section 5.9, Purchaser further covenants and agrees not to seek to assert or to exercise any rights or claims of, or in respect of, the Business, the Purchased Companies, the Purchased Assets, the Assumed Liabilities, and the operations and assets and Liabilities in respect thereof, under or in respect of any past or current insurance policy under which any of the foregoing is a named insured (other than the Business Insurance Policies).

Section 5.10 Litigation Support. In the event that and for so long as Seller or any of its Affiliates is prosecuting, contesting or defending any Proceeding, investigation, charge, claim or demand by or against a third party (for the avoidance of doubt, other than Purchaser or any of its Affiliates including the Purchased Companies) in connection with (a) the Transaction or any of the other transactions contemplated under this Agreement, or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction relating to, in connection with or arising from the Business, the Purchased Companies or their Subsidiaries, the Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Retained Liabilities, Purchaser shall, and shall cause its Affiliates (and its and their officers and employees and Representatives) to, cooperate with Seller Parent and its counsel in such prosecution, contest or defense, including making available its personnel, and providing such testimony and access to its books and records and other information as shall be reasonably necessary in connection with such prosecution, contest or defense provided that (x) such cooperation does not unreasonably interfere with the conduct of the Business and (y) Seller reimburses Purchaser and its Affiliates for any out-of-pocket costs and expenses (but not, for the avoidance of doubt, any internal costs, including employee costs) incurred in connection with such cooperation. For the avoidance of doubt, without limiting any of Purchaser's obligations pursuant to this Section 5.10, and notwithstanding anything in this Agreement to the contrary, Seller Parent shall retain full control of prosecuting, contesting, defending, compromising, settling or taking any other action related to or in connection with any Proceeding, investigation, charge, claim or demand by or against a third party related to any Retained Businesses, Excluded Asset or Retained Liability, whether arising before or after the Closing, and neither Purchaser nor its Affiliates shall have any rights in connection therewith, other than the right to indemnification for Retained Liabilities pursuant to Article X.

Section 5.11 Payments.

(a) Seller shall, or shall cause its applicable Affiliate to, promptly pay or deliver to Purchaser (or its designated Affiliates) any monies or checks that have been sent to Seller or any of its Affiliates after the Closing Date by customers, suppliers or other contracting parties of the Business or the Purchased Companies or their Subsidiaries to the extent that they constitute a Purchased Asset and are the property of Purchaser hereunder.

(b) Purchaser shall, or shall cause its applicable Affiliate to, promptly pay or deliver to Seller (or its designated Affiliates) any monies or checks that have been sent to Purchaser or any of its Affiliates (including the Business and the Purchased Companies and their Subsidiaries) after the Closing Date to the extent that they constitute an Excluded Asset and are the property of Seller or its Affiliates hereunder.

Section 5.12 Non-Solicitation of Employees.

(a) For a period of two (2) years from the Closing Date, without the prior written consent of Purchaser, as to any Business Employee with the title of Vice President or above as of immediately prior to the Closing who shall have become employed by Purchaser or its Subsidiaries as of immediately following the Closing (a "Seller Covered Person"), Seller Parent agrees that none of Seller Parent or any of its Subsidiaries will, directly or indirectly, engage to provide services or solicit for employment any Seller Covered Person; provided that Seller Parent and its Subsidiaries shall not be precluded from soliciting, engaging to provide services or taking any other action with respect to, any such individual (i) whose employment ceased prior to commencement of employment discussions between Seller Parent or its Subsidiaries and such individual, (ii) who responds to solicitation not specifically targeted at employees of Purchaser or any of its Affiliates (including by a search firm or recruiting agency) or (iii) who initiates discussions regarding such employment without any solicitation by Seller Parent or its Subsidiaries in violation of this Agreement; and provided, further, that Seller Parent and its Affiliates shall not be restricted from engaging in solicitations or advertising not targeted at any such Persons described above.

(b) For a period of two (2) years from the Closing Date, without the prior written consent of Seller, as to any employee of Seller Parent or its Subsidiaries with the title of Vice President or above as of immediately prior to the Closing (other than any Business Employee who shall have become employed by Purchaser or its Subsidiaries as of immediately following the Closing) (a "Purchaser Covered Person"), Purchaser agrees that none of Purchaser or any of its Subsidiaries will, directly or indirectly, engage to provide services or solicit for employment any Purchaser Covered Person; provided that Purchaser and its Subsidiaries shall not be precluded from soliciting, engaging to provide services or taking any other action with respect to, any such individual (i) whose employment ceased prior to commencement of employment discussions between Purchaser or its Subsidiaries and such individual, (ii) who responds to solicitation not specifically targeted at employees of Seller or any of its Affiliates (including by a search firm or recruiting agency) or (iii) who initiates discussions regarding such employment without any solicitation by Purchaser or its Subsidiaries in violation of this Agreement; and provided, further, that Purchaser and its Affiliates shall not be restricted from engaging in solicitations or advertising not targeted at any such Persons described above.

Section 5.13 Misallocated Assets.

(a) Subject to Section 2.10, if, at any time after the Closing, any asset held by Purchaser or any of its Affiliates (including the Purchased Companies and their Subsidiaries) is ultimately determined to be an Excluded Asset or Purchaser or any of its Affiliates is found subject to a Retained Liability, (i) Purchaser shall return or transfer and convey (without further consideration) to Seller or the appropriate Affiliate of Seller such Excluded Asset or Retained Liability; (ii) Seller shall, or shall cause its appropriate Affiliate to, assume (without further consideration) such Retained Liability; and (iii) Seller and Purchaser shall, and shall cause their appropriate Affiliates to, execute such documents or instruments of conveyance or assumption and take such further acts as are reasonably necessary or desirable to effect the transfer of such Excluded Asset or Retained Liability back to Seller or its appropriate Affiliate, in each case such that each Party is put into the same economic position as if such action had been taken on or prior to the Closing Date.

(b) Subject to Section 2.10, if, at any time after the Closing, any asset held by Seller or its Affiliates is ultimately determined to be a Purchased Asset or Seller or any of its Affiliates is found to be subject to an Assumed Liability, (i) Seller shall return or transfer and convey (without further consideration) to Purchaser such Purchased Asset or Assumed Liability; (ii) Purchaser shall assume (without further consideration) such Assumed Liability; and (iii) Seller and Purchaser shall, and shall cause their appropriate Affiliates to, execute such documents or instruments of conveyance or assumption and take such further acts as are reasonably necessary or desirable to effect the transfer of such Purchased Asset or Assumed Liability back to Purchaser, in each case such that each Party is put into the same economic position as if such action had been taken on or prior to the Closing Date.

Section 5.14 Use of Past Performance.

(a) Seller acknowledges and agrees that, from and after the Closing, Purchaser and its Affiliates, including the Purchased Companies (and Subsidiaries thereof), may make factual statements that truthfully and reasonably reference the Business's past performance in support of future bids and solicitations, as permitted by applicable Law and the terms of the relevant solicitation, and to the extent that such past performance of the Business was conducted by Seller and its Affiliates, such reference may refer to Seller and its Affiliates. However, Seller and its Affiliates make no representation or warranty regarding whether a soliciting body or customer will accept and/or favorably consider or evaluate such past performance. Purchaser and the Purchased Companies (and their Subsidiaries) acknowledge and agree that no such references may be made in respect of work outside the scope of the Business.

(b) Purchaser and the Purchased Companies and their Subsidiaries acknowledge and agree that, from and after the Closing, Seller and its Affiliates and their successors in interest may make factual statements that truthfully and reasonably reference the past performance of the Purchased Companies (and their Subsidiaries) in support of future bids and solicitations, as permitted by applicable Law and the terms of the relevant solicitation, and to the extent that such past performance of the Business was conducted by the Purchased Companies or their Subsidiaries, such reference may refer to the Purchased Companies or their Subsidiaries. However, Purchaser and its Affiliates make no representation or warranty regarding whether a soliciting body or customer will accept and/or favorably consider or evaluate such past performance.

Section 5.15 Representations and Warranty Policy. Purchaser may, in its discretion, obtain a customary representations and warranties insurance policy with respect to this Agreement and the Transaction (a "R&W Insurance Policy") at or prior to the Closing. In such instance, Purchaser agrees to use reasonable best efforts to keep the R&W Insurance Policy in full force and effect for the policy period set forth therein. Purchaser shall provide a copy of the R&W Insurance Policy to Seller upon request. Purchaser agrees that the R&W Insurance Policy will expressly exclude any right of subrogation against Seller and its Affiliates and their respective officers, directors and employees, and neither Purchaser nor its Affiliates will amend or waive such subrogation provisions without Seller's prior written consent.

Section 5.16 Seller Parent Conditional Guaranty. Seller Parent and Purchaser shall cooperate in good faith and use their respective reasonable best efforts between the date hereof and the Closing to agree on the final terms of a conditional guaranty (the "Seller Parent Conditional Guaranty") substantially on the terms set forth in Exhibit B and such other terms (or modifications to the terms set forth in Exhibit B) as may be reasonably requested prior to the Closing by any surety providing bonds and/or a bonding program to the Business (it being understood that any such requested term or modification which increases the amount of any of the Guaranteed Obligations or Payment Obligations (each as defined in Exhibit B) or the underlying receivables to which such Guaranteed Obligations or Payment Obligations relate or Seller Parent's right to consent to any settlement in respect of any claim relating to a Guaranteed Obligation or that would otherwise reasonably be expected to have a material impact on the benefits that Seller Parent would reasonably expect to derive from the transactions contemplated hereby shall be deemed not reasonable), to be entered into at Closing.

Section 5.17 Reserved.

Section 5.18 Receivables Cooperation. Purchaser agrees that from and after the Closing, Purchaser shall promptly, and in any event in accordance with the terms of the account purchase agreements set forth on Section 5.18 of the Seller Disclosure Schedules (the "Account Purchase Agreements") as in effect immediately prior to the Closing, transfer to the applicable counterparties to the Account Purchase Agreements any cash amounts received by Purchaser or any of its Affiliates (including the Purchased Companies and their Subsidiaries) in respect of receivables sold or transferred by Seller or its Affiliates (including the Purchased Companies and their Subsidiaries) prior to the Closing pursuant to the Account Purchase Agreements to the extent such cash amounts were not included in the calculation of Closing Working Capital.

Section 5.19 MEPP. If, following the Closing Date and prior to the later of (x) the date of the final determination of the Earn-Out Payment or (y) the date of the final determination of the aggregate Retained Claim Recovery payable to Seller Parent (or its designated Subsidiaries) hereunder in respect of GGB Claim Recoveries, the Central States Southeast, Southwest Areas Pension Plan (the "Central States MEPP") assesses the Purchased Entities or any of its Subsidiaries for a required contribution to the Central States MEPP that (i) is directly related to a "partial withdrawal" (as defined in Section 4205 of ERISA) or "complete withdrawal" (as defined in Section 4203 of ERISA) from the Central State MEPP that occurred prior to the Closing Date, (ii) is a non-ordinary course contribution assessed against all participating employers in the Central States MEPP and is other than a contribution increase with respect to continued participation in the Central States MEPP generally, (iii) results from the termination of the Central States MEPP by action of the trustees (a "Plan Termination" as defined in ERISA 4041A(a)(1)) or (iv) results in the termination of the Central States MEPP by virtue of the withdrawal of every employer (a "Mass Withdrawal" as defined in ERISA 4041A(a)(2)), in each case with respect to Business Employees or Former Business Employees (the events in clauses (i) through (iv) referred to as the "Reimbursable Contribution Events"), then, without duplication, the Earn-Out Payment or any Retained Claim Recovery amount payable to Seller Parent will be reduced, but in each case not below Zero Dollars ($0), until the amount of such reductions is equal to the amount a Purchased Entity or its Subsidiary (taking into account any contributions of other owners of any such Subsidiary) is required to contribute to the Central States MEPP as a result of the Reimbursable Contribution Events, net of any Tax benefit actually realized by Purchaser or its Affiliates (including the Purchased Companies and their Subsidiaries) as a result of, arising from or attributable to such contribution (the "Contribution Amount"); provided, that notwithstanding the foregoing or anything to the contrary herein, in no event shall the Contribution Amount exceed Six Million Two Hundred Thousand Dollars ($6,200,000) in the aggregate with respect to all Reimbursable Contribution Events. In no event will an event or condition giving rise to a contribution to the Central States MEPP be considered a Reimbursable Contribution Event if it is attributable, directly or indirectly, to the actions or omissions of the Purchaser or its Affiliates (including, following the Closing Date, the Purchased Entities or their Subsidiaries). In the event notice of such assessment is delivered to a Purchased Entity or its Subsidiaries, Purchaser or its Affiliates, Purchaser shall promptly provide Seller Parent with a notice and a copy of any documentation relating to such assessment and the Parties will cooperate and take all reasonable action to dispute such assessment and/or mitigate the amount thereof.

ARTICLE VI
EMPLOYEE MATTERS

Section 6.1 Transfer of Business Employees.

(a) Transfer of Business Employees Generally. On or prior to the Closing: Seller and its Affiliates shall use commercially reasonable efforts to take such steps as are required to transfer the employment of the Business Employees listed on Section 6.1(a) of the Seller Disclosure Schedules to a Purchased Entity (or a Subsidiary thereof).

(b) Long-Term Disability Business Employees. If any Business Employee or Former Business Employee who is receiving long-term disability benefits as of the Closing Date notifies Purchaser, within twelve (12) months following the Closing Date, that he or she is able to return to work, Purchaser shall offer employment to such employee on terms consistent with those applicable to Business Employees generally under this Article VI. Purchaser shall return to work any inactive Business Employee who is subject to a Collective Bargaining Agreement and who is receiving long-term disability benefits as of the Closing Date, but who subsequently becomes able to return to work within the period provided in the Collective Bargaining Agreement that applied to him or her immediately prior to the Closing Date.

(c) Definitions. For purposes of this Agreement, any Business Employee whose employment transfers pursuant to this Section 6.1 shall be referred to as a "Continuing Employee."

Section 6.2 Compensation and Employee Benefits.

(a) Compensation and Benefits Comparability. For a period of one (1) year following the Closing, or such longer period as required by applicable Law, Purchaser shall, or shall cause its Affiliates to, provide to each Continuing Employee during his or her employment with Purchaser and its Affiliates (i) base salary or wage rates that are not less than those in effect for such Continuing Employee immediately prior to the Closing, (ii) annual cash incentive compensation opportunities that are no less favorable in the aggregate than those in effect for such Continuing Employee immediately prior to the Closing, and (iii) employee benefits (excluding equity-based compensation, long-term incentive compensation opportunities, defined benefits pursuant to qualified and nonqualified retirement plans, deferred compensation arrangements, and retiree medical benefits and other retiree health and welfare arrangements) that, in the aggregate, substantially comparable to those in effect for such Continuing Employee immediately prior to the Closing.

(b) Severance or Other Termination Liabilities for Former Business Employees. Seller and its Affiliates shall be solely responsible for any severance or termination payments or benefits payable to Business Employees (prior to the Closing Date) or Former Business Employees with respect to terminations of employment occurring prior to the Closing Date, including pursuant to a Seller Benefit Plan, except to the extent such Liability is reflected in Closing Working Capital.

(c) Service Credit. For purposes of vesting and eligibility to participate under the employee benefit plans of Purchaser and its Affiliates providing benefits to any Continuing Employees after the Closing (the "New Plans"), each Continuing Employee shall be credited with his or her years of service with Seller and its Affiliates and their respective predecessors prior to the Closing, to the same extent as such Continuing Employee was entitled, prior to the Closing, to credit for such service under any similar Seller Benefit Plan in which such Continuing Employee participated or was eligible to participate immediately prior to the Closing; provided that the foregoing shall not apply for purposes of benefit accrual under any defined benefit pension plan or retiree medical plan (except as otherwise required by applicable Law) or to the extent that its application would result in a duplication of benefits for the same period of service. In addition, and without limiting the generality of the foregoing, each Continuing Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Seller Benefit Plan in which such Continuing Employee participated immediately before the Closing (such plans, collectively, the "Old Plans").

(d) Welfare Plans. For purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Continuing Employee, Purchaser shall use commercially reasonable efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such Continuing Employee and his or her covered dependents, unless such conditions would not have been waived under the comparable Seller Benefit Plans in which such Continuing Employee participated immediately prior to the Closing, and Purchaser shall use commercially reasonable efforts to cause any eligible expenses incurred by such Continuing Employee and his or her covered dependents during the portion of the plan year of the Old Plans ending on the date such Continuing Employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(e) Flexible Spending Accounts. If the Closing Date occurs after December 31, 2020, Seller and Purchaser shall take all actions necessary or appropriate so that, effective as of the Closing Date, (i) the account balances (whether positive or negative) (the "Transferred FSA Balances") under the applicable flexible spending plan of Seller or its Affiliates (collectively, the "Seller FSA Plan") of the Continuing Employees who are participants in the Seller FSA Plan shall be transferred to one or more comparable plans of Purchaser (collectively, the "Purchaser FSA Plan"); (ii) the elections, contribution levels and coverage levels of such Continuing Employees shall apply under the Purchaser FSA Plan in the same manner as under the Seller FSA Plan; and (iii) such Continuing Employees shall be reimbursed from the Purchaser FSA Plan for claims incurred at any time during the plan year of the Seller FSA Plan in which the Closing Date occurs that are submitted to the Purchaser FSA Plan from and after the Closing Date on the same basis and the same terms and conditions as under the Seller FSA Plan. As soon as practicable after the Closing Date (occurring after December 31, 2020), and in any event within ten (10) Business Days after the amount of the Transferred FSA Balances is determined, Seller shall pay Purchaser the net aggregate amount of the Transferred FSA Balances, if such amount is positive, and Purchaser shall pay Seller the net aggregate amount of the Transferred FSA Balances, if such amount is negative.

(f) Accrued Vacation, Sick Leave and Paid Time Off. Purchaser will recognize and assume all Liability with respect to accrued but unused vacation, sick leave and paid time off for all Continuing Employees (including any Liability to Continuing Employees for payments in respect of earned but unused vacation, sick leave and paid time off that arise as a result of the transfer of employment contemplated by Section 6.1), to the extent reflected in Closing Working Capital or the Adjustment Amount. Purchaser shall allow Continuing Employees to use the vacation, sick leave and paid time off recognized or established in accordance with the first sentence of this Section 6.2(f) in accordance with the terms of Seller's and its applicable Affiliates' programs in effect immediately prior to the Closing Date (in addition to, and not in lieu of, any vacation, sick leave and paid time off accrued under the applicable plans or policies of Purchaser or its Affiliates on or following the Closing).

Section 6.3 Seller Benefit Plans. Except as required by applicable Law, from and after the Closing, the Continuing Employees shall cease to be active participants in the Seller Benefit Plans that are not Purchased Entity Benefit Plans.

Section 6.4 Purchased Entity Benefit Plans. Purchaser and its Affiliates shall (indirectly) assume all assets (if any) and Liabilities related to all Purchased Entity Benefit Plans by virtue of Purchaser's acquisition of the Purchased Entity Shares. To the extent a Purchased Entity Benefit Plan is not required to be funded by applicable Law, there shall be no transfer of assets from Seller or its Affiliates (including the Purchased Entities and their Subsidiaries) . Purchaser shall indemnify and hold harmless Seller and its Affiliates and their officers, directors, employees, and agents from and against any and all costs, damages, losses, expenses, or other Liabilities arising out of or related to the Purchased Entity Benefit Plans.

Section 6.5 U.S. Defined Contribution Plans. Effective as of the Closing, Purchaser shall create or designate defined contribution plans (collectively, the "Purchaser DC Plans") for the benefit of the Continuing Employees who participated in one or more of the Seller Benefit Plans that are single-employer defined contribution plans maintained by Seller or its Affiliates (other than the Purchased Entities and their Subsidiaries) and that are intended to be qualified under Section 401(a) of the Code immediately prior to the Closing (collectively, the "Seller DC Plans"). Such Continuing Employees are referred to hereinafter as the "DC Employees." To the extent permitted by applicable Law, DC Employees shall be given credit under the respective Purchaser DC Plan for all service with and compensation from Seller and its Affiliates and their respective predecessors as if it were service with and compensation from Purchaser for purposes of determining eligibility, vesting and the amount of any levels of benefits under each respective Purchaser DC Plan.

Section 6.6 Deferred Compensation Plan Liabilities. Seller shall retain the Liability for all payments due under the Seller Deferred Compensation Plans. Purchaser shall notify Seller of the occurrence of a "separation from service" under Section 409A of the Code of any Continuing Employee who participates in a Seller Deferred Compensation Plan (provided that Seller provides Purchaser a list of such individuals), as promptly as practicable but in no event later than thirty (30) days thereafter. To the extent requested by Seller, Purchaser shall facilitate through Purchaser's payroll system the payment of any amounts payable to Continuing Employees under the Seller Deferred Compensation Plans, with the amount of any such payment (and the related employer portion of the applicable Taxes) to be prefunded by Seller to Purchaser. "Seller Deferred Compensation Plans" means the nonqualified deferred compensation plans maintained by Seller and its Affiliates (other than the Purchased Entities and their Subsidiaries) immediately prior to the Closing.

Section 6.7 Labor Matters. Purchaser and Seller shall, and shall cause their Affiliates to, cooperate to take all steps, on a timely basis, as are required under applicable Law or any Collective Bargaining Agreement to notify, consult with, or negotiate the effect, impact, terms or timing of the transactions contemplated by this Agreement with each works council, union, labor board, employee group, or Governmental Entity (with respect to labor and similar matters) where so required under applicable Law. Seller shall regularly review with Purchaser the progress of the notifications, consultations and negotiations with each works council, union, labor board, employee group and such Governmental Entity regarding the effect, impact or timing of the transactions contemplated by this Agreement. Purchaser and Seller shall, and shall cause their applicable Affiliates to, comply with all applicable Laws, directives and regulations relating to such matters.

Section 6.8 Workers' Compensation. Effective as of the Closing, Purchaser and its Affiliates shall be responsible for all workers' compensation benefits payable to or on behalf of the Business Employees who become Continuing Employees or Former Business Employees who were employed by a Purchased Entity immediately prior to their termination of employment, whether arising prior to, on or after the Closing Date.

Section 6.9 Immigration Compliance. Purchaser and Seller shall, and shall cause their Affiliates to, cooperate to take all steps, on a timely basis, as are required under applicable Law to ensure continued employment from and following the Closing for those Continuing Employees who are working pursuant to a visa or similar short-term work permit as of the Closing Date.

Section 6.10 Communications. Prior to the Closing, any employee notices or communication materials (including website postings) from Purchaser or its Affiliates or Seller or its Affiliates, as applicable, to the Business Employees, including notices or communication materials with respect to employment, compensation or benefits matters addressed in this Agreement or related, directly or indirectly, to the transactions contemplated by this Agreement or employment thereafter, shall be subject to the prior timely review and comment of the other Party, which comments shall be considered in good faith by the other Party.

Section 6.11 Third-Party Beneficiary Rights. This Article VI is included for the sole benefit of the parties to this Agreement and their respective transferees and permitted assigns and does not and shall not create any right in any Person, including any current or former employee of Seller or any of its Affiliates, any Business Employee, any Former Business Employee or any Continuing Employee, who is not a party to this Agreement. Nothing contained in this Agreement (express or implied) is intended to confer upon any individual any right to employment for any period of time, or any right to a particular term or condition of employment. No current or former employee of Seller or any of its Affiliates, nor any Business Employee, Former Business Employee or Continuing Employee, including any beneficiary or dependent thereof, or any other Person not a party to this Agreement, shall be entitled to assert any claim against Purchaser, Seller or any of their respective Affiliates under this Article VI.

ARTICLE VII
CERTAIN TAX MATTERS

Section 7.1 Cooperation and Exchange of Information.

(a) From and after the Closing, each Party shall, and shall cause its Affiliates to, provide to the other Party such cooperation, documentation and information relating to the Purchased Companies or their Subsidiaries or the Purchased Assets as either of them may reasonably request in (i) filing any Tax Return, amended Tax Return or claim for refund, (ii) determining a liability for Taxes or a right to refund of Taxes, or (iii) conducting any Tax Proceeding. Such cooperation and information shall include providing necessary powers of attorney, copies of all relevant portions of relevant Tax Returns, together with all relevant portions of relevant accompanying schedules and relevant work papers, relevant documents relating to rulings or other determinations by Taxing Authorities and relevant records concerning the ownership and Tax basis of property and other information, which any such Party may possess. Each Party shall make its employees reasonably available on a mutually convenient basis at its cost to provide an explanation of any documents or information so provided.

(b) Each Party shall retain all Tax Returns, schedules and work papers, and all material records and other documents relating to Tax matters, of the relevant entities for their respective Tax periods ending on or prior to the Closing Date until the later of (x) the expiration of the statute of limitations for the Tax periods to which the Tax Returns and other documents relate, or (y) eight (8) years following the due date (without extension) for such Tax Returns. Thereafter, the Party holding such Tax Returns or other documents may dispose of them after offering the other Party reasonable notice and opportunity to take possession of such Tax Returns and other documents at such other Party’s own expense.

Section 7.2 Tax Returns.

(a) From and after the Closing, Seller shall prepare (or cause to be prepared) any (i) Combined Tax Return, (ii) Tax Return of Seller Parent or any of its Subsidiaries (other than the Purchased Companies or any Subsidiary thereof) (the "Seller Returns") and (iii) Tax Returns (other than any Combined Tax Return or Seller Return) that are required to be filed by or with respect to any of the Purchased Entities (or any Subsidiaries thereof) after the Closing (taking into account valid extensions) for any Pre-Closing Tax Period (a "Pre-Closing Separate Tax Return"). Seller shall provide Purchaser with a copy of any completed Pre-Closing Separate Tax Return not less than thirty (30) days prior to the due date on which such Tax Return is due (taking validly obtained extensions into account) (or if such Tax Return is due within thirty (30) days after the Closing Date, then as soon as reasonably practicable taking into account the Tax period and the nature of the relevant Tax Return or other relevant circumstances), Purchaser shall have the right to review, comment on and propose changes to such Pre-Closing Separate Tax Return and shall provide comments, if any, to Seller on any such Pre-Closing Separate Tax Return within ten (10) days after receipt of such Pre-Closing Separate Tax Return (or such shorter period as is reasonable taking into account the Tax period and the nature of the relevant Tax Return or other relevant circumstances) and Seller shall consider any such comments in good faith. In the event Seller disagrees with any comments received from Purchaser, Seller shall promptly notify Purchaser of such disagreement prior to the due date for such Pre-Closing Separate Tax Return (taking into account extensions). Seller shall revise such Pre-Closing Separate Tax Returns to reflect any reasonable comments received from Purchaser with which Seller agrees and shall deliver, if applicable, a revised Pre-Closing Separate Tax Return to Purchaser at least ten (10) days before the due date therefor (taking validly obtained extensions into account) (or such shorter period as is reasonable taking into account the Tax period and the nature of the relevant Tax Return or other relevant circumstances), and Purchaser shall timely file or cause to be timely filed such Pre-Closing Separate Tax Returns as prepared by Seller; provided, however, that Purchaser shall not be required to file any Pre-Closing Separate Tax Return that includes a position for which Purchaser determines, in its reasonable discretion, that there is not at least "substantial authority" within the meaning of Section 6662(d)(2)(b)(i) of the Code (or any similar provision of state, local or non-U.S. Law). Except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any similar provision of state, local, or non-U.S. Law), Purchaser shall not amend or revoke any Combined Tax Return, Seller Return or any Pre-Closing Separate Tax Return (or any notification or election relating thereto) without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed). At Seller's reasonable request, Purchaser shall file, or cause to be filed, amended Pre-Closing Separate Tax Returns; provided, however, that Purchaser shall have the same rights to review and comment on such amended Pre-Closing Separate Tax Returns as described in this Section 7.2(a) for the original Pre-Closing Separate Tax Returns. Purchaser shall promptly provide (or cause to be provided) to Seller any information reasonably requested by Seller to facilitate the preparation and filing of any Tax Returns described in this Section 7.2(a), and Purchaser shall use commercially reasonable efforts to prepare (or cause to be prepared) such information in a manner and on a timeline requested by Seller.

(b) Except for any Tax Return required to be prepared by Seller pursuant to Section 7.2(a), Purchaser shall prepare, or cause to be prepared, and timely file, or cause to be timely filed, (taking into account any valid extensions) all Tax Returns of or with respect to the Purchased Entities (and any Subsidiaries thereof). In the case of any such Tax Return for a Straddle Period (each a "Purchaser-Filed Tax Return"), Purchaser shall prepare (or cause to be prepared) such Purchaser-Filed Tax Return in a manner consistent with the past practice of or with respect to the applicable Purchased Entity (or Subsidiary thereof). Purchaser shall provide Seller with a copy of such completed Purchaser-Filed Tax Return not less than thirty (30) days prior to the due date on which such Tax Return is due (taking validly obtained extensions into account) (or if such Tax Return is due within thirty (30) days after the Closing Date, then as soon as reasonably practicable taking into account the Tax period and the nature of the relevant Tax Return or other relevant circumstances). Seller shall have the right to review, comment on and propose changes to such Purchaser-Filed Tax Return, and Purchaser shall consider any such comments in good faith. Purchaser shall revise such Purchaser-Filed Tax Return to reflect any comments received from Seller with which Purchaser agrees and, in the event Purchaser disagrees with any comments received from Seller, Purchaser shall promptly notify Seller of such disagreement prior to the due date for such Purchaser-Filed Tax Return (taking into account extensions), and Seller and Purchaser shall work together in good faith to resolve any such disagreements. If Seller and Purchaser are unable to reach resolution, they shall promptly cause the jointly retained Independent Accounting Firm (who shall be promptly engaged if not previously engaged in accordance with Section 2.9) to resolve any remaining disputes within a reasonable time, taking into account the deadline for filing such return. Purchaser shall revise such Purchaser-Filed Tax Return to reflect such resolution and shall deliver, if applicable, a revised Purchaser-Filed Tax Return to Seller at least ten (10) days before the due date therefor (taking validly obtained extensions into account) (or such shorter period as is reasonable taking into account the Tax period and the nature of the relevant Tax Return or other relevant circumstances), and Purchaser shall timely file or cause to be timely filed such Tax Return. Any determination of the Independent Accounting Firm shall be binding upon the parties without further adjustment. The costs, fees and expenses of such Independent Accounting Firm shall be borne equally by Purchaser and Seller. Except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of state, local or non-U.S. law), Purchaser shall not amend or revoke any Purchaser-Filed Tax Return (or any notification or election relating thereto). At Seller's reasonable request, Purchaser shall file, or cause to be filed, amended Purchaser-Filed Tax Returns; provided, however, that any such amended Purchaser-Filed Tax Return shall be prepared in a manner consistent with this Section 7.2(b). Notwithstanding the foregoing, if a Purchaser-Filed Tax Return is due (taking into account applicable extensions) before all items with respect to such Purchaser-Filed Tax Return have been resolved, Purchaser shall timely file (or cause to be filed) such return as prepared by Purchaser and as revised to reflect any comments received from Seller with which Purchaser agrees and any agreement reached between Seller and Purchaser. After resolution of all disputed items with respect to any Purchaser-Filed Tax Return filed prior to such resolution, Purchaser shall file an amended return reflecting the resolution of such disputed items, if necessary.

(c) Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to provide any Person with any Tax Return or copy of any Tax Return of (i) Seller Parent or any of its Subsidiaries (other than the Purchased Entities and their respective Subsidiaries) or (ii) a consolidated, combined, affiliated or unitary group that includes Seller Parent or any of its Subsidiaries (including any Combined Tax Return).

Section 7.3 Tax Benefits and Tax Refunds. If Purchaser or any of its Affiliates actually realizes any Tax benefit as a result of any payment of compensation or benefits by Seller or any of its Affiliates to any Business Employee or Former Business Employee, then Purchaser shall pay to Seller Parent the amount of such Tax benefit no later than fifteen (15) days after such Tax benefit is actually realized. Purchaser shall pay or cause to be paid to Seller Parent any refund (or credit obtained in lieu thereof) of Taxes for which Seller Parent is liable under Article X (including any interest paid thereon) received by Purchaser, any Affiliate of Purchaser or the Purchased Entities or any Subsidiary thereof, except to the extent any such refund (or credit) is attributable to a carry back of a Tax attribute from a Post-Closing Tax Period, no later than ten (10) days following receipt of such refund (or, in the case of a credit obtained in lieu of such refund, no later than ten (10) days following the filing of the income Tax Return on which such credit is used to offset tax otherwise payable), net of any out-of-pocket costs incurred in obtaining such refund or credit (including any income Taxes imposed thereon). Any refunds or credits of the Purchased Entities (or their Subsidiaries) for any Straddle Period shall be equitably apportioned between Seller Parent and Purchaser in accordance with the principles set forth in Section 7.10. Each Party shall pay, or cause its Affiliates to pay, to the Party entitled to a refund or credit of Taxes under this Section 7.3, the amount of such refund or credit (including any interest paid thereon and net of any reasonable out-of-pocket expenses (including Taxes)) to the Party receiving such refund or credit in respect of the receipt or accrual of such refund or credit in readily available funds within fifteen (15) days of the actual receipt of the refund or credit or the application for such refund or credit against amounts otherwise payable.

Section 7.4 Tax Contests. If any Taxing Authority asserts a claim with respect to Taxes that, if pursued successfully, would reasonably be expected to serve as the basis for a claim for indemnification under Article X (a "Tax Claim"), then the Party first receiving notice of such Tax Claim promptly shall provide written notice thereof to the other Party. Such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of the relevant portion of any correspondence received from the Taxing Authority.

(a) In the case of a Tax Proceeding of or with respect to any of the Purchased Entities or their respective Subsidiaries for any taxable period ending on or before the Closing Date (other than a Tax Proceeding described in Section 7.4(c)), Seller shall have the exclusive right to control such Tax Proceeding; provided, however, that Seller shall not settle or compromise any such Tax Proceeding without the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), if such settlement or compromise could have a material adverse impact on Purchaser or any of its Affiliates for any Post-Closing Tax Period.

(b) In the case of a Tax Proceeding of or with respect to any of the Purchased Entities or their respective Subsidiaries for any Straddle Period (other than a Tax Proceeding described in Section 7.4(c)), the Controlling Party shall have the right and obligation to conduct, at its own expense, such Tax Proceeding; provided, however, that (i) the Controlling Party shall provide the Non-Controlling Party with a timely and reasonably detailed account of each stage of such Tax Proceeding, (ii) the Controlling Party shall consult with the Non-Controlling Party before taking any significant action in connection with such Tax Proceeding, (iii) the Controlling Party shall consult with the Non-Controlling Party and offer the Non-Controlling Party an opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Proceeding, (iv) the Controlling Party shall defend such Tax Proceeding diligently and in good faith as if it were the only party in interest in connection with such Tax Proceeding, (v) the Non-Controlling Party shall be entitled to participate in such Tax Proceeding and attend any meetings or conferences with the relevant Taxing Authority and (vi) the Controlling Party shall not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent of the Non-Controlling Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, further, however, that the Controlling Party shall not have any obligations (and the Non-Controlling Party shall not have any rights) under clause (i), (ii), (iii) or (v) above with respect to any portion of such Tax Proceeding (and any actions, written materials, meetings or conferences relating exclusively thereto) that could not reasonably be expected to affect the liability of, or otherwise have an adverse effect on, the Non-Controlling Party or any of its Affiliates. For purposes of this Agreement, "Controlling Party" shall mean Seller if Seller and its Affiliates are reasonably expected to bear the greater Tax liability in connection with such Tax Proceeding, or Purchaser if Purchaser and its Affiliates are reasonably expected to bear the greater Tax liability in connection with such Tax Proceeding; and "Non-Controlling Party" means whichever of Seller or Purchaser is not the Controlling Party with respect to such Tax Proceeding.

(c) Notwithstanding anything to the contrary in this Agreement, Seller Parent shall have the exclusive right to control in all respects, and neither Purchaser nor any of its Affiliates shall be entitled to participate in, any Tax Proceeding with respect to (i) any Tax Return of Seller Parent or any of its Subsidiaries and (ii) any Tax Return of a consolidated, combined or unitary group that includes Seller Parent or any of its Subsidiaries (including any Combined Tax Return).

Section 7.5 Tax Sharing Agreements. To the extent relating to the Purchased Entities or their Subsidiaries, Seller Parent shall terminate or cause to be terminated, on or before the Closing Date, the rights and obligations of the Purchased Entities and their Subsidiaries pursuant to all Tax sharing agreements or arrangements (other than this Agreement), if any, to which any of the Purchased Entities or their Subsidiaries, on the one hand, and Seller Parent or any of its Affiliates (other than the Purchased Companies and their Subsidiaries), on the other hand, are parties, and neither Seller Parent nor any of its Affiliates (other than the Purchased Entities and their Subsidiaries), on the one hand, nor any of the Purchased Entities or their respective Subsidiaries, on the other hand, shall have any rights or obligations to each other after the Closing in respect of such agreements or arrangements.

Section 7.6 Tax Treatment of Payments.

(a) Except to the extent otherwise required by applicable Law or pursuant to a "determination" (within the meaning of Section 1313(a) of the Code or any similar provision of state, local or foreign Law), Seller Parent, Purchaser, the Purchased Entities and their respective Affiliates shall (i) (A) treat the transactions contemplated by this Agreement as a contingent payment sale with a stated maximum selling price as contemplated by Treasury Regulations Section 15A.453-1(c)(1) and (2) and (B) treat any and all payments under Section 2.9, Section 2.11, Section 2.12, Section 5.16 and Article X as an adjustment to the purchase price for Tax purposes (except to the extent of any amounts in respect of imputed interest) and (ii) not take any position inconsistent with clause (i) on any Tax Return or in any Tax Proceeding. For the avoidance of doubt, nothing in this Agreement shall restrict Seller Parent or any of its Affiliates from making an election pursuant to Treasury Regulations Section 15A.453-1(d)(3) to not report the transactions contemplated by this Agreement on the installment method.

(b) Seller Parent and Purchaser acknowledge that, for U.S. federal and applicable state and local income Tax purposes, prior to the Closing, Seller Parent will transfer or cause to be transferred to Seller Parent or one or more of its Subsidiaries (other than the Purchased Companies and their respective Subsidiaries) all economic rights to, interest in, and benefits of the Retained Claim Recovery, Seller Parent's Applicable GDB Portion of any GDB Claim Recoveries and Seller Parent's Applicable GGB Portion of any GGB Claim Recoveries (the "Transferred Excluded Assets" and any such transfer, an "Excluded Assets Transfer"). No later than ninety (90) days after the Closing, Seller Parent shall deliver to Purchaser written notice of the fair market value of such Transferred Excluded Assets as of the date of any relevant Excluded Assets Transfer, determined in a manner consistent with applicable Tax Law (the "Transferred Excluded Assets Value"). Neither Seller Parent or Purchaser shall (and each of Seller Parent and Purchaser shall cause their respective Affiliates not to) take any position inconsistent with the Excluded Assets Transfer or the Transferred Excluded Assets Value on any Tax Return or in any Tax Proceeding, in each case, except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of state, local or foreign Law).

Section 7.7 Elections.

(a) Notwithstanding anything herein to the contrary, neither Purchaser nor any of its Subsidiaries or Affiliates (including, after the Closing Date, the Purchased Companies and their Subsidiaries) shall (i) make or cause to be made any election with respect to any Purchased Company or any Subsidiary thereof (including any entity classification election pursuant to Treasury Regulation Section 301.7701-3) effective on or prior to the Closing Date, (ii) change or cause to be changed any method of Tax accounting or any Tax accounting period of any Purchased Company or any Subsidiary thereof, which election or change would be effective on or prior to the Closing Date or (iii) take any action or engage in any transaction that would reasonably be expected to increase any Tax liability required to be reflected as a reserve or Liability in Closing Working Capital or Closing Funded Debt (or otherwise require any Tax liability to be reflected as a reserve or Liability in Closing Working Capital or Closing Funded Debt that would not otherwise be required to be so reflected) for purposes of calculating the Final Purchase Price.

(b) Seller Parent and Purchaser agree to the matters set forth in Section 7.7(b) of the Seller Disclosure Schedules.

(c) To the extent Purchaser or any of its Affiliates (including the Purchased Companies and their Subsidiaries) actually realize any Tax benefit (that is, in cash or an actual reduction in liability for Tax) as a result of, arising from or attributable to the -36(d)(6) Election (within the meaning of Section 7.7(b) of the Seller Disclosure Schedules), calculated on a "with and without" basis (such Tax benefit, the "Shared Tax Benefit"), then Purchaser shall pay to Seller Parent an amount in cash equal to the product of (i) fifty-five percent (55%) and (ii) the Shared Tax Benefit, which payment shall be made no later than fifteen (15) days after such Shared Tax Benefit is actually realized. For each taxable period ending after the Closing Date during which any Tax deduction results or arises from, or is attributable to, the -36(d)(6) Election, which Tax deduction is or would be reflected on a Tax Return of Purchaser or any of its Affiliates (including the Purchased Companies and their Subsidiaries), regardless of whether Purchaser or any of its Affiliates (or any of the Purchased Companies or their Subsidiaries) actually realize any associated Tax benefit, Purchaser shall deliver to Seller Parent a calculation, together with reasonable supporting documentation and work papers, (A) of any Shared Tax Benefit for such taxable period or (B) supporting any determination that there is no such Shared Tax Benefit for such taxable period (a "Shared Tax Benefit Calculation"). Any Shared Tax Benefit Calculation shall be delivered no later than thirty (30) days prior to the due date (taking validly obtained extensions into account) for the Tax Return on which the relevant Tax deduction is or would be reflected. Seller Parent and its representatives shall have the right to review any Shared Tax Benefit Calculation and the relevant books and records of the Purchased Companies and their Subsidiaries, and Purchaser shall (and shall cause its representatives to) assist Seller Parent and its representatives in their review of such Shared Tax Benefit Calculation and reasonably cooperate with respect thereto. Seller Parent shall notify Purchaser if Seller Parent disagrees with any portion of any Shared Tax Benefit Calculation, and such notice shall set forth in reasonable detail the basis for such disagreement and Seller Parent's proposed adjustments to such Shared Tax Benefit Calculation. Following the delivery of any such notice of disagreement, Seller Parent and Purchaser shall negotiate in good faith to resolve such disagreement. If Seller Parent and Purchaser are unable to reach resolution, they shall promptly cause the jointly retained Independent Accounting Firm (who shall be promptly engaged if not previously engaged in accordance with this Agreement) to resolve any remaining disputes within a reasonable time, taking into account the deadline for filing the relevant Tax Return. Any determination of the Independent Accounting Firm shall be binding upon the Parties without further adjustment. The costs, fees and expenses of such Independent Accounting Firm shall be borne in proportion to how Seller Parent and Purchaser share the Shared Tax Benefit under this Section 7.7(c). Notwithstanding the foregoing, if the relevant Tax Return is due (taking into account applicable extensions) before all disputes with respect to the relevant Shared Tax Benefit Calculation have been resolved, nothing in this Section 7.7(c) shall prevent Purchaser from timely filing (or causing to be timely filed) such Tax Return; provided that any positions reflected on such Tax Return shall not be prejudicial to, nor shall they influence the resolution of, any outstanding disputes with respect to any Shared Tax Benefit Calculation.

Section 7.8 Transfer Taxes. Notwithstanding anything in this Agreement to the contrary, any sales, use, transfer (including real estate transfer), registration, documentary, conveyancing, stamp, value added, goods and services or similar Taxes and related fees and costs imposed on or payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes") will be borne 50% by Purchaser and 50% by Seller, and will be paid to the appropriate Taxing Authority promptly when due by the Party having the obligation to pay such Transfer Taxes under applicable Law. The Party responsible under applicable Law for filing the Tax Returns with respect to such Transfer Taxes shall prepare and timely file such Tax Returns and promptly provide a copy of such Tax Return to the other Party. Seller and Purchaser shall, and shall cause their respective Affiliates to, cooperate to timely prepare and file any Tax Returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes; provided that, notwithstanding any of the foregoing, neither Seller nor any of its Affiliates shall be required to file any claim for exemption or exclusion from the application or imposition of any Transfer Taxes, or any claim for any reduction thereof, if Seller determines in its sole discretion that the filing of such claim or any related action would have an adverse effect on Seller or any of its Affiliates.

Section 7.9 Additional Post-Closing Tax Covenant. With respect to any of the Purchased Companies or any Subsidiary thereof that is characterized as a foreign corporation for U.S. federal income Tax purposes, from the Closing Date through the end of the taxable period of such entity that includes the Closing Date, Purchaser shall not, and shall cause its Affiliates (including the Purchased Companies and their Subsidiaries) not to (a) take any action outside the ordinary course of business that could reasonably be expected to increase Seller Parent's (or any Affiliate of Seller Parent's) pro rata share of amounts determined under Section 951(a)(1) or 951A(a) of the Code or (b) enter into any extraordinary transaction with respect to such entity or otherwise take any action or enter into any transaction that would be considered under the Code to constitute the payment of an actual or deemed dividend by such entity, including pursuant to Section 304 of the Code, or that would otherwise result in a diminution of foreign tax credits that, absent such transaction, may be claimed by Seller Parent or any of its Affiliates or a change in the application of Section 245A of the Code to Seller Parent or any of its Affiliates as compared with such application absent such action or transaction.

Section 7.10 Proration of Straddle Period Taxes. In the case of Taxes relating to the Purchased Entities (or Subsidiaries thereof) that are payable with respect to any Straddle Period, the portion of any such Taxes that is attributable to the portion of the Straddle Period ending on the Closing Date shall be (i) in the case of Taxes not described in clause (ii) (including Taxes that are based upon or related to income or receipts), deemed equal to the amount that would be payable if the Straddle Period of the Purchased Companies ended with (and included) the Closing Date; provided that exemptions, allowances, or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the portion of the Straddle Period ending on and including the Closing Date and the portion of the Straddle Period beginning after the Closing Date in proportion to the number of days in each such portion; and (ii) in the case of Taxes that are imposed on a periodic basis with respect to the assets or capital of the Purchased Entities, deemed to be the amount of such Taxes for the entire Straddle Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. With respect to any Purchased Company or Subsidiary thereof that is treated as a partnership for U.S. federal income Tax purposes, the Parties agree to allocate, pursuant to Section 706 of the Code, between Purchaser and Seller based on a closing of the books as of the Closing Date, all items of income, gain, loss, deduction and credit attributable to such Purchased Company or Subsidiary for the applicable taxable period in which the Closing Date occurs. For the avoidance of doubt, Seller Parent and Purchaser shall use the interim closing of the books method at the end of the Closing Date for purposes of determining allocations that must be made to the Purchased Entities and their respective Subsidiaries for U.S. federal, and applicable state and local, income Tax purposes (including pursuant to Treasury Regulations Section 1.1502-76(b)(1)(ii)(A)(1) (and not pursuant to the "next day" rule under Treasury Regulations Section 1.1502-76(b)(1)(ii)(B)), and neither Seller Parent nor Purchaser shall elect to use the ratable allocation method pursuant to Treasury Regulations Section 1.1502-76(b)(2)(ii)) with respect to the Purchased Entities or their respective Subsidiaries for U.S. federal, and applicable state and local, income tax purposes. In accordance with Treasury Regulations Section 1.1502-76 and any analogous provision of state, local, or foreign Law, any Tax related to any extraordinary transactions (not contemplated by this Agreement to occur on the Closing Date) that occurs on the Closing Date, but after the Closing, shall be allocated to the Post-Closing Tax Period.

ARTICLE VIII
CONDITIONS PRECEDENT

Section 8.1 Conditions to Each Party's Obligations to Close. The respective obligations of Seller and Purchaser to effect the Closing are subject to the satisfaction or (to the extent permitted by Law) waiver by Seller and Purchaser at or prior to the Closing of the following condition:

(a) No Injunctions or Restraints. No Judgment or Law issued or enacted by any Governmental Entity of competent jurisdiction shall have been entered and remain in effect which prevents or prohibits the consummation of the Closing.

Section 8.2 Conditions to Obligations of Purchaser to Close. The obligation of Purchaser to effect the Closing is subject to the satisfaction (or waiver by Purchaser) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The representations and warranties of Seller contained in Article III (other than as set forth in the following two sentences) shall be true and correct as of the Closing Date as if made on and as of the Closing Date (or, in the case of representations and warranties that are made as of a specific date, as of such date), except where the failure of such representations and warranties to be true and correct (without giving effect to any materiality or "Business Material Adverse Effect" qualification set forth therein) would not have, individually or in the aggregate, a Business Material Adverse Effect. The representations and warranties of Seller set forth in Section 3.2(b) and Section 3.3 shall be true and correct in all material respects as of the Closing Date as if made on and as of the Closing Date (or, in the case of representations and warranties that are made as of a specific date, as of such date). The representation and warranty of Seller set forth in Section 3.8(b) shall be true and correct in all respects as of the Closing Date as if made on and as of the Closing Date.

(b) Performance of Obligations of Seller. The covenants and agreements of Seller to be performed on or before the Closing Date in accordance with this Agreement shall have been performed in all material respects.

(c) Officer's Certificate. Purchaser shall have received a certificate, dated as of the Closing Date and signed on behalf of Seller by an executive officer of Seller, stating that the conditions specified in Section 8.2(a) and Section 8.2(b) have been satisfied.

Section 8.3 Conditions to Obligations of Seller to Close. The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver by Seller) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The representations and warranties of Purchaser contained in Article IV (other than as set forth in the following sentence) shall be true and correct as of the Closing Date as if made on and as of the Closing Date (or, in the case of representations and warranties that are made as of a specific date, as of such date), except where the failure of such representations and warranties to be true and correct (without giving effect to any materiality or "Purchaser Material Adverse Effect" qualification set forth therein) would not have, individually or in the aggregate, a Purchaser Material Adverse Effect. The representations and warranties of Purchaser set forth in Section 4.2 shall be true and correct in all material respects as of the Closing Date as if made on and as of the Closing Date (or, in the case of representations and warranties that are made as of a specific date, as of such date).

(b) Performance of Obligations of Purchaser. The covenants and agreements of Purchaser to be performed on or before the Closing Date in accordance with this Agreement shall have been performed in all material respects.

(c) Officer's Certificate. Seller shall have received a certificate, dated as of the Closing Date and signed on behalf of Purchaser by an executive officer of Purchaser, stating that the conditions specified in Section 8.3(a) and Section 8.3(b) have been satisfied.

Section 8.4 Frustration of Closing Conditions. Neither Purchaser nor Seller may rely as a basis for terminating this Agreement on the failure of any condition set forth in this Article VIII to be satisfied if such failure was caused by such Party's failure to act in good faith or to use the efforts to cause the Closing to occur as required by this Agreement, including Section 5.1.

ARTICLE IX
TERMINATION; EFFECT OF TERMINATION

Section 9.1 Termination. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the Transaction and the other transactions contemplated by this Agreement abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) by Seller, if Purchaser shall have materially breached any of its representations, warranties, covenants or agreements contained in this Agreement, and such breach would give rise to the failure of a condition set forth in Section 8.3(a) or Section 8.3(b) and has not been cured by the earlier of (i) the date that is thirty (30) days after the date that Seller has notified Purchaser of such breach stating Seller's intention to terminate this Agreement pursuant to this Section 9.1(b) and the basis for such termination and (ii) the Outside Date; provided that Seller shall not be permitted to terminate this Agreement pursuant to this Section 9.1(b) if Seller has materially breached any of its representations, warranties, covenants or agreements contained in this Agreement;

(c) by Purchaser, if Seller shall have materially breached any of its representations, warranties, covenants or agreements contained in this Agreement, and such breach would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.2(b) and has not been cured by the earlier of (i) the date that is thirty (30) days after the date that Purchaser has notified Seller of such breach stating Purchaser's intention to terminate this Agreement pursuant to this Section 9.1(c) and the basis for such termination and (ii) the Outside Date; provided that Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 9.1(c) if Purchaser has materially breached any of its representations, warranties, covenants or agreements contained in this Agreement;

(d) by Seller or by Purchaser, subject to Section 11.7, if the Closing shall not have occurred on or prior to the date that is the four (4) month anniversary of the date hereof (the "Outside Date"); provided that the right to terminate this Agreement pursuant to this Section 9.1(d) shall not be available to (i) any Party whose failure to perform any covenant or agreement under this Agreement or whose breach of any representation or warranty has been the cause of, or resulted in, the failure of the Closing to occur on or before such date or (ii) any Party during the pendency of any Proceeding brought by the other Party for specific performance of this Agreement; or

(e) by Seller or by Purchaser, if a permanent Judgment issued by a Governmental Entity of competent jurisdiction shall have become final and nonappealable, preventing the consummation of the Transaction; provided that the right to terminate this Agreement pursuant to this Section 9.1(e) shall not be available to any Party whose failure to perform any covenant or agreement under this Agreement or whose breach of any representation or warranty has been the cause of, or resulted in, the issuance of such Judgment.

Section 9.2 Effect of Termination. If this Agreement is terminated and the Transaction is abandoned as described in Section 9.1, this Agreement shall become null and void and of no further force and effect, without any Liability or obligation on the part of any Party or its Affiliates, directors, officers or employees; provided that the provisions of Section 5.3, Section 9.1, this Section 9.2, Section 9.3 and Article XI shall remain in full force and effect; and provided, further, that nothing in this Section 9.2 shall release or relieve any Party from any Liability for any fraud or willful and material breach by such Party of any representation, warranty, covenant or agreement in this Agreement. Notwithstanding the foregoing, nothing in this Section 9.2 shall release or relieve Purchaser from any Liability in respect of reimbursement or similar obligations with respect to Seller or its Affiliates expressly set forth in this Agreement.

Section 9.3 Notice of Termination. In the event of termination by Seller or Purchaser pursuant to Section 9.1, written notice of such termination shall be given by the terminating Party to the other Party.

ARTICLE X
INDEMNIFICATION

Section 10.1 Survival.

(a) The representations and warranties of Seller and Seller Parent contained in this Agreement shall not survive the Closing.

(b) The representations and warranties of Purchaser contained in this Agreement shall not survive the Closing.

(c) The covenants and agreements contained in this Agreement that require performance in full prior to the Closing (and any rights arising out of any breach of such covenants and agreements), in each case, shall not survive the Closing, and the covenants and agreements in this Agreement that by their terms apply or are to be performed, in whole or in part, after the Closing (and any rights arising out of any breach of such covenants and agreements), in each case, shall survive the Closing for the period provided in such covenants and agreements, if any, or until fully performed. For the avoidance of doubt, (i) the obligation of Seller Parent to retain, and indemnify and hold harmless the Purchaser Indemnified Parties for, any Retained Liabilities, and the obligation of Purchaser to assume, and indemnify and hold harmless the Seller Indemnified Parties for, any Assumed Liabilities, as well as any covenants and agreements of the Parties that by their terms provide for indemnification or reimbursement or allocate fees, payments, costs or expenses as between the Parties, shall survive the Closing indefinitely and (ii) the obligation of Seller Parent under Section 10.2(a)(iii) and the obligation of Purchaser under Section 7.7(c) shall survive the Closing Date with respect to any Tax (or Tax benefit) until sixty days following the expiration of the applicable statute of limitations with respect to such Tax (or Tax benefit). No Person shall be entitled to indemnification, and no Proceeding seeking to recover Covered Losses or other relief shall be commenced or maintained, after the end of the relevant survival period set forth herein, unless a claim for indemnification with respect thereto has previously been made in accordance with this Agreement.

Section 10.2 Indemnification by Seller Parent.

(a) Subject to the provisions of this Article X, effective as of and after the Closing, Seller Parent shall indemnify, defend and hold harmless Purchaser and its Affiliates (including, following the Closing, the Purchased Entities and their Subsidiaries) and their respective officers, directors, employees, agents, attorneys, accountants, representatives and successors (collectively, the "Purchaser Indemnified Parties"), from and against any and all Covered Losses incurred or suffered by any of the Purchaser Indemnified Parties to the extent resulting directly or indirectly from or arising out of (i) any breach of any covenant or agreement of Seller contained in this Agreement that survives the Closing, for the period it survives, (ii) any Retained Liabilities or (iii) any Covered Taxes.

(b) Notwithstanding anything in this Agreement to the contrary, Seller Parent shall not be required to indemnify or hold harmless any Purchaser Indemnified Party against, or reimburse any Purchaser Indemnified Party for, any Covered Losses to the extent that such Covered Losses or the related Liabilities are reflected, reserved, accrued, recorded or included in the Closing Working Capital, the Adjustment Amount or the Closing Funded Debt as finally determined pursuant to this Agreement.

Section 10.3 Indemnification by Purchaser. Subject to the provisions of this Article X, effective as of and after the Closing, Purchaser shall indemnify, defend and hold harmless Seller Parent and its Affiliates and their respective officers, directors, employees, agents, attorneys, accountants, representatives and successors (collectively, the "Seller Indemnified Parties"), from and against any and all Covered Losses incurred or suffered by any of the Seller Indemnified Parties to the extent resulting directly or indirectly from or arising out of (a) any breach of any covenant or agreement of Purchaser contained in this Agreement that survives the Closing, for the period it survives or (b) any Assumed Liability.

Section 10.4 Procedures.

(a) Any Person entitled to be indemnified under this Article X (the "Indemnified Party") shall promptly give written notice to the Party from whom indemnification may be sought (the "Indemnifying Party") of any pending or threatened Proceeding against the Indemnified Party that has given or would reasonably be expected to give rise to such right of indemnification with respect to such Proceeding (a "Third Party Claim"), indicating, with reasonable specificity, the nature of such Third Party Claim, the basis therefor, a copy of any documentation received from the third party, the amount and calculation of the Covered Losses (if then known) for which the Indemnified Party is entitled to indemnification under this Article X (and a good faith estimate of any such future Covered Losses relating thereto), and the provision(s) of this Agreement in respect of which such Covered Losses shall have occurred, and the Indemnified Party shall promptly deliver to the Indemnifying Party any information or documentation related to the foregoing reasonably requested by the Indemnifying Party. A failure by the Indemnified Party to give notice and to tender the defense of the Proceeding in a timely manner pursuant to this Section 10.4(a) shall not limit the obligations of the Indemnifying Party under this Article X, except to the extent such Indemnifying Party is prejudiced thereby.

(b) With respect to any Third Party Claim, the Indemnifying Party under this Article X shall have the right, but not the obligation, to assume the control and defense, at its own expense and by counsel of its own choosing, of such Third Party Claim and any Third Party Claims related to the same or a substantially similar set of facts; provided that the Indemnifying Party shall not be entitled to assume the control and defense of such Third Party Claim, and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party, if such Third Party Claim is a criminal Proceeding. If the Indemnifying Party so undertakes to control and defend any such Third Party Claim, it shall notify the Indemnified Party of its intention to do so, and the Indemnified Party shall cooperate fully with the Indemnifying Party and its counsel in the defense against, and settlement of, any such Third Party Claim; provided, however, that the Indemnifying Party shall not settle any such Third Party Claim without the written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed) unless such settlement does not involve any injunctive relief against or any finding or admission of any violation of Law or wrongdoing by the Indemnified Party, and any money damages are borne solely by the Indemnifying Party. Subject to the foregoing, the Indemnified Party shall have the right to employ separate legal counsel and to participate in but not control the defense of such Proceeding at its own cost and expense; provided that, subject to the provisions of this Article X, the Indemnifying Party shall bear the reasonable fees of one firm of legal counsel (and one additional firm of legal counsel in each jurisdiction implicated in such Proceeding) representing all Indemnified Parties in such Proceeding and all related Proceedings, if, but only if, the defendants in such Proceeding include both an Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have reasonably concluded, based on the advice of legal counsel, that there is a material conflict of interest between the Indemnifying Party and the Indemnified Party with respect to such Proceeding. In any event, the Indemnified Party shall cause its legal counsel to cooperate with the Indemnifying Party and its legal counsel and shall not assert any position in any Proceeding inconsistent with that asserted by the Indemnifying Party. No Indemnified Party may settle any Third Party Claim without the written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed). If the Indemnifying Party does not assume the control and defense of a Third Party Claim, it shall nevertheless be entitled to participate in the defense of such Proceeding at its own cost and expense, and the Indemnified Party shall cooperate fully with the Indemnifying Party and its counsel in the defense against, and settlement of, any such Third Party Claim.

(c) In the event that any Indemnified Party has or may have an indemnification claim against any Indemnifying Party under this Article X that does not involve a Third Party Claim, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party indicating, with reasonable specificity, the nature of such claim, the basis therefor, the amount and calculation of the Covered Losses (if then known) for which the Indemnified Party is entitled to indemnification under this Article X (and a good-faith estimate of any such future Covered Losses relating thereto), and the provision(s) of this Agreement in respect of which such Covered Losses shall have occurred, and the Indemnified Party shall promptly deliver to the Indemnifying Party any information or documentation related to the foregoing reasonably requested by the Indemnifying Party. A failure by the Indemnified Party to give notice in a timely manner pursuant to this Section 10.4(c) shall not limit the obligations of the Indemnifying Party under this Article X, except to the extent such Indemnifying Party is prejudiced thereby. If the Indemnifying Party disputes its liability with respect to such claim, the Indemnifying Party and the Indemnified Party shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in the appropriate court of competent jurisdiction set forth in Section 11.8.

(d) Any indemnification of an Indemnified Party for Covered Losses pursuant to this Article X shall be effected by wire transfer of immediately available funds to an account designated by the Indemnified Party from or on behalf of the Indemnifying Party within five (5) Business Days of the earlier to occur of a written agreement by Purchaser and Seller or a final judgment by the appropriate court of competent jurisdiction set forth in Section 11.8, in either case determining the amount of such Covered Losses required to be paid by the Indemnifying Party to the Indemnified Party in respect of an indemnification claim hereunder.

(e) Notwithstanding anything in this Agreement to the contrary, this Section 10.4 shall not apply with respect to indemnification and other payments in respect of Taxes, which shall be governed by Article VII.

Section 10.5 Exclusive Remedy and Release. Purchaser and Seller acknowledge and agree that, except with respect to claims under the Transition Services Agreement (which shall be governed exclusively by the Transition Services Agreement) and the Seller Parent Conditional Guaranty (which shall be governed exclusively by the Seller Parent Conditional Guaranty), claims seeking specific performance or other equitable relief with respect to covenants or agreements to be performed after the Closing, following the Closing, the indemnification provisions of Section 10.2 and Section 10.3 shall be the sole and exclusive remedies of Purchaser and Seller, respectively, and any of their respective Affiliates, for any Liabilities (including in respect of any claims for breach of contract (including for breach of any representation, warranty, covenant or agreement), warranty, tortious conduct (including negligence), under Law or otherwise and whether predicated on common law, statute, strict liability, or otherwise) that each Party may at any time suffer or incur, or become subject to, as a result of or in connection with this Agreement, the Transaction or the other transactions contemplated by this Agreement, including any breach of any representation or warranty in this Agreement by any Party, or any breach of or failure by any Party to perform or comply with any covenant or agreement in this Agreement and the other Transaction Documents. In furtherance of the foregoing, from and after the Closing, the Parties hereby waive, on behalf of themselves and their Affiliates, to the fullest extent permitted by applicable Law, any and all other rights, claims and causes of action (including rights of contribution, if any) known or unknown, foreseen or unforeseen, which exist or may arise in the future, that they may have against Seller or any of its Affiliates, or Purchaser or any of its Affiliates, as the case may be, as a result of or in connection with this Agreement, the Transaction or the other transactions contemplated by this Agreement, whether arising under or based upon breach of contract (including for breach of any representation, warranty, covenant or agreement), warranty, tortious conduct (including negligence), under Law or otherwise and whether predicated on common law, statute, strict liability, or otherwise. Without limiting the generality of the foregoing, the Parties hereby irrevocably waive any right of rescission they may otherwise have or to which they may become entitled.

Section 10.6 Additional Indemnification Provisions. With respect to each indemnification obligation contained in this Agreement, all Covered Losses shall be (a) reduced by any Tax benefits actually realized by the Indemnified Party or its Affiliates in the taxable year in which such Covered Loss is paid or accrued or in the two succeeding years (it being agreed that if any such Tax benefit is realized after the relevant indemnification payment is made (such that such indemnification payment was not reduced by the amount of such Tax benefit), the Indemnified Party shall pay to the Indemnifying Party the amount of the such Tax benefit no later than fifteen (15) days after such Tax benefit is actually realized) and (b) net of any third-party insurance or indemnity, contribution or similar proceeds that have actually been recovered by the Indemnified Party or its Affiliates in connection with the facts giving rise to the right of indemnification (it being agreed that if third-party insurance or indemnification, contribution or similar proceeds in respect of such facts are recovered by the Indemnified Party or its Affiliates subsequent to the Indemnifying Party's making of an indemnification payment in satisfaction of its applicable indemnification obligation, such proceeds shall be promptly remitted to the Indemnifying Party to the extent of the indemnification payment made) and indemnification shall not be available hereunder unless the Indemnified Party first uses, and causes its Affiliates to use, reasonable best efforts to seek full recovery under all insurance and indemnity, contribution or similar provisions covering such Covered Loss to the same extent as it would if such Covered Loss were not subject to indemnification hereunder. Upon making any payment to the Indemnified Party for any indemnification claim pursuant to this Article X, the Indemnifying Party shall be subrogated, to the extent of such payment, to any rights which the Indemnified Party may have against any third parties with respect to the subject matter underlying such indemnification claim, and the Indemnified Party shall assign any such rights to the Indemnifying Party and otherwise cooperate with the Indemnifying Party in seeking recovery thereunder.

Section 10.7 Mitigation. Each of the Parties agrees to use, and to cause its Affiliates to use, its reasonable best efforts to mitigate its respective Covered Losses upon and after becoming aware of any event or condition that would reasonably be expected to give rise to any Covered Losses that are indemnifiable hereunder. The Parties acknowledge and agree that indemnification under this Article X shall not be available to any Party or any Indemnified Party with respect to any Covered Loss to the extent such Covered Loss results from or arises out of, in whole or in part, a failure by such Person or its Affiliates to use reasonable best efforts to mitigate such Covered Loss.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1 Entire Agreement. This Agreement and the other Transaction Documents, and the Schedules and Exhibits hereto and thereto, and the Confidentiality Agreement, along with the Seller Disclosure Schedules and Purchaser Disclosure Schedules, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter. In the event of a conflict between the terms of this Agreement and the terms of any Transaction Document, the terms of this Agreement shall control.

Section 11.2 Disclosure Schedules. The Seller Disclosure Schedules and the Purchaser Disclosure Schedules, and all schedules attached thereto, and all Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or in the Seller Disclosure Schedules or the Purchaser Disclosure Schedules but not otherwise defined therein shall be defined as set forth in this Agreement. Any information, item or other disclosure set forth in any Section of the Seller Disclosure Schedules or the Purchaser Disclosure Schedules, as the case may be, shall be deemed to be disclosed with respect to any other Section of this Agreement (or to have been set forth in any other Section of the Seller Disclosure Schedules or the Purchaser Disclosure Schedules, as the case may be), if the relevance of such disclosure to such other Section is reasonably apparent notwithstanding the omission of a reference or a cross-reference with respect thereto and notwithstanding any reference to a Section of the Seller Disclosure Schedules or the Purchaser Disclosure Schedules, as applicable, in such Section of this Agreement.

Section 11.3 Assignment. Neither this Agreement nor any of the rights and obligations hereunder may be assigned by Seller or Seller Parent on the one hand, or Purchaser on the other hand, without the prior written consent of the other provided, however, that (a) prior to the Closing, Purchaser may, subject to the last sentence of this Section 11.3, assign its rights (but not any obligations) under this Agreement to one or more Affiliates of Purchaser and (b) either Seller or Seller Parent on the one hand, or Purchaser, on the other hand, may, without the consent of the other, assign its rights, interests and obligations hereunder in their entirety in connection with a merger, consolidation or other business combination of such Party with or into another Person, in each case so long as the surviving or acquiring Person (or ultimate parent thereof) assumes all the obligations of such Party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party (provided that any such assignment described in the foregoing clauses (a) and (b) shall not (x) impede or delay the consummation of the Transaction or the other transactions contemplated by this Agreement or (y) result in the withholding or deduction of, or any requirement to withhold or deduct, any amount of Tax pursuant to Section 2.14 or the imposition of any Tax on Seller Parent or any of its Affiliates). Any attempted assignment in violation of this Section 11.3 shall be void. Subject to the two preceding sentences, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. In the event that Purchaser or any of its Affiliates assigns its rights under this Agreement as permitted under the first sentence of this Section 11.3 or transfers its interest in the Business, the Purchased Entity Shares or any other equity interests in the Purchased Companies or their Subsidiaries (directly, indirectly, by operation of law or otherwise) to any of Purchaser's Affiliates, such Affiliates shall expressly assume the Liabilities and obligations of Purchaser hereunder by executing a joinder to this Agreement acceptable to Seller; provided that any such transfer shall not relieve Purchaser of its Liabilities or obligations hereunder.

Section 11.4 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties. By an instrument in writing, Purchaser, on the one hand, or Seller, on the other hand, may waive compliance by the other with any term or provision of this Agreement that the other Party was or is obligated to comply with or perform. Such waiver or failure to insist on strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

Section 11.5 No Third-Party Beneficiaries. Except for Section 10.2 and Section 10.3, which are intended to benefit, and to be enforceable by, the indemnified parties specified therein, this Agreement, together with the other Transaction Documents and the Exhibits and Schedules hereto and thereto are not intended to confer in or on behalf of any Person not a party to this Agreement (and their successors and assigns) any rights, benefits, causes of action or remedies with respect to the subject matter or any provision hereof.

Section 11.6 Notices. All notices and other communications to be given to any Party hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or five (5) days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, or when received in the form of a facsimile or email transmission (receipt confirmation requested), and shall be directed to the address set forth below (or at such other address or facsimile number or email address as such Party shall designate by like notice):

(a) if to Purchaser:

Oroco Capital, LLC
4938 Hampden Lane, No. 563
Bethesda, Maryland 20814
Attention: Mitchell Goldsteen
Email: [***]

with a copy (which shall not constitute notice) to:

King & Spalding LLP
1700 Pennsylvania Avenue, NW
Second Floor
Washington, DC 20006
Facsimile: (202) 626-3737
Attention: Alan M. Noskow
Email: anoskow@kslaw.com

(b) if to Seller:

AECOM
1999 Avenue of the Stars, Suite 2600
Los Angeles, California 90067
Facsimile: (213) 593-8178
Attention: David Gan, Executive Vice President, Chief Legal Officer
Manav Kumar, Senior Vice President, Deputy General Counsel

Email: david.gan@aecom.com
manav.kumar@aecom.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Jacob A. Kling
Email: JAKling@wlrk.com

Section 11.7 Specific Performance. The Parties agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that the Parties do not perform any provision of this Agreement in accordance with its specified terms or otherwise breach such provisions. Accordingly, the Parties acknowledge and agree that each of the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which such Party is entitled in Law or in equity. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other Party has an adequate remedy at Law or that any such award is not an appropriate remedy for any reason at Law or in equity. Any Party seeking an injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with such remedy. The foregoing is in addition to any other remedy to which any Party is entitled at law, in equity or otherwise. The Parties further agree that nothing set forth in this Section 11.7 shall require any Party hereto to institute any Proceeding for (or limit any Party's right to institute any Proceeding for) specific performance under this Section 11.7 prior or as a condition to exercising any termination right under Article IX (and pursuing damages after such termination). If any Party brings any Proceeding to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date shall automatically be extended by (x) the amount of time during which such Proceeding is pending, *plus* twenty (20) Business Days or (y) such longer time period established by the court presiding over such Proceeding.

Section 11.8 Governing Law and Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. In addition, each of the Parties (a) in the event that any dispute (whether in contract, tort or otherwise) arises out of this Agreement or the Transaction or the other transactions contemplated hereby, submits to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware, or in the event (but only in the event) that such court does not have subject matter jurisdiction over the applicable Proceeding, any state or federal court within the State of Delaware; (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it will not bring any Proceeding relating to this Agreement or the Transaction or the other transactions contemplated hereby in any court other than the above-named courts; and (d) agrees that it will not seek to assert by way of motion, as a defense or otherwise, that any such Proceeding (i) is brought in an inconvenient forum, (ii) should be transferred or removed to any court other than the above-named courts, (iii) should be stayed by reason of the pendency of some other proceeding in any court other than the above-named courts or (iv) that this Agreement or the subject matter hereof may not be enforced in or by the above-named courts. Each Party agrees that service of process upon such Party in any such Proceeding shall be effective if notice is given in accordance with Section 11.6.

Section 11.9 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY OTHER AGREEMENTS EXECUTED IN CONNECTION HEREWITH OR THE ADMINISTRATION THEREOF OR THE TRANSACTION OR ANY OF THE OTHER TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY RELATED INSTRUMENTS. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT OR INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 11.9. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 11.9 WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

Section 11.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other competent authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transaction and the other transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one (1) or more such counterparts have been signed by each Party and delivered (by facsimile, email, or otherwise) to the other Party. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” from, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signatures. This Agreement has been executed in the English language. If this Agreement is translated into another language, the English language text shall in any event prevail.

Section 11.12 Expenses. Except as otherwise provided in this Agreement, whether or not the Closing takes place, all costs and expenses incurred in connection with this Agreement, the Transaction and the other transactions contemplated hereby shall be paid by the Party incurring such expense.

Section 11.13 Certain Information. Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall be made (or other action taken) pursuant to this Agreement that would involve the disclosure of information to the extent such disclosure is prohibited by applicable Law or a Governmental Entity (and no representation or warranty shall be deemed breached or untrue as a result of any such disclosure not being made for such reason so long as the Party not making such disclosure has previously informed the other Party or its counsel that such Party is unable to make a disclosure that would need to be made in order for such representation and warranty to be true and correct and the general nature of such omitted disclosure). To the extent legally permissible, the Parties will cooperate in good faith to determine whether appropriate substitute disclosures or actions can be made or taken under circumstances in which the limitations of the preceding sentence apply.

Section 11.14 Interpretation; Absence of Presumption. It is understood and agreed that the specification of any dollar amount in the representations and warranties or covenants and agreements contained in this Agreement or the inclusion of any specific item in the Seller Disclosure Schedules or Purchaser Disclosure Schedules is not intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Seller Disclosure Schedules or Purchaser Disclosure Schedules in any dispute or controversy between the Parties as to whether any obligation, item or matter not described in this Agreement or included or not included in the Seller Disclosure Schedules or Purchaser Disclosure Schedules is or is not material for purposes of this Agreement. Nothing herein (including the Seller Disclosure Schedules and the Purchaser Disclosure Schedules) shall be deemed an admission by either Party or any of its Affiliates, in any Proceeding or action, that such Party or any such Affiliate, or any third party, is or is not in breach or violation of, or in default in, the performance or observance of any term or provisions of any Contract or any Law. For the purposes of this Agreement, (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph, Exhibit and Schedule are references to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified; (c) the terms "hereof," "herein," "hereby," "hereto," and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto and the words "date hereof" refer to the date of this Agreement; (d) references to "Dollars" or "$" shall mean U.S. dollars; (e) the word "including" and words of similar import when used in this Agreement and the Transaction Documents shall mean "including, without limitation," unless otherwise specified; (f) the word "or" shall not be exclusive; (g) references to "written" or "in writing" include in electronic form; (h) provisions shall apply, when appropriate, to successive events and transactions; (i) the headings contained in this Agreement and the other Transaction Documents are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement and the other Transaction Documents; (j) Seller and Purchaser have each participated in the negotiation and drafting of this Agreement and the other Transaction Documents and if an ambiguity or question of interpretation should arise, this Agreement and the other Transaction Documents shall be construed as if drafted jointly by the Parties or the parties thereto, as applicable, and no presumption or burden of proof shall arise favoring or burdening any party by virtue of the authorship of any of the provisions in this Agreement or the other Transaction Documents; (k) a reference to any Person includes such Person's successors and permitted assigns; (l) any reference to "days" means calendar days unless Business Days are expressly specified; (m) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; (n) any Law defined or referred to in this Agreement or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor Laws and the related regulations thereunder and published interpretations thereof, and references to any Contract or instrument are to that Contract or instrument as from time to time amended, modified or supplemented; provided that, for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to any Law shall be deemed to refer to such Law, as amended, and the related regulations thereunder and published interpretations thereof, in each case, as of such date; and (o) to the extent that this Agreement or any other Transaction Document requires an Affiliate of any Party to take or omit to take any action, such covenant or agreement includes the obligation of such Party to cause such Affiliate to take or omit to take such action.

Section 11.15 Waiver of Conflicts Regarding Representation; Nonassertion of Attorney-Client Privilege.

(a) Purchaser waives and will not assert, and agrees to cause its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, to waive and not assert, any conflict of interest arising out of or relating to the representation, after the Closing (the "Post-Closing Representation"), of Seller or any of its Affiliates, or any shareholder, officer, employee or director of Seller or any of its Affiliates (any such Person, a "Designated Person") in any matter involving this Agreement, the other Transaction Documents or any other agreements or transactions contemplated hereby or thereby, by any legal counsel currently representing any Designated Person in connection with this Agreement, the other Transaction Documents or any other agreements or transactions contemplated hereby or thereby, including Wachtell, Lipton, Rosen & Katz (any such representation, the "Current Representation").

(b) Purchaser waives and will not assert, and agrees to cause its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, to waive and not assert, any attorney-client or other applicable legal privilege or protection with respect to any communication between any legal counsel and any Designated Person occurring during the Current Representation (the "Privileged Communications") or in connection with any Post-Closing Representation, including in connection with a dispute with Purchaser or its Affiliates (including, following the Closing, any Purchased Company or any of its Subsidiaries), including in respect of any claim for indemnification by a Purchaser Indemnified Party, it being the intention of the Parties that all such rights to such attorney-client and other applicable legal privilege or protection and to control such attorney-client and other applicable legal privilege or protection shall be retained by Seller and its Affiliates and that Seller, and not Purchaser or its Affiliates or the Purchased Companies and their Subsidiaries, shall have the sole right to decide whether or not to waive any attorney-client or other applicable legal privilege or protection. Accordingly, from and after Closing, none of Purchaser or its Affiliates, including the Purchased Companies and their Subsidiaries, shall have any access to any such communications or to the files of the Current Representation, all of which shall be and remain the property of Seller and not of Purchaser or its Affiliates, including the Purchased Companies and their Subsidiaries, or to internal counsel relating to such engagement, and none of Purchaser or its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, or any Person acting or purporting to act on their behalf shall seek to obtain the same by any process on the grounds that the privilege and protection attaching to such communications and files belongs to Purchaser or its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, or does not belong to Seller. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser or its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, on the one hand, and a third party other than Seller or its Affiliates, on the other hand, Purchaser or its Affiliates, including, following the Closing, the Purchased Companies and their Subsidiaries, may seek to prevent the disclosure of the Privileged Communications to such third party and request that Seller not permit such disclosure, and Seller shall consider such request in good faith.

Section 11.16 Non-Recourse. The Parties agree that all Proceedings based on, in respect of or arising out of (a) this Agreement, the Confidentiality Agreement, the Commitment Letter or the other Transaction Documents or (b) the negotiation, execution or performance or breach hereof or thereof, or the failure to perform any covenant or agreement contained herein or therein, or to consummate the Transaction or any of the transactions contemplated hereby or thereby, may only be made against the Persons that are expressly identified as Parties to this Agreement (and their respective successors and permitted assigns) (other than with respect to any claims by or between the express parties or express third-party beneficiaries (in each case, including their successors or permitted assigns) to the Confidentiality Agreement, the Commitment Letter or the other Transaction Documents in accordance with the terms thereof). No other Person shall have any Liability in respect of any Proceedings based on, in respect of or arising out of the matters set forth in clauses (a) or (b) of the immediately preceding sentence. Nothing in this Section 11.16 shall limit the rights or remedies available to the express parties or express third-party beneficiaries to the Confidentiality Agreement, the Commitment Letter or the other Transaction Documents in accordance with the terms thereof.

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IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Agreement as of the date first written above.

URS HOLDINGS, INC.

By: /s/ Manav Kumar
Name: Manav Kumar
Title: Secretary

AECOM

By: /s/ W. Troy Rudd
Name: W. Troy Rudd
Title: Chief Executive Officer

SCC GROUP LLC

By: /s/ Mitchel Goldsteen
Name: Mitchell Goldsteen
Title: Manager

SCCI NATIONAL HOLDINGS, INC. 2021 STOCK PLAN

1. GENERAL.

(a) Eligible Stock Award Recipients. Employees, Directors and Consultants are eligible to receive Stock Awards.

(b) Available Stock Awards. The Plan provides for the grant of the following types of Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards and (vi) Other Stock Awards.

(c) Purpose. The Plan, through the grant of Stock Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

2. ADMINISTRATION.

(a) Administration by the Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of the Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine (A) who will be granted Stock Awards; (B) when and how each Stock Award will be granted; (C) what type of Stock Award will be granted; (D) the provisions of each Stock Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Stock Award; (E) the number of shares of Common Stock subject to, or the cash value of, a Stock Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Stock Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate, in whole or in part, the time at which a Stock Award may be exercised or vest (or the time at which cash or shares of Common Stock may be issued in settlement thereof).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or a Stock Award Agreement, suspension or termination of the Plan will not impair a Participant's rights under the Participant's then-outstanding Stock Award without the Participant's written consent except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or bringing the Plan or Stock Awards granted under the Plan into compliance with the requirements for Incentive Stock Options or ensuring that they are exempt from, or compliant with, the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Stock Awards available for issuance under the Plan. Except as otherwise provided in the Plan or a Stock Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Stock Award without the Participant's written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

(viii) To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however,* that a Participant's rights under any Stock Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Stock Awards without the affected Participant's consent (A) to maintain the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Stock Award solely because it impairs the qualified status of the Stock Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Stock Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Stock Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

(xi) To effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Delegation to an Officer. The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Stock Awards, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 13(t) below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date will not exceed two million (2,000,000) shares (the ***"Share Reserve"***).

(ii) For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a).

(b) Reversion of Shares to the Share Reserve. If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

(c) Incentive Stock Option Limit. Subject to the Share Reserve and Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be a number of shares of Common Stock equal to three multiplied by the Share Reserve.

(d) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

(c) Consultants. A Consultant will not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or sale of the Company's securities to such Consultant is not exempt under Rule 701 because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Stock Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Stock Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of 10 years from the date of its grant or such shorter period specified in the Stock Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Stock Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Stock Award if such Stock Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations;

(v) according to a deferred payment or similar arrangement with the Optionholder; *provided, however*, that interest will compound at least annually and will be charged at the minimum rate of interest necessary to avoid (A) the imputation of interest income to the Company and compensation income to the Optionholder under any applicable provisions of the Code, and (B) the classification of the Option as a liability for financial accounting purposes; or

(vi) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Stock Award Agreement.

(d) Exercise and Payment of a SAR. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Award Agreement evidencing such SAR.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, upon the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Stock Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date three months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Stock Award Agreement, which period will not be less than 30 days if necessary to comply with applicable laws unless such termination is for Cause) and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR will terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement. In addition, unless otherwise provided in a Participant's Stock Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of the period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Stock Award Agreement for exercisability after the termination of the Participant's Continuous Service (for a reason other than death), then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Stock Award Agreement, which period will not be less than six months if necessary to comply with applicable laws unless such termination is for Cause), and (ii) the expiration of the term of such Option or SAR as set forth in the Stock Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Stock Award Agreement or other individual written agreement between the Company or any Affiliate and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon such Participant's termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date of such termination of Continuous Service.

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Stock Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Stock Award Agreement, in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

(m) Early Exercise of Options. An Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the "Repurchase Limitation" in Section 8(l), any unvested shares of Common Stock so purchased may be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the "Repurchase Limitation" in Section 8(l) is not violated, the Company will not be required to exercise its repurchase right until at least six months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option Agreement.

(n) Right of Repurchase. Subject to the "Repurchase Limitation" in Section 8(l), the Option or SAR may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Participant pursuant to the exercise of the Option or SAR.

(o) Right of First Refusal. The Option or SAR may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Participant of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option or SAR. Such right of first refusal will be subject to the "Repurchase Limitation" in Section 8(l). Except as expressly provided in this Section 5(o) or in the Stock Award Agreement, such right of first refusal will otherwise comply with any applicable provisions of the bylaws of the Company.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock underlying a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. Subject to the "Repurchase Limitation" in Section 8(l), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) Dividends. A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the will Board deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.

(c) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Stock Awards.

(b) Securities Law Compliance. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of a Stock Award or the subsequent issuance of cash or Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards will constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Stock Award Agreement or related grant documents as a result of a clerical error in the papering of the Stock Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Stock Award Agreement or related grant documents.

(c) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to a Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Stock Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to the Stock Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Stock Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares subject to any portion of such Stock Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Stock Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Stock Award that is so reduced or extended.

(f) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that the Participant is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from a Stock Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Stock Award Agreement.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) Compliance with Section 409A of the Code. To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in the Plan (and unless the Stock Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding a Stock Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(l) Repurchase Limitation. The terms of any repurchase right will be specified in the Stock Award Agreement. The repurchase price for vested shares of Common Stock will be the Fair Market Value of the shares of Common Stock on the date of repurchase. The repurchase price for unvested shares of Common Stock will be the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. However, the Company will not exercise its repurchase right until at least six months (or such longer or shorter period of time necessary to avoid classification of the Stock Award as a liability for financial accounting purposes) have elapsed following delivery of shares of Common Stock subject to the Stock Award, unless otherwise specifically provided by the Board.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board may take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction; *provided*, *however*, that the Board may require Participants to complete and deliver to the Company a notice of exercise before the effective date of a Corporate Transaction, which exercise is contingent upon the effectiveness of such Corporate Transaction;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration (including no consideration) as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Corporate Transaction, over (B) any exercise price payable by such holder in connection with such exercise. For clarity, this payment may be zero ($0) if the value of the property is equal to or less than the exercise price. Payments under this provision may be delayed to the same extent that payment of consideration to the holders of the Company's Common Stock in connection with the Corporate Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

10. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless terminated sooner by the Board, the Plan will automatically terminate on the day before the 10th anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan will not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant or as otherwise permitted in the Plan.

11. EFFECTIVE DATE OF PLAN.

This Plan will become effective on the Effective Date.

12. CHOICE OF LAW.

The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition.

(b) "***Board***" means the Board of Directors of the Company.

(c) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(d) "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Stock Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(e) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (C) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; or

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing definition or any other provision of this Plan, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(g) "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Company***" means SCCI National Holdings, Inc., a Delaware corporation.

(j) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) "***Director***" means a member of the Board.

(n) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, and (ii) the date this Plan is adopted by the Board.

(p) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(s) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(t) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined by the Board in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and that qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(v) "***Nonstatutory Stock Option***" means an option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(w) "***Officer***" means any person designated by the Company as an officer.

(x) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(z) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(c).

(bb) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(cc) "***Own***," "***Owned***," "***Owner***," "***Ownership***" means a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(dd) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ee) "***Plan***" means this SCCI National Holdings, Inc. 2021 Stock Plan.

(ff) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(gg) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(hh) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(ii) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(jj) "***Rule 405***" means Rule 405 promulgated under the Securities Act.

(kk) "***Rule 701***" means Rule 701 promulgated under the Securities Act.

(ll) "***Securities Act***" means the Securities Act of 1933, as amended.

(mm) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(nn) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(oo) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right or any Other Stock Award.

(pp) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(qq) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(rr) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

Exhibit 10.4

**Portions of this exhibit have been redacted in accordance with Item 601(b)(10) of Regulation S-K. The information is not material and would cause competitive harm to the registrant if publicly disclosed. [***] indicates that information has been redacted. **

CREDIT AGREEMENT

DATED AS OF FEBRUARY 26, 2021

AMONG

SHIMMICK CONSTRUCTION COMPANY, INC.,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

AND

BMO HARRIS BANK N.A.,
AS ADMINISTRATIVE AGENT

BMO HARRIS BANK N.A., AS SOLE LEAD ARRANGER AND AS SOLE BOOK RUNNER

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CREDIT AGREEMENT

This Credit Agreement is entered into as of February 26, 2021, by and among Shimmick Construction Company, Inc., a California corporation (the *"Borrower"*), SCCI National Holdings, Inc., a Delaware corporation (the *"Parent"*), the direct and indirect Subsidiaries of the Borrower from time to time party to this Agreement, as Guarantors, the several financial institutions from time to time party to this Agreement, as Lenders, and BMO HARRIS BANK N.A., as Administrative Agent as provided herein.

PRELIMINARY STATEMENT

The Borrower has requested, and the Lenders have agreed to extend, certain credit facilities on the terms and conditions of this Agreement.

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

SECTION 1. DEFINITIONS; INTERPRETATION.

Section 1.1. Definitions. The following terms when used herein shall have the following meanings:

"Account Debtor" means any Person obligated to make payment on any Receivable.

"Acquired Business" means the entity or assets acquired by the Borrower or another Loan Party in an Acquisition, whether before or after the date hereof.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person (other than a Person that is a Subsidiary), or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary) provided that the Borrower or another Loan Party that is a Subsidiary of the Borrower is the surviving entity.

"Adjusted LIBOR" means, for any Borrowing of Eurodollar Loans, a rate per annum determined in accordance with the following formula:

$$\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{\text{1 - Eurodollar Reserve Percentage}}$$

"Administrative Agent" means BMO Harris Bank N.A., in its capacity as Administrative Agent hereunder, and any permitted successor in such capacity pursuant to Section 10.6.

"*Administrative Questionnaire*" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"*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; *provided that*, in any event for purposes of this definition, any Person that owns, directly or indirectly, 20% or more of the securities having the ordinary voting power for the election of directors or governing body of a corporation or 20% or more of the partnership or other ownership interest of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person; *provided, further,* that with respect to the Borrower, its Affiliates shall exclude Construction Joint Ventures.

"*Agreement*" means this Credit Agreement, as the same may be amended, modified, restated or supplemented from time to time pursuant to the terms hereof.

"*Anti-Corruption Law*" means the FCPA and any law, rule or regulation of any jurisdiction concerning or relating to bribery or corruption that are applicable to any Loan Party or any Subsidiary or Affiliate.

"*Applicable Margin*" means, with respect to Loans, Reimbursement Obligations, Letter of Credit Fees, and the commitment fees payable under Section 3.1(a), until the first Pricing Date, the rates per annum shown opposite Level II below, and thereafter from one Pricing Date to the next the Applicable Margin means the rates per annum determined in accordance with the following schedule:

LEVEL	TOTAL LEVERAGE RATIO FOR SUCH PRICING DATE	APPLICABLE MARGIN FOR BASE RATE LOANS UNDER FACILITY AND REIMBURSEMENT OBLIGATIONS SHALL BE:	APPLICABLE MARGIN FOR EURODOLLAR LOANS UNDER FACILITY AND FINANCIAL LETTER OF CREDIT FEES SHALL BE:	APPLICABLE MARGIN FOR PERFORMANCE LETTER OF CREDIT FEES SHALL BE:	APPLICABLE MARGIN FOR COMMITMENT FEE SHALL BE:
I	Less than 0.50 to 1.00	1.75%	2.75%	2.0625%	0.25%
II	Less than 1.00 to 1.00, but greater than or equal to 0.50 to 1.00	2.00%	3.00%	2.2500%	0.30%
III	Less than 1.50 to 1.00, but greater than or equal to 1.00 to 1.00	2.25%	3.25%	2.4375%	0.35%
IV	Greater than or equal to 1.50 to 1.00	2.50%	3.50%	2.6250%	0.40%

For purposes hereof, the term *"Pricing Date"* means, for any fiscal quarter of the Borrower ending on or after March 31, 2021, the date on which the Administrative Agent is in receipt of the Borrower's most recent financial statements (and, in the case of the year-end financial statements, audit report) for the fiscal quarter then ended, pursuant to Section 8.5. The Applicable Margin shall be established based on the Total Leverage Ratio for the most recently completed fiscal quarter and the Applicable Margin established on a Pricing Date shall remain in effect until the next Pricing Date. If the Borrower has not delivered its financial statements by the date such financial statements (and, in the case of the year-end financial statements, audit report) are required to be delivered under Section 8.5, until such financial statements and audit report are delivered, the Applicable Margin shall be the highest Applicable Margin (*i.e.*, Level IV shall apply). If the Borrower subsequently delivers such financial statements before the next Pricing Date, the Applicable Margin shall be determined on the date of delivery of such financial statements and remain in effect until the next Pricing Date. In all other circumstances, the Applicable Margin shall be in effect from the Pricing Date that occurs immediately after the end of the fiscal quarter covered by such financial statements until the next Pricing Date. Each determination of the Applicable Margin made by the Administrative Agent in accordance with the foregoing shall be conclusive and binding on the Borrower and the Lenders if reasonably determined. Notwithstanding the foregoing, in the event that any financial statement or compliance certificate delivered pursuant to Section 8.5 is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Margin for any period than the Applicable Margin applied for that period, then (i) the Borrower shall promptly deliver to the Administrative Agent a corrected financial statement and a corrected compliance certificate for that period (the "*Corrected Financials Date*"), (ii) the Applicable Margin shall be determined based on the corrected compliance certificate for that period, and (iii) the Borrower shall immediately pay to the Administrative Agent (for the account of the Lenders that hold a Commitment and Loans at the time such payment is received, regardless of whether those Lenders held a Commitment and Loans during the relevant period) the accrued additional interest owing as a result of such increased Applicable Margin for that period; provided, for the avoidance of doubt, such deficiency shall be due and payable as at such Corrected Financials Date and no Event of Default under Section 9.1(a) shall be deemed to have occurred with respect to such deficiency prior to such date. This paragraph shall not limit the rights of the Administrative Agent or the Lenders with respect to Section 2.9 and Section 9, and shall survive the termination of this Agreement until the payment in full in cash of the Obligations.

"*Application*" is defined in Section 2.3(b).

"*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.

"*Assigned Accounts*" is defined in Section 12.2.

"*Assignment and Assumption*" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 13.2(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit H or any other form reasonably approved by the Administrative Agent.

"*Authorized Representative*" means those persons shown on the list of officers provided by the Borrower pursuant to Section 7.2 or on any update of any such list provided by the Borrower to the Administrative Agent, or any further or different officers of the Borrower so named by any Authorized Representative of the Borrower in a written notice to the Administrative Agent.

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

"*Bank Products*" means each and any of the following bank products and services provided to any Loan Party by any Lender or any of its Affiliates: (a) credit or charge cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, and (c) depository, cash management, and treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"*Base Rate*" means, for any day, the rate per annum equal to the greatest of: (a) the rate of interest announced by the Administrative Agent from time to time as its prime commercial rate as in effect on such day, with any change in the Base Rate resulting from a change in said prime lending rate to be effective as of the date of the relevant change in said prime commercial rate (it being acknowledged and agreed that such rate may not be the Administrative Agent's best or lowest rate), (b) the sum of (i) the rate determined by the Administrative Agent to be the average (rounded upward, if necessary, to the next higher 1/100 of 1%) of the rates per annum quoted to the Administrative Agent at approximately 10:00 a.m. (Chicago time) (or as soon thereafter as is practicable) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) by two or more Federal funds brokers selected by the Administrative Agent for sale to the Administrative Agent at face value of Federal funds in the secondary market in an amount equal or comparable to the principal amount for which such rate is being determined, *plus* (ii) 1/2 of 1%, and (c) the LIBOR Quoted Rate for such day *plus* 1.00%, and (d) the Base Rate Floor. As used herein, the term *"LIBOR Quoted Rate"* means, for any day, the rate per annum equal to the quotient of (i) the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. Dollars for a one-month interest period which appears on the LIBOR01 Page as of 11:00 a.m. (London, England time) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) divided by (ii) one (1) minus the Eurodollar Reserve Percentage, provided that in no event shall the "LIBOR Quoted Rate" be less than 0.00%.

"*Base Rate Floor*" means 0.50% per annum.

"*Base Rate Loan*" means a Loan bearing interest at a rate specified in Section 2.4(a).

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

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

"Bonding Agreement" means, collectively, all contractual arrangements entered into by the Borrower or any of its Subsidiaries with providers of bid, performance or payment bonds.

"Bonds" means, collectively, all bonds issued by any Surety pursuant to a Bonding Agreement.

"*Borrower*" is defined in the introductory paragraph of this Agreement.

"*Borrowing*" means the total of Loans of a single type advanced, continued for an additional Interest Period, or converted from a different type into such type by the Lenders under the Facility on a single date and, in the case of Eurodollar Loans, for a single Interest Period. Borrowings of Loans are made and maintained ratably from each of the Lenders under the Facility according to their Revolver Percentages. A Borrowing is "*advanced*" on the day Lenders advance funds comprising such Borrowing to the Borrower, is "*continued*" on the date a new Interest Period for the same type of Loans commences for such Borrowing, and is "*converted*" when such Borrowing is changed from one type of Loans to the other, all as determined pursuant to Section 2.6.

"*Borrowing Base*" means, as of any time it is to be determined, the sum of:

(a) 85.0% of the then outstanding unpaid amount of Eligible Receivables; *plus*

(b) 50.0% of the value (computed at the lower of market or cost using the first-in/first-out method of inventory valuation applied in accordance with GAAP) of Eligible Inventory; *plus*

(c) 80.0% of the net orderly liquidation value of Eligible Equipment;

provided that (i) the Administrative Agent shall have the right upon five (5) Business Days' notice to the Borrower to reduce the advance rates against Eligible Receivables, Eligible Inventory and Eligible Equipment in its Permitted Discretion based on results from any field audit or appraisal of the Collateral and (ii) the Borrowing Base shall be computed only as against and on so much of such Collateral as is included on the Borrowing Base Certificates furnished from time to time by the Borrower pursuant to this Agreement and, if required by the Administrative Agent pursuant to any of the terms hereof or any Collateral Document, as verified by such other evidence reasonably required to be furnished to the Administrative Agent pursuant hereto or pursuant to any such Collateral Document.

"*Borrowing Base Certificate*" means the certificate in the form of Exhibit E hereto, or in such other form acceptable to the Administrative Agent, to be delivered to the Administrative Agent, the L/C Issuer and the Lenders pursuant to Section and 8.5.

"*Business Day*" means any day (other than a Saturday or Sunday) on which banks are not authorized or required to close in Chicago, Illinois and, if the applicable Business Day relates to the advance or continuation of, or conversion into, or payment of a Eurodollar Loan, on which banks are dealing in U.S. Dollar deposits in the interbank eurodollar market in London, England.

"*Capital Expenditures*" means, with respect to any Person for any period, the aggregate amount of all expenditures (whether paid in cash or accrued as a liability) by such Person during that period for the acquisition or leasing (pursuant to a Capital Lease) of fixed or capital assets or additions to property, plant, or equipment (including replacements, capitalized repairs, and improvements) which should be capitalized on the balance sheet of such Person in accordance with GAAP.

"*Capital Lease*" means any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

"*Capitalized Lease Obligation*" means, for any Person, the amount of the liability shown on the balance sheet of such Person in respect of a Capital Lease determined in accordance with GAAP.

"*Cash Collateralize*" means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances subject to a first priority perfected security interest in favor of the Administrative Agent or, if the Administrative Agent and each applicable L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and each applicable L/C Issuer.

"*Cash Collateral*" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"*Cash Equivalents*" means (a) marketable direct obligations or securities issued by, or unconditionally guaranteed or insured by, the United States or issued by any political division, agency or instrumentality thereof and whose obligations constitute the full faith and credit obligations of the United States, in each case maturing within one (1) year from the date of issuance or acquisition thereof, (b) marketable direct obligations or securities issued or fully guaranteed or insured by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of issuance or acquisition thereof, (c) commercial paper maturing within one (1) year from the date of issuance thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one (1) year from the date of issuance thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia having at the date of acquisition thereof combined capital and surplus of not less than $100,000,000, (e) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is fully insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than $100,000,000, having a term of not more than seven (7) days, with respect to securities satisfying the criteria in clauses (a) or (d) above, provided all such agreements require physical delivery of the securities securing such repurchase agreement, except those delivered through the Federal Reserve Book Entry System, and (g) investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (f) above.

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

"*Change of Control*" means any of (a) Mitchell Goldsteen ceases to own, legally and beneficially, at least 51% of the equity interests of the Parent and at least 51% of the Voting Stock of the Parent, (b) the Parent ceases to own, legally and beneficially, 100% of the equity interests of the Borrower, (c) Mitchell Goldsteen fails to have the right to appoint a majority of the board of directors (or similar governing body) of the Parent and of the Borrower, or (d) any "Change of Control" (or words of like import), as defined in any agreement or indenture relating to any issue of Material Indebtedness of any Loan Party or any Subsidiary of a Loan Party, shall occur.

"*Closing Date*" means the date of this Agreement or such later Business Day upon which each condition described in Section 7.2 shall be satisfied or waived in a manner acceptable to the Administrative Agent in its discretion.

"*Code*" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"*Collateral*" means all properties, rights, interests, and privileges from time to time subject to the Liens granted to the Administrative Agent, or any security trustee therefore, by the Collateral Documents.

"*Collateral Access Agreement*" means any landlord waiver, warehouse, processor or other bailee letter or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of the Borrower or any Subsidiary for any leased real property where any Collateral is located, as such landlord waiver, bailee letter or other agreement may be amended, restated, or otherwise modified from time to time.

"*Collateral Account*" is defined in Section 9.4(b).

"*Collateral Documents*" means the Security Agreement, and all other mortgages, deeds of trust, security agreements, pledge agreements, assignments, financing statements, control agreements, and other documents as shall from time to time secure or relate to the Secured Obligations or any part thereof.

"*Commitments*" means, as to any Lender, the obligation of such Lender to make Revolving Loans and to participate in Letters of Credit issued for the account of the Borrower hereunder in an aggregate principal or face amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.2 attached hereto and made a part hereof, as the same may be reduced or modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.15). The Borrower and the Lenders acknowledge and agree that the Commitments of the Lenders aggregate $25,000,000 on the Closing Date.

"*Commodity Exchange Act*" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

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

"*Constituent Documents*" means, with respect to any Person, collectively and, in each case, together with any modification of any term thereof, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation of such Person, (b) the bylaws, operating agreement or joint venture agreement of such Person, (c) any other constitutive, organizational or governing document of such Person, whether or not equivalent, and (d) any other document setting forth the manner of election or duties of the directors, officers or managing members of such Person or the designation, amount or relative rights, limitations and preferences of any Voting Stock of such Person.

"*Construction Joint Venture*" means an investment made in the ordinary course of business in connection with joint ventures (including legal entity joint ventures) or a similar pooling of efforts in respect of a specific project or series of related specific projects for a limited or fixed duration which is formed to conduct business of the type in which any Loan Party is presently engaged and which procures the services necessary to conduct its business (other than incidental services) through the owners of such joint venture or pooling of efforts or through subcontractors to the owners of such joint venture.

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

"*Controlled Group*" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with any Loan Party, are treated as a single employer under Section 414 of the Code.

"*Credit Event*" means the advancing of any Loan, or the issuance of, or extension of the expiration date or increase in the amount of, any Letter of Credit.

"*Debtor Relief Laws*" means the Bankruptcy Code of the United States of America, 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 which constitutes an Event of Default or any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

"*Defaulting Lender*" means, subject to Section 2.13(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans or participations in any Lender Letter of Credit in respect of any Letter of Credit required to be funded hereunder within two (2) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, at any time after the Closing Date (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; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.13(b)) upon delivery of written notice of such determination to the Borrower, the L/C Issuer and each Lender.

"*Designated Disbursement Account*" means the account of the Borrower maintained with the Administrative Agent or its Affiliate and designated in writing to the Administrative Agent as the Borrower's Designated Disbursement Account (or such other account as the Borrower and the Administrative Agent may otherwise agree).

"*Disposition*" means the sale, lease, conveyance or other disposition of Property, other than (a) the sale or lease of inventory in the ordinary course of business, and (b) the sale, transfer, lease or other disposition of Property of a Loan Party to another Loan Party or a Construction Joint Venture in the ordinary course of its business.

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

"*Earn Out Obligations*" means and includes any cash earn out obligations, performance payments or similar obligations of the Borrower or any Guarantor to any sellers arising out of or in connection with an Acquisition, but excluding any working capital adjustments or payments for services or licenses provided by such sellers.

"*EBITDA*" means, with reference to any period, Net Income for such period *plus* all amounts deducted in arriving at such Net Income amount in respect of (a) Interest Expense for such period, (b) federal, state, and local income taxes for such period, (c) depreciation of fixed assets and amortization of intangible assets for such period and (d) non-cash write-offs of unbilled receivables related to the Specified Projects, in each case, existing on the Borrower's balance sheet as of the Closing Date.

"*Eligible Assignee*" means any Person that meets the requirements to be an assignee under Section 13.2(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 13.2(b)(iii)).

"*Eligible Equipment*" shall mean equipment of any Loan Party included in an appraisal report prepared for and which can be relied upon by the Administrative Agent, which appraisal report describes the net orderly liquidation value of such equipment and is otherwise in form and substance satisfactory to the Administrative Agent, and such equipment:

(a) is used in the ordinary course of the conduct of the applicable Loan Party's business;

(b) is in the possession or control of a Loan Party;

(c) is located in the United States of America or Canada at a Permitted Collateral Location as set forth in the Security Agreement or in transit between Permitted Collateral Locations;

(d) is an asset of such Person to which it has good and marketable title, is freely assignable, and is subject to a perfected first priority Lien in favor of the Administrative Agent free and clear of any other Liens except for liens permitted by Section 8.8 or, if the equipment is subject to a prior Lien, adequate reserves have been established with respects to the amounts secured by such security interest or Lien;

(e) is not worn-out, damaged, defective or is not used or usable in the ordinary course of a Loan Party's business as currently conducted; and

(f) is not subject to a lease.

"*Eligible Inventory*" means raw materials or finished goods inventory of the Borrower or any Guarantor that:

(a) is an asset of such Person to which it has good and marketable title, is freely assignable, and is subject to a perfected, first priority Lien in favor of the Administrative Agent free and clear of any other Liens (other than Liens permitted by Section 8.8(a) or (b) arising by operation of law which are subordinate to the Liens in favor of the Administrative Agent);

(b) is located in the United States of America at a Permitted Collateral Location as set forth in the Security Agreement and, in the case of any location not owned by such Person, which is at all times subject either to a Collateral Access Agreement or, in the absence of such Collateral Access Agreement and the Administrative Agent so agrees in its sole discretion, reserves established to the satisfaction of the Administrative Agent;

(c) is not bill-and-hold inventory or otherwise so identified to a contract to sell that it constitutes a Receivable;

(d) is not obsolete or slow moving, and is of good and merchantable quality conforming to all standards imposed by any Governmental Authority free from any defects which might adversely affect the market value thereof;

(e) is not covered by a warehouse receipt or similar document;

(f) does not constitute spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (except to the extent such goods may be resold in the ordinary course of business), repossessed goods, defective or damaged goods, goods that have been discontinued or components thereof, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) does not contain or bear any intellectual property rights licensed to the Borrower or such Guarantor unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such inventory under the current licensing agreement;

(h) all representations and warranties relating to such inventory set forth in this Agreement and the Collateral Documents are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects);

(i) in the case of finished goods inventory, was produced pursuant to binding and existing purchase orders therefor to which the Borrower or such Guarantor has title; and

(j) is not otherwise deemed to be ineligible in the reasonable judgment of the Administrative Agent (it being acknowledged and agreed that with five (5) Business Days prior written notice any inventory or categories thereof of the Borrower or any Guarantor may be deemed ineligible by the Administrative Agent acting in is reasonable judgment).

"*Eligible Line of Business*" means any business engaged in as of the date of this Agreement by the Borrower or any other Loan Party or any business reasonably related thereto.

"*Eligible Receivables*" means any Receivable of the Borrower or any Guarantor that:

(a) (i) arises out of the sale of goods or the performance of services in the ordinary course of business that is not contingent upon the completion of any further performance by the Borrower or any Guarantor or any other Person on its/their behalf, (ii) does not represent a pre-billed Receivable or retainage amount, (iii) does not relate to the payment of interest, and (iv) is net of any deposits made by or for the account of the relevant Account Debtor;

(b) is payable in U.S. Dollars and the Account Debtor on such Receivable is located within the United States of America or Canada or, if such right has arisen out of the sale of such goods shipped to, or out of the rendition of services to, an Account Debtor located in any other country, such right is secured by a valid and irrevocable transferable letter of credit issued by a lender reasonably acceptable to the Administrative Agent for the full amount thereof or secured by an insurance policy in an amount and on such terms, and issued by an insurer, satisfactory to the Administrative Agent in its discretion, in each case which has been assigned or transferred to the Administrative Agent in a manner acceptable to the Administrative Agent;

(c) is the valid, binding and legally enforceable obligation of the Account Debtor obligated thereon and such Account Debtor (i) is not a Subsidiary or an Affiliate of any Loan Party (for the avoidance of doubt, this clause (i) shall not apply to Construction Joint Ventures), (ii) is not a shareholder, director, officer, or employee of any Loan Party or of any of its Subsidiaries, (iii) is not the United States of America or Canada, or any state, province, or political subdivision thereof, or any department, agency or instrumentality of any of the foregoing, unless the Assignment of Claims Act, Financial Administration Act (Canada), or any similar state, provincial, or local statute, as the case may be, is complied with to the satisfaction of the Administrative Agent, (iv) is not a debtor under any proceeding under any Debtor Relief Law, unless such Receivable is, under applicable law, accorded priority over the general unsecured obligations of such debtor incurred prior to the institution of such proceeding, or any other comparable bankruptcy or insolvency law, including without limitation the Canadian Legislation (v) is not an assignor for the benefit of creditors, or (vi) has not sold all or substantially all of its assets;

(d) is not evidenced by an instrument or chattel paper unless the same has been endorsed and delivered to the Administrative Agent;

(e) is an asset of such Person to which it has good and marketable title, is freely assignable, and is subject to a perfected, first priority Lien in favor of the Administrative Agent free and clear of any other Liens (other than Liens permitted by Section 8.8(a) or (b) arising by operation of law which are subordinate to the Liens in favor of the Administrative Agent);

(f) is not owing from an Account Debtor who is also a creditor or supplier of such Person, and is not subject to any offset, counterclaim, or other defense with respect thereto; or is not subject to any counterclaim or defense asserted by the Account Debtor or subject to any offset or contra account payable to the Account Debtor (unless the amount of such Receivable is net of such contra account established to the reasonable satisfaction of the Administrative Agent);

(g) no surety bond was required or given in connection with said Receivable or the contract or purchase order out of which the same arose;

(h) it is evidenced by an invoice to the Account Debtor dated not more than five (5) Business Days subsequent to the shipment date of the relevant inventory or completion of performance of the relevant services and is issued on ordinary trade terms requiring payment within thirty (30) days of invoice date, and has not been invoiced more than once;

(i) is not unpaid more than ninety (90) days after the date of the original invoice therefor, and which has not been written off the books of the Borrower of such Guarantor or otherwise designated as uncollectible;

(j) is not owed by an Account Debtor who is obligated on Receivables more than 10% of the aggregate unpaid balance of which do not satisfy a time period specified in subsection (i) above unless the Administrative Agent has approved the continued eligibility thereof;

(k) would not cause the total Receivables owing from any one Account Debtor and its Affiliates to exceed 40% of all Eligible Receivables;

(l) would not cause the total Receivables owing from any one Account Debtor and its Affiliate to exceed any credit limit established for purposes of determining eligibility hereunder by the Administrative Agent in its Permitted Discretion for such Account Debtor and for which the Administrative Agent has given the Borrower at least five (5) Business Days prior notice of the establishment of any such credit limit;

(m) is not owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit the Borrower or such Guarantor to seek judicial enforcement in such jurisdiction of payment of such Receivable, unless the Borrower or such Guarantor has filed such report or qualified to do business in such jurisdiction;

(n) complies in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(o) all representations and warranties relating to such Receivable set forth in this Agreement and the Collateral Documents are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects);

(p) does not arise from a sale on a bill-and-hold, guaranteed sale, sale-or-return, sale-on-approval, consignment, or any other repurchase or return basis;

(q) with respect to any Receivable due to a Construction Joint Venture that is an Eligible Receivable under (a) – (p) above, such Eligible Receivable amount shall be limited to be no greater than such Eligible Receivable amount multiplied by the Parent's ownership percentage in such Construction Joint Venture; and

(r) is not otherwise deemed to be ineligible in the reasonable judgment of the Administrative Agent (it being acknowledged and agreed that with five (5) Business Days prior written notice any Receivable of the Borrower or any Guarantor may be deemed ineligible by the Administrative Agent acting in its reasonable judgment).

"*Environmental Claim*" means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material, (c) from any abatement, removal, remedial, corrective or response action in connection with a Hazardous Material, Environmental Law or order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"*Environmental Law*" means any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, protection or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, investigation, remediation or handling of, or exposure to, any Hazardous Material or (e) pollution (including any Release to air, land, surface water or groundwater), and any amendment, rule, regulation, order or directive issued thereunder.

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

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto, and the rules and regulations promulgated thereunder.

"*Eurodollar Loan*" means a Loan bearing interest at the rate specified in Section 2.4(b).

"*Eurodollar Reserve Percentage*" means the maximum reserve percentage, expressed as a decimal, at which reserves (including, without limitation, any emergency, marginal, special, and supplemental reserves) are imposed by the Board of Governors of the Federal Reserve System (or any successor) on "*eurocurrency liabilities*", as defined in such Board's Regulation D (or any successor thereto), subject to any amendments of such reserve requirement by such Board or its successor, taking into account any transitional adjustments thereto. For purposes of this definition, the relevant Loans shall be deemed to be "*eurocurrency liabilities*" as defined in Regulation D without benefit or credit for any prorations, exemptions or offsets under Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any such reserve percentage.

"*Event of Default*" means any event or condition identified as such in Section 9.1.

"*Event of Loss*" means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property or (b) any condemnation, seizure, or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

"*Excess Availability*" means, as of any time the same is to be determined, the amount (if any) by which (a) (x) if Usage is less than or equal to 35%, the Commitment as then in effect or (y) if Usage is greater than 35%, the lesser of the Borrowing Base as then determined and computed or the Commitment as then in effect, exceeds (b) the aggregate principal amount of Revolving Loans and L/C Obligations then outstanding.

"*Excess Interest*" is defined in Section 13.14.

"*Excluded Deposit Account*" means (a) a deposit account the balance of which consists exclusively of (and is identified when established as an account established solely for the purposes of) (i) withheld income Taxes and federal, state, local or foreign employment Taxes in such amounts as are required in the reasonable judgment of a Loan Party to be paid to the Internal Revenue Service or any other U.S., federal, state or local or foreign government agencies within the following month with respect to employees of such Loan Party, (ii) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of any Loan Party, (iii) amounts which are required to be pledged or otherwise provided as security pursuant to any requirement of any Governmental Authority or foreign pension requirement, (iv) amounts to be used to fund payroll obligations (including, but not limited to, amounts payable to any employment contracts between any Loan Party and their respective employees), and (b) other deposit accounts maintained in the ordinary course of business containing cash amounts that do not exceed at any time $500,000 for any such account and $1,000,000 in the aggregate for all such accounts under this clause (b), unless requested by the Administrative Agent.

"*Excluded Equity Issuances*" means (a) the issuance by any Subsidiary of equity securities to the Borrower or any Guarantor, as applicable, (b) the issuance of equity securities by the Borrower to any Person that is an equity holder of the Borrower prior to such issuance (a "*Subject Holder*") so long as such Subject Holder did not acquire any equity securities of the Borrower so as to become a Subject Holder concurrently with, or in contemplation of, the issuance of such equity securities to such Subject Holder, (c) the issuance of equity securities of the Borrower to directors, officers and employees of the Borrower and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Borrower's Board of Directors, and (d) the issuance of equity securities of the Borrower in order to finance the purchase consideration (or a portion thereof) in connection with a Permitted Acquisition or Capital Expenditures.

"*Excluded Property*" means (a) any fee-owned real property with a fair market value of less than $10,000,000, unless requested by the Administrative Agent; (b) any leased real property; (c) any equipment securing purchase money indebtedness or Capitalized Lease Obligations if the granting of a Lien to any third party is prohibited by the agreement(s) setting forth the terms and conditions applicable to such Indebtedness but only if such Indebtedness and the Liens securing the same are permitted by Sections 8.7(b) and 8.8(d), *provided* that if and when the prohibition which prevents the granting of a Lien in any such Property is removed, terminated or otherwise becomes unenforceable as a matter of law (including, without limitation, the termination of any such security interest resulting from the satisfaction of the Indebtedness secured thereby), and notwithstanding any previous release of Lien provided by the Administrative Agent requested in connection with respect to any such Indebtedness, the Excluded Property will no longer include such Property and the Administrative Agent will be deemed to have, and at all times to have had, a security interest in such property and the Collateral will be deemed to include, and at all times to have included, such Property without further action or notice by any Person; (d) any permit or license issued to any Loan Party as the permit holder or licensee thereof or any lease to which any Loan Party is lessee thereof, in each case only to the extent and for so long as the terms of such permit, license, or lease effectively (after giving effect to Sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code in the applicable state (or any successor provision or provisions) or any other applicable law) prohibit the creation by such Loan Party of a security interest in such permit, license, or lease in favor of the Administrative Agent or would result in an effective invalidation, termination or breach of the terms of any such permit, license or lease (after giving effect to Sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code in the applicable state (or any successor provision or provisions) or any other applicable law), in each case unless and until any required consents are obtained, *provided* that the Excluded Property will not include, and the Collateral shall include and the security interest granted in the Collateral shall attach to, (x) all proceeds, substitutions or replacements of any such excluded items referred to herein unless such proceeds, substitutions or replacements would constitute excluded items hereunder, (y) all rights to payment due or to become due under any such excluded items referred to herein, and (z) if and when the prohibition which prevents the granting of a security interest in any such Property is removed, terminated, or otherwise becomes unenforceable as a matter of law, the Administrative Agent will be deemed to have, and at all times to have had, a security interest in such property, and the Collateral will be deemed to include, and at all times to have included, such Property without further action or notice by any Person; (e) equity interests of any Foreign Subsidiary which, if granted, would cause a material adverse effect on the Borrower's federal income tax liability, unless requested by the Administrative Agent after the occurrence and during the continuation of an Event of Default, provided that Excluded Property shall not include, and the Collateral shall include, (x) non-voting equity interests of a first-tier Foreign Subsidiary owned by any Loan Party and (y) voting equity interests of a first-tier Foreign Subsidiary owned by any Loan Party representing not more than 66% of the total voting power of all outstanding voting equity interests of such Foreign Subsidiary, with equity interests of such Foreign Subsidiary constituting "stock entitled to vote" within the meaning of Treasury regulation section 1.956-2(c)(2) being treated as voting equity interests of such Foreign Subsidiary for purposes of this clause (e); (f) Excluded Deposit Accounts; and (g) any and all interests in any Construction Joint Venture.

"*Excluded Swap Obligation*" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.12) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 4.1 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 4.1(g), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Facility" means the credit facility for making Revolving Loans and issuing Letters of Credit described in Sections 2.2 and 2.3.

"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 agreements entered into pursuant to Section 1471(b)(1) of the Code.

"*FCPA*" means the Foreign Corrupt Practices Act, 15 U.S.C. §§78dd-1, et seq.

"*Financial Letter of Credit*" means a Letter of Credit which secures a contractual payment obligation.

"*Federal Funds Rate*" means the fluctuating interest rate per annum described in part (i) of clause (b) of the definition of Base Rate.

"*Financial Officer*" of any Person means the chief financial officer, principal accounting officer, treasurer or controller of such Person.

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

"*Foreign Subsidiary*" means each Subsidiary that (a) is organized under the laws of a jurisdiction other than the United States of America or any state thereof or the District of Columbia, (b) conducts substantially all of its business outside of the United States of America, and (c) has substantially all of its assets outside of the United States of America.

"*Fronting Exposure*" means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's Revolver Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

"*GAAP*" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

"*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 (including any supra-national bodies such as the European Union or the European Central Bank).

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

"*Guarantors*" means and includes Parent, each Subsidiary of Borrower, and Borrower, in its capacity as a guarantor of the Secured Obligations of another Loan Party; *provided, however,* that unless otherwise required by the Administrative Agent or the Required Lenders during the existence of any Event of Default, a Foreign Subsidiary shall not be required to be a Guarantor hereunder if providing such Guaranty Agreement would cause a material adverse effect on the Borrower's federal income tax liability.

"*Guaranty Agreements*" means and includes the Guarantee of the Loan Parties provided for in Section 11, and any other guaranty agreement executed and delivered in order to guarantee the Secured Obligations or any part thereof in form and substance acceptable to the Administrative Agent.

"*Hazardous Material*" means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous, toxic, or a pollutant and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous," "toxic," or a "pollutant" or words of like meaning and regulatory effect pursuant to an Environmental Law.

"*Hazardous Material Activity*" means any activity, event or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material.

"*Hedging Agreement*" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Loan Party or its Subsidiaries shall be a Hedging Agreement.

"*Hedging Liability*" means the liability of any Loan Party to any of the Lenders, or any Affiliates of such Lenders in respect of any Hedging Agreement of the type permitted under Section 8.7(c) as such Loan Party may from time to time enter into with any one or more of the Lenders party to this Agreement or their Affiliates, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor); *provided, however,* that, with respect to any Guarantor, Hedging Liability Guaranteed by such Guarantor shall exclude all Excluded Swap Obligations.

"*Hostile Acquisition*" means the acquisition of the capital stock or other equity interests of a Person through a tender offer or similar solicitation of the owners of such capital stock or other equity interests which has not been approved (prior to such acquisition) by resolutions of the Board of Directors of such Person or by similar action if such Person is not a corporation, or as to which such approval has been withdrawn.

"*Indebtedness*" means for any Person (without duplication) (a) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (b) all indebtedness for the deferred purchase price of property or services (including any Earn Out Obligations but excluding purchase price adjustments and trade accounts payable arising in the ordinary course of business which are not more than ninety (90) days past due), (c) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (d) all Capitalized Lease Obligations of such Person, (e) all obligations of such Person on or with respect to letters of credit, bankers' acceptances and other extensions of credit whether or not representing obligations for borrowed money, (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person or any warrant, right or option to acquire such equity interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (g) all net obligations (determined as of any time based on the termination value thereof) of such Person under any interest rate, foreign currency, and/or commodity swap, exchange, cap, collar, floor, forward, future or option agreement, or any other similar interest rate, currency or commodity hedging arrangement; and (h) all Guarantees of such Person in respect of any of the foregoing. For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

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

"*Information*" is defined in Section 13.20.

"*Interest Expense*" means, with reference to any period, the sum of all interest charges (including imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"*Interest Payment Date*" means (a) with respect to any Eurodollar Loan, the last day of each Interest Period with respect to such Eurodollar Loan and on the maturity date and, if the applicable Interest Period is longer than three (3) months, on each day occurring every three (3) months after the commencement of such Interest Period, and (b) with respect to any Base Rate Loan, the last day of every calendar month and on the maturity date.

"*Interest Period*" means the period commencing on the date a Borrowing of Eurodollar Loans is advanced, continued, or created by conversion and ending in the case of Eurodollar Loans, one (1), two (2), three (3), or six (6) months thereafter, *provided, however,* that:

(i) no Interest Period shall extend beyond the final maturity date of the relevant Loans;

(ii) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, *provided* that, if such extension would cause the last day of an Interest Period for a Borrowing of Eurodollar Loans to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; and

(iii) for purposes of determining an Interest Period for a Borrowing of Eurodollar Loans, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; *provided, however,* that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end.

"*IRS*" means the United States Internal Revenue Service.

"*L/C Issuer*" means BMO Harris Bank N.A., in its capacity as the issuer of Letters of Credit hereunder, or such other Lender requested by the Borrower (with such Lender's consent) and approved by the Administrative Agent in its sole discretion, in each case together with its successors in such capacity as provided in Section 2.3(h).

"*L/C Obligations*" means the aggregate undrawn face amounts of all outstanding Letters of Credit and all unpaid Reimbursement Obligations.

"*L/C Sublimit*" means $25,000,000, as reduced or otherwise amended pursuant to the terms hereof.

"*Legal Requirement*" means any treaty, convention, statute, law, regulation, ordinance, license, permit, governmental approval, injunction, judgment, order, consent decree or other requirement of any Governmental Authority, whether federal, state, or local.

"*Lenders*" means and includes BMO Harris Bank N.A. and the other Persons listed on Schedule 2.2 and any other Person that shall have become party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"*Lending Office*" is defined in Section 4.7.

"*Letter of Credit*" is defined in Section 2.3(a).

"*Letter of Credit Fee*" is defined in Section 3.1(b).

"*LIBOR*" means, for an Interest Period for a Borrowing of Eurodollar Loans, (a) the LIBOR Index Rate for such Interest Period, if such rate is available, and (b) if the LIBOR Index Rate cannot be determined, the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which deposits in U.S. Dollars in immediately available funds are offered to the Administrative Agent at 11:00 a.m. (London, England time) two (2) Business Days before the beginning of such Interest Period by three (3) or more major banks in the interbank eurodollar market selected by the Administrative Agent for delivery on the first day of and for a period equal to such Interest Period and in an amount equal or comparable to the principal amount of the Eurodollar Loan scheduled to be made as part of such Borrowing, provided that in no event shall "LIBOR" be less than 0.00%.

"*LIBOR Floor*" means 0.50% per annum.

"*LIBOR Index Rate*" means, for any Interest Period, the greater of (a) the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. Dollars for a period equal to such Interest Period, which appears on the LIBOR01 Page as of 11:00 a.m. (London, England time) on the day two (2) Business Days before the commencement of such Interest Period and (b) the LIBOR Floor.

"*LIBOR01 Page*" means the display designated as "*LIBOR01 Page*" on the Reuters Service (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market).

"*Lien*" means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement; provided that in no event shall the interests of a lessor under an operating lease be a Lien.

"*Liquidity*" means, at any time, the sum of (i) the aggregate amount of unrestricted cash maintained by the Borrower and its Subsidiaries that are Loan Parties plus (ii) Excess Availability.

"*Loan*" means any Revolving Loan, whether outstanding as a Base Rate Loan or Eurodollar Loan or otherwise, each of which is a "*type*" of Loan hereunder.

"*Loan Documents*" means this Agreement, the Notes (if any), the Applications, the Collateral Documents, the Guaranty Agreements, and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

"*Loan Party*" means the Borrower and each of the Guarantors.

"*Material Adverse Effect*" means (a) a material adverse change in, or material adverse effect upon, the operations, business, Property or condition (financial or otherwise) of the Borrower or of the Loan Parties and their Subsidiaries taken as a whole, (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document or (c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or the rights and remedies of the Administrative Agent and the Lenders thereunder or (ii) the perfection or priority of any Lien granted under any Collateral Document.

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

"*Material Plan*" is defined in Section 9.1(i).

"*Maximum Rate*" is defined in Section 13.14.

"*Minimum Collateral Amount*" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the Fronting Exposure of all L/C Issuers with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

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

"*Net Cash Proceeds*" means, as applicable, (a) with respect to any Disposition by a Person, cash and Cash Equivalent proceeds received by or for such Person's account, net of (i) reasonable direct fees, costs and expenses relating to such Disposition (including brokers' fees or commissions, discounts, legal, accounting and other professional and transactional fees), (ii) sale, use, transfer or other transactional taxes paid or payable by such Person as a direct result of such Disposition, (iii) all amounts that are reasonably set aside as a reserve for (x) adjustments in respect of the purchase price of such assets, and (y) any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, (iv) any indemnity holdback obligations and (v) the principal amount of any Indebtedness permitted hereby which is secured by a prior perfected Lien on the asset subject to such Disposition and is required to be repaid in connection with such Disposition, (b) with respect to any Event of Loss of a Person, cash and Cash Equivalent proceeds received by or for such Person's account (whether as a result of payments made under any applicable insurance policy therefor or in connection with condemnation proceedings or otherwise), net of taxes paid or payable by such Person as a result of receipt of such proceeds and reasonable fees, costs and expenses and taxes incurred in connection with the collection of such proceeds, awards or other payments, and (c) with respect to any offering of equity securities of a Person or the issuance of any Indebtedness by a Person, cash and Cash Equivalent proceeds received by or for such Person's account, net of (i) reasonable legal, underwriting, and other fees, costs, premiums, commissions and expenses and (ii) taxes paid or payable by any Loan Party or any of its Subsidiaries in connection with such offering or issuance, in each case of clauses (i) and (ii), which are incurred as a direct result thereof or properly attributable thereto.

"*Net Income*" means, with reference to any period, the net income (or net loss) of the Borrower and its Subsidiaries for such period computed on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from Net Income (a) the net income (or net loss) of any Person accrued prior to the date it becomes a Subsidiary of, or has merged into or consolidated with, the Borrower or another Subsidiary, (b) the net income (or net loss) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has an equity interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries during such period, and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or requirement of law applicable to such Subsidiary.

"*Net Worth*" means, for any Person and at any time the same is to be determined, total shareholder's equity (including capital stock, additional paid-in capital, and retained earnings after deducting treasury stock) which would appear on the balance sheet of such Person in accordance with GAAP.

"*Non-Consenting Lender*" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of Section 13.3 and (b) has been approved by the Required Lenders.

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

"*Note*" and "*Notes*" each is defined in Section 2.10.

"*Obligations*" means all obligations of the Borrower to pay principal and interest on the Loans, all Reimbursement Obligations owing under the Applications, all fees and charges payable hereunder, and all other payment obligations of the Borrower or any other Loan Party arising under or in relation to any Loan Document, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

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

"*OFAC Event*" means the event specified in Section 8.15(c).

"*OFAC Sanctions Programs*" means all laws, regulations, and Executive Orders administered by OFAC, including without limitation, the Bank Secrecy Act, anti-money laundering laws (including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56 (a/k/a the USA Patriot Act)), and all economic and trade sanction programs administered by OFAC, any and all similar United States federal laws, regulations or Executive Orders (whether administered by OFAC or otherwise), and any similar laws, regulations or orders adopted by any State within the United States.

"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 or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.12).

"Parent" is defined in the introductory paragraph of this Agreement.

"*Participant"* has the meaning assigned to such term in clause (d) of Section 13.2.

"*Participant Register"* has the meaning specified in clause (d) of Section 13.2.

"*Participating Interest"* is defined in Section 2.3(e).

"*Participating Lender"* is defined in Section 2.3(e).

"PBGC" means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

"Perfection Certificate" means that certain Perfection Certificate dated as of the Closing Date from the Borrower to the Administrative Agent.

"*Performance Letter of Credit*" means a Letter of Credit which secures a contractual obligation for the completion of work or services (i.e., one that does not involve the payment of money

"Permitted Acquisition" means any Acquisition with respect to which all of the following conditions shall have been satisfied:

(a) the Acquired Business is in an Eligible Line of Business and has its primary operations within the United States of America;

(b) the Acquisition shall not be a Hostile Acquisition;

(c) the financial statements of the Acquired Business shall have been audited by a nationally recognized accounting firm or such financial statements shall have undergone review of a scope satisfactory to the Administrative Agent;

(d) the Total Consideration for the Acquired Business shall not exceed $10,000,000 and, when taken together with the Total Consideration for all Acquired Businesses acquired during the term of this Agreement, shall not exceed $25,000,000 in the aggregate;

(e) the Borrower shall have notified the Administrative Agent not less than thirty (30) days prior to any such Acquisition and furnished to the Administrative Agent at such time reasonable details as to such Acquisition (including sources and uses of funds therefor), and three (3)-year historical financial information and three (3)-year pro forma financial forecasts of the Acquired Business on a stand-alone basis as well as of the Borrower on a consolidated basis after giving effect to the Acquisition and covenant compliance calculations reasonably satisfactory to the Administrative Agent demonstrating satisfaction of the condition described in clause (g) below;

(f) if a new Subsidiary is formed or acquired as a result of or in connection with the Acquisition, the Borrower shall have complied with the requirements of Section 12.4 in connection therewith;

(g) after giving effect to the Acquisition and any Credit Event in connection therewith, no Default shall exist, including with respect to the financial covenant contained in Section 8.23(a) on a pro forma basis (looking back four completed fiscal quarters as if the Acquisition occurred on the first day of such period and after giving effect to the payment of the purchase price for the Acquired Business);

(h) after giving effect to the Acquisition and any Credit Event in connection therewith, the Borrower shall have not less than $75,000,000 of Liquidity;

(i) the Acquired Business must have positive EBITDA (looking back four completed fiscal quarters as if the Acquisition occurred on the first day of such period) after giving effect to pro forma adjustments reasonably acceptable to the Administrative Agent in its sole discretion;

(j) such Acquisition shall be structured as (1) an asset acquisition by a Loan Party of all or substantially all of the assets of the Person whose assets are being acquired (or all or substantially all of a line or lines of business of such Person), (2) a merger of the Person to be acquired with and into a Loan Party, with such Loan Party as the surviving corporation in such merger, (3) a merger of the Person to be acquired with a transitory merger subsidiary of a Loan Party with the Person acquired as the surviving entity in such merger provided that such surviving entity is the Borrower or a Guarantor, or (4) a purchase of no less than 100% of the equity interests of the Person to be acquired by a Loan Party; and

(k) any earn out obligations incurred in connection with the Acquisition shall be subordinated to the Facility in a manner reasonably acceptable to the Administrative Agent.

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

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

"*Plan*" means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code that either (a) is maintained by a member of the Controlled Group for employees of a member of the Controlled Group or (b) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

"*Premises*" means the real property owned or leased by any Loan Party or any Subsidiary of a Loan Party.

"*Property*" means, as to any Person, all types of real, personal, tangible, intangible or mixed property owned by such Person whether or not included in the most recent balance sheet of such Person and its subsidiaries under GAAP.

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

"*Receivables*" means all rights to the payment of a monetary obligation, now or hereafter owing, whether evidenced by accounts, instruments, chattel paper, or general intangibles.

"*Recipient*" means (a) the Administrative Agent, (b) any Lender, and (c) any L/C Issuer, as applicable.

"*Reimbursement Obligation*" is defined in Section 2.3(c).

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

"*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing any Hazardous Material.

"*Required Lenders*" means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; provided, however, that at any time there are two or more non-affiliated Lenders, "Required Lenders" must include at least two non-affiliated Lenders. To the extent provided in the last paragraph of Section 13.3, the Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"*Responsible Officer*" of any person means any executive officer or Financial Officer of such Person and any other officer, general partner or managing member or similar official thereof with responsibility for the administration of the obligations of such person in respect of this Agreement whose signature and incumbency shall have been certified to the Administrative Agent on or after the Closing Date pursuant to an incumbency certificate of the type contemplated by Section 7.2.

"*Revolver Percentage*" means, for each Lender, the percentage of the total Commitments represented by such Lender's Commitment or, if the Commitments have been terminated or expired, the percentage of the total Revolving Credit Exposure then outstanding held by such Lender; and where the term "*Revolver Percentage*" is applied on an aggregate basis (including, without limitation, Section 10.8), such aggregate percentage shall be calculated by aggregating the separate components of the Revolver Percentage, and expressing such components on a single percentage basis.

"*Revolving Credit Exposure*" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Obligations at such time.

"*Revolving Loan*" is defined in Section 2.2 and, as so defined, includes a Base Rate Loan or a Eurodollar Loan, each of which is a "*type*" of Revolving Loan hereunder.

"*Revolving Note*" is defined in Section 2.10.

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

"*Secured Obligations*" means the Obligations, Hedging Liability, and Bank Product Obligations, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired (including all interest, costs, fees, and charges after the entry of an order for relief against any Loan Party in a case under the United States Bankruptcy Code or any similar proceeding, whether or not such interest, costs, fees and charges would be an allowed claim against such Loan Party in any such proceeding); *provided, however,* that, with respect to any Guarantor, Secured Obligations Guaranteed by such Guarantor shall exclude all Excluded Swap Obligations.

"*Security Agreement*" means that certain Security Agreement dated the date of this Agreement among the Loan Parties and the Administrative Agent, as the same may be amended, modified, supplemented or restated from time to time.

"*Specified Projects*" means the following construction projects: (i) Transbay Superstructure Concrete; (ii) Alameda Creek Fish Passage; (iii) Caltrain 25th Avenue Grade Separator; (iv) Twin Peaks; (v) E320 South Bellevue; (vi) GGB Physical Suicide Deterrent System (PSDS); (vii) Southport; (viii) LAX Automated People Mover; (ix) OC 405; (x) Chickamagua; (xi) Fullerton and (xii) LaGrange.

"*Subordinated Debt*" means Indebtedness which is subordinated in right of payment to the prior payment of the Secured Obligations pursuant to subordination provisions approved in writing by the Administrative Agent and is otherwise pursuant to documentation that is, which is in an amount that is, and which contains interest rates, payment terms, maturities, amortization schedules, covenants, defaults, remedies and other material terms that are in form and substance, in each case satisfactory to the Administrative Agent.

"*Subsidiary*" means, as to any particular parent corporation or organization, any other corporation or organization more than 50% of the outstanding Voting Stock of which is at the time directly or indirectly owned by such parent corporation or organization or by any one or more other entities which are themselves subsidiaries of such parent corporation or organization. Unless otherwise expressly noted herein, the term "*Subsidiary*" means a Subsidiary of the Borrower or of any of its direct or indirect Subsidiaries.

"*Surety*" means, collectively, any surety party to a Bonding Agreement.

"*Surety's General Indemnity Agreement*" means [ ].

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

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

"*Termination Date*" means February 26, 2024, or such earlier date on which the Commitments are terminated in whole pursuant to Section 2.11, 9.2 or 9.3.

"*Total Consideration*" means, with respect to an Acquisition, the sum (but without duplication) of (a) cash paid or payable in connection with any Acquisition, whether paid at or prior to or after the closing thereof, (b) Indebtedness payable to the seller in connection with such Acquisition, including all "earn-out" and other future payment obligations subject to the occurrence of any contingency (*provided* that, in the case of any future payment subject to a contingency, such shall be considered part of the Total Consideration to the extent of the reserve, if any, required under GAAP to be established in respect thereof by any Loan Party or any Subsidiary of a Loan Party), (c) the fair market value of any equity securities, including any warrants or options therefor, delivered in connection with any Acquisition, (d) the present value of covenants not to compete entered into in connection with such Acquisition or other future payments which are required to be made over a period of time and are not contingent upon any Loan Party or its Subsidiary meeting financial performance objectives (exclusive of salaries paid in the ordinary course of business) (discounted at the Base Rate), but only to the extent not included in clause (a), (b) or (c) above, and (e) the amount of Indebtedness assumed in connection with such Acquisition.

"*Total Credit Exposure*" means, as to any Lender at any time, the Revolving Credit Exposure of such Lender at such time.

"*Total Funded Debt*" means, at any time the same is to be determined, the sum (but without duplication) of (a) all Indebtedness of the Borrower and its Subsidiaries at such time described in clauses (a)-(f), both inclusive, of the definition thereof, and (b) all Indebtedness of any other Person which is directly or indirectly Guaranteed by the Borrower or any of its Subsidiaries or which the Borrower or any of its Subsidiaries has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which the Borrower or any of its Subsidiaries has otherwise assured a creditor against loss.

"*Total Leverage Ratio*" means, as of the last day of any fiscal quarter of the Borrower, the ratio of Total Funded Debt of the Borrower and its Subsidiaries as of the last day of such fiscal quarter to EBITDA of the Borrower and its Subsidiaries for the period of four fiscal quarters then ended.

"*Unfunded Vested Liabilities*" means, for any Plan at any time, the amount (if any) by which the present value of all vested nonforfeitable accrued benefits under such Plan exceeds the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the Controlled Group to the PBGC or the Plan under Title IV of ERISA.

"*Usage*" means, as of any date of determination, a percentage calculated by taking (x) the Total Credit Exposure of all Lenders at such time divided by (y) the Commitment of all Lenders at such time.

"*U.S. Dollars*" and "*$*" each means the lawful currency of the United States of America.

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

"*U.S. Tax Compliance Certificate*" has the meaning assigned to such term in subsection (g) of Section 4.1.

"*Voting Stock*" of any Person means capital stock or other equity interests of any class or classes (however designated) having ordinary power for the election of directors or other similar governing body of such Person, other than stock or other equity interests having such power only by reason of the happening of a contingency.

"*Welfare Plan*" means a "welfare plan" as defined in Section 3(1) of ERISA.

"*Wholly-owned Subsidiary*" means a Subsidiary of which all of the issued and outstanding shares of capital stock (other than directors' qualifying shares as required by law) or other equity interests are owned by the Borrower and/or one or more Wholly-owned Subsidiaries within the meaning of this definition.

"*Withholding Agent*" means any Loan Party and the Administrative Agent.

Section 1.2. Interpretation . The foregoing definitions are equally applicable to both 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 permitted 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. All references to time of day herein are references to Chicago, Illinois, time unless otherwise specifically provided. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, unless stated otherwise, it shall be done in accordance with GAAP except where such principles are inconsistent with the specific provisions of this Agreement.

Section 1.3. Change in Accounting Principles. If, after the date of this Agreement, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.5 and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement, either the Borrower or the Required Lenders may by notice to the Administrative Agent and the Borrower, respectively, require that the Lenders and the Borrower negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Borrower and its Subsidiaries shall be the same as if such change had not been made. No delay by the Borrower or the Required Lenders in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles. Without limiting the generality of the foregoing, the Borrower shall neither be deemed to be in compliance with any financial covenant hereunder nor out of compliance with any financial covenant hereunder if such state of compliance or noncompliance, as the case may be, would not exist but for the occurrence of a change in accounting principles after the date hereof. Notwithstanding any changes in GAAP that would require lease obligations that would previously be treated as operating leases to be classified and accounted for as Capitalized Lease Obligation or otherwise reflected on Borrower’s consolidated balance sheet (including the issuance on February 25, 2016, by the Financial Accounting Standards Board of a new Accounting Standards Update (ASU), Leases (Topic 842)), such obligations shall continue to be treated as operating leases in a manner consistent with such treatment prior to such change.

Section 1.4. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 2. THE FACILITY.

Section 2.1. [Reserved].

Section 2.2. Revolving Facility. Subject to the terms and conditions hereof, each Lender, by its acceptance hereof, severally agrees to make a loan or loans (individually a *"Revolving Loan"* and collectively for all the Lenders the *"Revolving Loans"*) in U.S. Dollars to the Borrower from time to time on a revolving basis up to the amount of such Lender's Commitment, subject to any reductions thereof pursuant to the terms hereof, before the Termination Date. The sum of the aggregate principal amount of Revolving Loans and L/C Obligations at any time outstanding shall not exceed (x) if Usage is less than or equal to 35%, the Commitment in effect at such time or (y) if Usage is greater than 35%, the lesser of the Borrowing Base as then determined and computed or the Commitment in effect at such time. Each Borrowing of Revolving Loans shall be made ratably by the Lenders in proportion to their respective Revolver Percentages. As provided in Section 2.6(a), the Borrower may elect that each Borrowing of Revolving Loans be either Base Rate Loans or Eurodollar Loans. Revolving Loans may be repaid and the principal amount thereof reborrowed before the Termination Date, subject to the terms and conditions hereof.

Section 2.3. Letters of Credit. (a) *General Terms.* Subject to the terms and conditions hereof, as part of the Facility, the L/C Issuer shall issue Financial Letters of Credit and Performance Letters of Credit (each a *"Letter of Credit"*) for the account of the Borrower or for the account of the Borrower and one or more of its Subsidiaries in an aggregate undrawn face amount up to the L/C Sublimit. Each Letter of Credit shall be issued by the L/C Issuer, but each Lender shall be obligated to reimburse the L/C Issuer for such Lender's Revolver Percentage of the amount of each drawing thereunder and, accordingly, Letters of Credit shall constitute usage of the Commitment of each Lender pro rata in an amount equal to its Revolver Percentage of the L/C Obligations then outstanding.

(b) *Applications.* At any time before the Termination Date, the L/C Issuer shall, at the request of the Borrower, issue one or more Letters of Credit in U.S. Dollars, in a form satisfactory to the L/C Issuer, with expiration dates no later than the earlier of 12 months from the date of issuance (or which are cancelable not later than 12 months from the date of issuance and each renewal) or thirty (30) days prior to the Termination Date, in an aggregate face amount as set forth above, upon the receipt of an application duly executed by the Borrower and, if such Letter of Credit is for the account of one of its Subsidiaries, such Subsidiary for the relevant Letter of Credit in the form then customarily prescribed by the L/C Issuer for the Letter of Credit requested (each an *"Application"*). The Borrower agrees that if on the Termination Date any Letters of Credit remain outstanding the Borrower shall then deliver to the Administrative Agent, without notice or demand, Cash Collateral in an amount equal to 105% of the aggregate amount of each Letter of Credit then outstanding (which shall be held by the Administrative Agent pursuant to the terms of Section 9.4). Notwithstanding anything contained in any Application to the contrary: (i) the Borrower shall pay fees in connection with each Letter of Credit as set forth in Section 3.1(b), (ii) except as otherwise provided herein or in Sections 2.8, 2.13 or 2.14, unless an Event of Default exists, the L/C Issuer will not call for the funding by the Borrower of any amount under a Letter of Credit before being presented with a drawing thereunder, and (iii) if the L/C Issuer is not timely reimbursed for the amount of any drawing under a Letter of Credit on the date such drawing is paid, except as otherwise provided for in Section 2.6(e), the Borrower's obligation to reimburse the L/C Issuer for the amount of such drawing shall bear interest (which the Borrower hereby promises to pay) from and after the date such drawing is paid at a rate per annum equal to the sum of the Applicable Margin plus the Base Rate from time to time in effect (computed on the basis of a year of 360 days, and the actual number of days elapsed). If the L/C Issuer issues any Letter of Credit with an expiration date that is automatically extended unless the L/C Issuer gives notice that the expiration date will not so extend beyond its then scheduled expiration date, unless the Administrative Agent or the Required Lenders instruct the L/C Issuer otherwise, the L/C Issuer will give such notice of non-renewal before the time necessary to prevent such automatic extension if before such required notice date: (i) the expiration date of such Letter of Credit if so extended would be after the Termination Date, (ii) the Commitments have been terminated, or (iii) an Event of Default exists and either the Administrative Agent or the Required Lenders (with notice to the Administrative Agent) have given the L/C Issuer instructions not to so permit the extension of the expiration date of such Letter of Credit. The L/C Issuer agrees to issue amendments to the Letter(s) of Credit increasing the amount, or extending the expiration date, thereof at the request of the Borrower subject to the conditions of Section 7 and the other terms of this Section.

(c) *The Reimbursement Obligations.* Subject to Section 2.3(b), the obligation of the Borrower to reimburse the L/C Issuer for all drawings under a Letter of Credit (a *"Reimbursement Obligation"*) shall be governed by the Application related to such Letter of Credit, except that reimbursement shall be made by no later than 12:00 Noon (Chicago time) on the date when each drawing is to be paid if the Borrower has been informed of such drawing by the L/C Issuer on or before 11:00 a.m. (Chicago time) on the date when such drawing is to be paid or, if notice of such drawing is given to the Borrower after 11:00 a.m. (Chicago time) on the date when such drawing is to be paid, by no later than 12:00 Noon (Chicago time) on the following Business Day, in immediately available funds at the Administrative Agent's principal office in Chicago, Illinois, or such other office as the Administrative Agent may designate in writing to the Borrower (who shall thereafter cause to be distributed to the L/C Issuer such amount(s) in like funds). If the Borrower does not make any such reimbursement payment on the date due and the Participating Lenders fund their participations therein in the manner set forth in Section 2.3(e) below, then all payments thereafter received by the Administrative Agent in discharge of any of the relevant Reimbursement Obligations shall be distributed in accordance with Section 2.3(e) below.

(d) *Obligations Absolute.* The Borrower's obligation to reimburse L/C Obligations shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement and the relevant Application under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not strictly comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders, or the L/C Issuer shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the L/C Issuer; *provided* that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower and each other Loan Party to the extent permitted by applicable law) suffered by the Borrower or any Loan Party that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as determined by a court of competent jurisdiction by final and nonappealable judgment), the L/C Issuer shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the L/C Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) *The Participating Interests.* Each Lender (other than the Lender acting as L/C Issuer in issuing the relevant Letter of Credit), by its acceptance hereof, severally agrees to purchase from the L/C Issuer, and the L/C Issuer hereby agrees to sell to each such Lender (a *"Participating Lender"*), an undivided percentage participating interest (a *"Participating Interest")*, to the extent of its Revolver Percentage, in each Letter of Credit issued by, and each Reimbursement Obligation owed to, the L/C Issuer. Upon any failure by the Borrower to pay any Reimbursement Obligation at the time required on the date the related drawing is to be paid, as set forth in Section 2.3(c) above, or if the L/C Issuer is required at any time to return to the Borrower or to a trustee, receiver, liquidator, custodian or other Person any portion of any payment of any Reimbursement Obligation, each Participating Lender shall, not later than the Business Day it receives a certificate in the form of Exhibit A hereto from the L/C Issuer (with a copy to the Administrative Agent) to such effect, if such certificate is received before 1:00 p.m. (Chicago time), or not later than 1:00 p.m. (Chicago time) the following Business Day, if such certificate is received after such time, pay to the Administrative Agent for the account of the L/C Issuer an amount equal to such Participating Lender's Revolver Percentage of such unpaid or recaptured Reimbursement Obligation together with interest on such amount accrued from the date the related payment was made by the L/C Issuer to the date of such payment by such Participating Lender at a rate per annum equal to: (i) from the date the related payment was made by the L/C Issuer to the date two (2) Business Days after payment by such Participating Lender is due hereunder, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Participating Lender to the date such payment is made by such Participating Lender, the Base Rate in effect for each such day. Each such Participating Lender shall thereafter be entitled to receive its Revolver Percentage of each payment received in respect of the relevant Reimbursement Obligation and of interest paid thereon, with the L/C Issuer retaining its Revolver Percentage thereof as a Lender hereunder. The several obligations of the Participating Lenders to the L/C Issuer under this Section shall be absolute, irrevocable, and unconditional under any and all circumstances whatsoever and shall not be subject to any set-off, counterclaim or defense to payment which any Participating Lender may have or have had against the Borrower, the L/C Issuer, the Administrative Agent, any Lender or any other Person whatsoever. Without limiting the generality of the foregoing, such obligations shall not be affected by any Default or by any reduction or termination of any Commitment of any Lender, and each payment by a Participating Lender under this Section shall be made without any offset, abatement, withholding or reduction whatsoever.

(f) *Indemnification.* The Participating Lenders shall, to the extent of their respective Revolver Percentages, indemnify the L/C Issuer (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment) that the L/C Issuer may suffer or incur in connection with any Letter of Credit issued by it. The obligations of the Participating Lenders under this subsection (f) and all other parts of this Section shall survive termination of this Agreement and of all Applications, Letters of Credit, and all drafts and other documents presented in connection with drawings thereunder.

(g) *Manner of Requesting a Letter of Credit.* The Borrower shall provide at least five (5) Business Days' advance written notice to the Administrative Agent of each request for the issuance of a Letter of Credit, such notice in each case to be accompanied by an Application for such Letter of Credit properly completed and executed by the Borrower and, in the case of an extension or amendment or an increase in the amount of a Letter of Credit, a written request therefor, in a form acceptable to the Administrative Agent and the L/C Issuer, in each case, together with the fees called for by this Agreement. The Administrative Agent shall promptly notify the L/C Issuer of the Administrative Agent's receipt of each such notice (and the L/C Issuer shall be entitled to assume that the conditions precedent to any such issuance, extension, amendment or increase have been satisfied unless notified to the contrary by the Administrative Agent or the Required Lenders) and the L/C Issuer shall promptly notify the Administrative Agent and the Lenders of the issuance of the Letter of Credit so requested.

(h) *Replacement of the L/C Issuer*. The L/C Issuer may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced L/C Issuer, and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of the L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer. From and after the effective date of any such replacement (i) the successor L/C Issuer shall have all the rights and obligations of the L/C Issuer under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to refer to such successor or to any previous L/C Issuer, or to such successor and all previous L/C Issuers, as the context shall require. After the replacement of a L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of a L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

Section 2.4. Applicable Interest Rates. (a) *Base Rate Loans.* Each Base Rate Loan made or maintained by a Lender shall bear interest (computed on the basis of a year of 365 or 366 days, as the case may be, and the actual days elapsed on the unpaid principal amount thereof from the date such Loan is advanced, or created by conversion from a Eurodollar Loan, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Base Rate from time to time in effect, payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(b) *Eurodollar Loans.* Each Eurodollar Loan made or maintained by a Lender shall bear interest during each Interest Period it is outstanding (computed on the basis of a year of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced or continued, or created by conversion from a Base Rate Loan, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Adjusted LIBOR applicable for such Interest Period, payable by the Borrower in arrears on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(c) *Rate Determinations.* The Administrative Agent shall determine each interest rate applicable to the Loans and the Reimbursement Obligations hereunder in a commercially reasonable manner, and its determination thereof shall be conclusive and binding except in the case of manifest error.

Section 2.5. Minimum Borrowing Amounts; Maximum Eurodollar Loans. Each Borrowing of Base Rate Loans advanced under the Facility shall be in an amount not less than $100,000. Each Borrowing of Eurodollar Loans advanced, continued or converted under the Facility shall be in an amount equal to $1,000,000 or such greater amount which is an integral multiple of $500,000. Without the Administrative Agent’s consent, there shall not be more than six (6) Borrowings of Eurodollar Loans outstanding hereunder at any one time.

Section 2.6. Manner of Borrowing Loans and Designating Applicable Interest Rates. (a) *Notice to the Administrative Agent.* The Borrower shall give notice to the Administrative Agent by no later than 10:00 a.m. (Chicago time): (i) at least three (3) Business Days before the date on which the Borrower requests the Lenders to advance a Borrowing of Eurodollar Loans and (ii) on the date the Borrower requests the Lenders to advance a Borrowing of Base Rate Loans. The Loans included in each Borrowing shall bear interest initially at the type of rate specified in such notice of a new Borrowing. Thereafter, subject to the terms and conditions hereof, the Borrower may from time to time elect to change or continue the type of interest rate borne by each Borrowing or, subject to the minimum amount requirement for each outstanding Borrowing set forth in Section 2.5, a portion thereof, as follows: (i) if such Borrowing is of Eurodollar Loans, on the last day of the Interest Period applicable thereto, the Borrower may continue part or all of such Borrowing as Eurodollar Loans or convert part or all of such Borrowing into Base Rate Loans or (ii) if such Borrowing is of Base Rate Loans, on any Business Day, the Borrower may convert all or part of such Borrowing into Eurodollar Loans for an Interest Period or Interest Periods specified by the Borrower. The Borrower shall give all such notices requesting the advance, continuation or conversion of a Borrowing to the Administrative Agent by telephone, telecopy, or other telecommunication device reasonably acceptable to the Administrative Agent (which notice shall be irrevocable once given (unless such notice provides that such request is contingent on the consummation of a transaction (which transaction shall be described in reasonable detail in such notice), in which case, such notice shall be revocable to the extent the transaction is not consummated on the date such advance, continuation or conversion is requested to be made) and, if by telephone, shall be promptly confirmed in writing in a manner acceptable to the Administrative Agent), substantially in the form attached hereto as Exhibit B (Notice of Borrowing) or Exhibit C (Notice of Continuation/Conversion), as applicable, or in such other form acceptable to the Administrative Agent. Notice of the continuation of a Borrowing of Eurodollar Loans for an additional Interest Period or of the conversion of part or all of a Borrowing of Base Rate Loans into Eurodollar Loans must be given by no later than 10:00 a.m. (Chicago time) at least three (3) Business Days before the date of the requested continuation or conversion. All such notices concerning the advance, continuation or conversion of a Borrowing shall specify the date of the requested advance, continuation or conversion of a Borrowing (which shall be a Business Day), the amount of the requested Borrowing to be advanced, continued or converted, the type of Loans to comprise such new, continued or converted Borrowing and, if such Borrowing is to be comprised of Eurodollar Loans, the Interest Period applicable thereto. Upon notice to the Borrower by the Administrative Agent or the Required Lenders (or, in the case of an Event of Default under Section 9.1(k) or 9.1(l) with respect to the Borrower, without notice), no Borrowing of Eurodollar Loans shall be advanced, continued, or created by conversion if any Default then exists. The Borrower agrees that the Administrative Agent may rely on any such telephonic, telecopy or other telecommunication notice given by any person the Administrative Agent in good faith believes is an Authorized Representative without the necessity of independent investigation, and in the event any such notice by telephone conflicts with any written confirmation such telephonic notice shall govern if the Administrative Agent has acted in reliance thereon.

(b) *Notice to the Lenders*. The Administrative Agent shall give prompt telephonic, telecopy or other telecommunication notice to each Lender of any notice from the Borrower received pursuant to Section 2.6(a) above and, if such notice requests the Lenders to make Eurodollar Loans, the Administrative Agent shall give notice to the Borrower and each Lender by like means of the interest rate applicable thereto promptly after the Administrative Agent has made such determination.

(c) *Borrower's Failure to Notify.* If the Borrower fails to give notice pursuant to Section 2.6(a) above of the continuation or conversion of any outstanding principal amount of a Borrowing of Eurodollar Loans before the last day of its then current Interest Period within the period required by Section 2.6(a) and such Borrowing is not prepaid in accordance with Section 2.8(a), such Borrowing shall automatically be converted into a Borrowing of Base Rate Loans. In the event the Borrower fails to give notice pursuant to Section 2.6(a) above of a Borrowing equal to the amount of a Reimbursement Obligation and has not notified the Administrative Agent by 12:00 noon (Chicago time) on the day such Reimbursement Obligation becomes due that it intends to repay such Reimbursement Obligation through funds not borrowed under this Agreement, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans under the Facility on such day in the amount of the Reimbursement Obligation then due, which Borrowing shall be applied to pay the Reimbursement Obligation then due.

(d) *Disbursement of Loans*. The Administrative Agent shall make the proceeds of each new Borrowing available to the Borrower at the Administrative Agent's principal office in Chicago, Illinois (or at such other location as the Administrative Agent shall designate), by depositing or wire transferring such proceeds to the credit of the Borrower's Designated Disbursement Account or as the Borrower and the Administrative Agent may otherwise agree.

(e) *Administrative Agent Reliance on Lender Funding.* Unless the Administrative Agent shall have been notified by a Lender prior to (or, in the case of a Borrowing of Base Rate Loans, by 1:00 p.m. (Chicago time) on) the date on which such Lender is scheduled to make payment to the Administrative Agent of the proceeds of a Loan (which notice shall be effective upon receipt) that such Lender does not intend to make such payment, the Administrative Agent may assume that such Lender has made such payment when due and the Administrative Agent may in reliance upon such assumption (but shall not be required to) make available to the Borrower the proceeds of the Loan to be made by such Lender and, if any Lender has not in fact made such payment to the Administrative Agent, such Lender shall, on demand, pay to the Administrative Agent the amount made available to the Borrower attributable to such Lender together with interest thereon in respect of each day during the period commencing on the date such amount was made available to the Borrower and ending on (but excluding) the date such Lender pays such amount to the Administrative Agent at a rate per annum equal to: (i) from the date the related advance was made by the Administrative Agent to the date two (2) Business Days after payment by such Lender is due hereunder, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Lender to the date such payment is made by such Lender, the Base Rate in effect for each such day. If such amount is not received from such Lender by the Administrative Agent immediately upon demand, the Borrower will, on written demand, repay to the Administrative Agent the proceeds of the Loan attributable to such Lender with interest thereon at a rate per annum equal to the interest rate applicable to the relevant Loan, but without such payment being considered a payment or prepayment of a Loan under Section 4.5 so that the Borrower will have no liability under such Section with respect to such payment. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.7. Maturity of Loans. (a) *Revolving Loans.* Each Revolving Loan, both for principal and interest not sooner paid, shall mature and be due and payable by the Borrower on the Termination Date.

Section 2.8. Prepayments. (a) *Optional*. The Borrower may prepay, without premium or penalty, in whole or in part (but, if in part, then: (i) if such Borrowing is of Base Rate Loans, in an amount not less than $100,000, (ii) if such Borrowing is of Eurodollar Loans, in an amount not less than $500,000, and (iii) in each case, in an amount such that the minimum amount required for a Borrowing pursuant to Section 2.5 remains outstanding) upon not less than three (3) Business Days prior notice by the Borrower to the Administrative Agent in the case of any prepayment of a Borrowing of Eurodollar Loans and notice delivered by the Borrower to the Administrative Agent no later than 10:00 a.m. (Chicago time) on the date of prepayment in the case of a Borrowing of Base Rate Loans (or, in any case, such shorter period of time then agreed to by the Administrative Agent), such prepayment to be made by the payment of the principal amount to be prepaid and, in the case of any Eurodollar Loans, accrued interest thereon to the date fixed for prepayment plus any amounts due the Lenders under Section 4.5.

(b) *Mandatory*. (i) The Borrower shall, on each date the Commitments are reduced pursuant to Section 2.11, prepay the Revolving Loans, and, if necessary, prefund the L/C Obligations by the amount, if any, necessary to reduce the sum of the aggregate principal amount of Revolving Loans and L/C Obligations then outstanding to the amount to which the Commitments have been so reduced.

(ii) If Usage is greater than 35% and the sum of the unpaid principal balance of the Revolving Loans and the L/C Obligations then outstanding shall be in excess of the Borrowing Base as then determined and computed, the Borrower shall immediately and without notice or demand pay over the amount of the excess to the Administrative Agent for the account of the Lenders as and for a mandatory prepayment on such Obligations, with each such prepayment first to be applied to the Revolving Loans until paid in full with any remaining balance to be held by the Administrative Agent in the Collateral Account as security for the Obligations owing with respect to the Letters of Credit.

(iii) If the Borrower or any Subsidiary shall at any time or from time to time make or agree to make a Disposition or shall suffer an Event of Loss with respect to any Property, then the Borrower shall promptly notify the Administrative Agent of such proposed Disposition or Event of Loss (including the amount of the estimated Net Cash Proceeds to be received by the Borrower or such Subsidiary in respect thereof) and, promptly upon receipt by the Borrower or such Subsidiary of the Net Cash Proceeds of such Disposition or Event of Loss, the Borrower shall prepay the Obligations in an aggregate amount equal to 100% of the amount of all such Net Cash Proceeds; *provided* that (x) so long as no Default then exists, this subsection shall not require any such prepayment with respect to Net Cash Proceeds received on account of an Event of Loss so long as such Net Cash Proceeds are applied to replace or restore the relevant Property in accordance with the relevant Collateral Documents, (y) this subsection shall not require any such prepayment with respect to Net Cash Proceeds received on account of Dispositions during any fiscal year of the Borrower not exceeding $1,000,000 in the aggregate so long as no Event of Default then exists, and (z) in the case of any Disposition not covered by clause (y) above, so long as no Event of Default then exists, if the Borrower states in its notice of such event that the Borrower or the relevant Subsidiary intends to reinvest, within 90 days of the applicable Disposition, the Net Cash Proceeds thereof in assets similar to the assets which were subject to such Disposition, then the Borrower shall not be required to make a mandatory prepayment under this subsection in respect of such Net Cash Proceeds to the extent such Net Cash Proceeds are actually reinvested in such similar assets with such 90-day period. Promptly after the end of such 90-day period, the Borrower shall notify the Administrative Agent whether the Borrower or such Subsidiary has reinvested such Net Cash Proceeds in such similar assets, and, to the extent such Net Cash Proceeds have not been so reinvested, the Borrower shall promptly prepay the Obligations in the amount of such Net Cash Proceeds not so reinvested. If the Administrative Agent or the Required Lenders so request, all proceeds of such Disposition or Event of Loss shall be deposited with the Administrative Agent (or its agent) and held by it in the Collateral Account. So long as no Default exists, the Administrative Agent is authorized to disburse amounts representing such proceeds from the Collateral Account to or at the Borrower’s direction for application to or reimbursement for the costs of replacing, rebuilding or restoring such Property.

(iv) If after the Closing Date the Borrower or any Subsidiary shall issue new equity securities (whether common or preferred stock or otherwise), other than Excluded Equity Issuances, the Borrower shall promptly notify the Administrative Agent of the estimated Net Cash Proceeds of such issuance to be received by or for the account of the Borrower or such Subsidiary in respect thereof. Promptly upon receipt by the Borrower or such Subsidiary of Net Cash Proceeds of such issuance, the Borrower shall prepay the Obligations in an aggregate amount equal to 100% of the amount of such Net Cash Proceeds. The Borrower acknowledges that its performance hereunder shall not limit the rights and remedies of the Lenders for any breach of Section 8.11 (Maintenance of Subsidiaries) or Section 9.1(j) (Change of Control) or any other terms of the Loan Documents.

(v) If after the Closing Date the Borrower or any Subsidiary shall issue any Indebtedness, other than Indebtedness permitted by Section 8.7(a)-(e), the Borrower shall promptly notify the Administrative Agent of the estimated Net Cash Proceeds of such issuance to be received by or for the account of the Borrower or such Subsidiary in respect thereof. Promptly upon receipt by the Borrower or such Subsidiary of Net Cash Proceeds of such issuance, the Borrower shall prepay the Obligations in an aggregate amount equal to 100% of the amount of such Net Cash Proceeds. The Borrower acknowledges that its performance hereunder shall not limit the rights and remedies of the Lenders for any breach of Section 8.7 or any other terms of the Loan Documents.

(vi) If after the Closing Date the Borrower or any Subsidiary shall issue any Subordinated Debt, the Borrower shall promptly notify the Administrative Agent of the estimated Net Cash Proceeds of such issuance to be received by or for the account of the Borrower or such Subsidiary in respect thereof. Promptly upon receipt by the Borrower or such Subsidiary of Net Cash Proceeds of such issuance, the Borrower shall prepay the Obligations in an aggregate amount equal to 100% of the amount of such Net Cash Proceeds. The Borrower acknowledges that its performance hereunder shall not limit the rights and remedies of the Lenders for any breach of Section 8.7 or any other terms of the Loan Documents.

(vii) Unless the Borrower otherwise directs, prepayments of Loans under this Section 2.8(b) shall be applied first to Borrowings of Base Rate Loans until payment in full thereof with any balance applied to Borrowings of Eurodollar Loans in the order in which their Interest Periods expire. Each prepayment of Loans under this Section 2.8(b) shall be made by the payment of the principal amount to be prepaid and, in the case of any Eurodollar Loan, accrued interest thereon to the date of prepayment together with any amounts due the Lenders under Section 4.5. Each prefunding of L/C Obligations shall be made in accordance with Section 9.4.

(c) Any amount of Revolving Loans paid or prepaid before the Termination Date may, subject to the terms and conditions of this Agreement, be borrowed, repaid and borrowed again.

Section 2.9. Default Rate. Notwithstanding anything to the contrary contained herein, while any Event of Default exists or after acceleration, the Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all Loans and Reimbursement Obligations, letter of credit fees and other amounts at a rate per annum equal to:

(a) for any Base Rate Loan, upon the written election of the Administrative Agent, the sum of 2.0% per annum *plus* the Applicable Margin *plus* the Base Rate from time to time in effect;

(b) for any Eurodollar Loan, upon the written election of the Administrative Agent, the sum of 2.0% per annum *plus* the rate of interest in effect thereon at the time of such Event of Default until the end of the Interest Period applicable thereto and, thereafter, at a rate per annum equal to the sum of 2.0% per annum *plus* the Applicable Margin for Base Rate Loans *plus* the Base Rate from time to time in effect;

(c) for any unpaid Reimbursement Obligation, the sum of 2.0% per annum *plus* the amounts due under Section 2.3 with respect to such Reimbursement Obligation;

(d) for any Letter of Credit, the sum of 2.0% per annum *plus* the Letter of Credit Fee due under Section 3.1(b) with respect to such Letter of Credit; and

(e) for any other amount owing hereunder not covered by clauses (a) through (d) above, the sum of 2% per annum *plus* the Applicable Margin *plus* the Base Rate from time to time in effect;

provided, however, that in the absence of acceleration pursuant to Section 9.2 or 9.3, any adjustments pursuant to this Section shall be made at the election of the Administrative Agent, acting at the request or with the consent of the Required Lenders, with written notice to the Borrower (which election may be retroactively effective to the date of such Event of Default). While any Event of Default exists or after acceleration, interest shall be paid on demand of the Administrative Agent at the request or with the consent of the Required Lenders.

Section 2.10. Evidence of Indebtedness. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by the Administrative Agent from time to time, including the amounts of principal and interest payable and paid to the Administrative Agent from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the type thereof and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender’s share thereof.

(c) The entries maintained in the accounts maintained pursuant to subsections (a) and (b) above shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded absent manifest error; *provided, however,* that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender may request that its Loans be evidenced by a promissory note or notes in the forms of Exhibit D (referred to herein as a *"Revolving Note"*) (the Revolving Notes being hereinafter referred to collectively as the *"Notes"* and individually as a *"Note"*). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender or its registered assigns in the amount of the relevant Commitment, as applicable. Thereafter, the Loans evidenced by such Note or Notes and interest thereon shall at all times (including after any assignment pursuant to Section 13.2) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 13.2, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in subsections (a) and (b) above.

Section 2.11. Commitment Terminations. (a) *Optional Revolving Credit Terminations.* The Borrower shall have the right at any time and from time to time, upon five (5) Business Days prior written notice to the Administrative Agent (or such shorter period of time agreed to by the Administrative Agent), to terminate the Commitments without premium or penalty and in whole or in part, any partial termination to be (i) in an amount not less than $1,000,000 and (ii) allocated ratably among the Lenders in proportion to their respective Revolver Percentages, provided that the Commitments may not be reduced to an amount less than the sum of the aggregate principal amount of Revolving Loans and L/C Obligations then outstanding. Any termination of the Commitments below the L/C Sublimit then in effect shall reduce the L/C Sublimit by a like amount. The Administrative Agent shall give prompt notice to each Lender of any such termination of the Commitments.

(b) Any termination of the Commitments pursuant to this Section may not be reinstated.

Section 2.12. Replacement of Lenders. If any Lender requests compensation under Section 4.4, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.1 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 4.7, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.2), all of its interests, rights (other than its existing rights to payments pursuant to Section 4.1 or Section 4.4) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 13.2;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.5 as if the Loans owing to it were prepaid rather than assigned) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 4.4 or payments required to be made pursuant to Section 4.1, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.13. Defaulting Lenders.

(a) *Defaulting Lender Adjustments.* Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) *Voting, Waivers and Amendments*. Such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters, including such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to any Loan Document shall be restricted as set forth in the definition of Required Lenders. Such Defaulting Lender's Commitments shall be excluded for purposes of determining "Required Lenders".

(ii) *Defaulting Lender Waterfall.* Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.7 hereto shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; *fourth*, as the Borrower may request (so long as no Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 7.1 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with their Revolver Percentages without giving effect to Section 2.13(a)(iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.13(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees*.

(A) No Defaulting Lender shall be entitled to receive any commitment fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Participation Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) With respect to any facility fee or L/C Participation Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each L/C Issuer, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) *Reallocation of Participations to Reduce Fronting Exposure*. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolver Percentages (calculated without regard to such Defaulting Lender's Commitments) but only to the extent that (x) the conditions set forth in Section 7.1 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Loans and interests in L/C Obligations of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) *Cash Collateral*. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to them hereunder or under law, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) *Defaulting Lender Cure*. If the Borrower, the Administrative Agent and each L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with their respective Revolver Percentages (without giving effect to Section 2.13(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) *New Letters of Credit*. So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.14. Cash Collateral for Fronting Exposure . At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or any L/C Issuer (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.13(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the L/C Issuers, and agree to maintain, a first priority security interest in all such Cash Collateral as security for such Defaulting Lender's obligation to fund participations in respect of L/C Obligations, to be applied pursuant to clause (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the L/C Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower shall, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.14 or Section 2.13 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any L/C Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.14(c) following (A) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (B) the determination by the Administrative Agent and each L/C Issuer that there exists excess Cash Collateral; provided that, subject to Section 2.14, the Person providing Cash Collateral and each L/C Issuer may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

Section 2.15. Increase in Commitment. The Borrower may, on any Business Day prior to the Termination Date, with the written consent of the Administrative Agent, increase the aggregate amount of the Commitment by delivering an Increase Request substantially in the form attached hereto as Exhibit G (or in such other form acceptable to the Administrative Agent) to the Administrative Agent at least five (5) Business Days prior to the desired effective date of such increase (the "*Revolver Increase*") identifying an additional Lender (or additional Commitment for an existing Lender) and the additional amount of its Commitment (or additional amount of its Commitment; *provided, however*, that:

(a) the aggregate amount of all such Revolver Increases shall not exceed $20,000,000 and any such Revolver Increase shall be in an amount not less than $2,000,000 (or such lesser amount then agreed to by the Administrative Agent);

(b) no Default or Event of Default shall have occurred and be continuing at the time of the request or the effective date of the Revolver Increase; and

(c) each of the representations and warranties set forth in Section 6 and in the other Loan Documents shall be and remain true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) on the effective date of such Revolver Increase, except to the extent the same expressly relate to an earlier date, in which case they shall be true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as of such earlier date. The effective date of the Revolver Increase shall be agreed upon by the Borrower and the Administrative Agent. Upon the effectiveness thereof, Schedule 2.2 shall be deemed amended to reflect the Revolver Increase and the new Lender (or, if applicable, existing Lender) shall advance Revolving Loans in an amount sufficient such that after giving effect to its Revolving Loans each Lender shall have outstanding its Revolver Percentage of all Revolving Loans outstanding under the Commitments. It shall be a condition to such effectiveness that (A) if any Eurodollar Loans are outstanding on the date of such effectiveness, such Eurodollar Loans shall be deemed to be prepaid on such date and the Borrower shall pay any amounts owing to the Administrative Agent pursuant to Section 4.5 and (B) the Borrower shall not have terminated any portion of the Commitment pursuant to Section 2.11. Borrower agrees to pay the reasonable and documented out-of-pocket expenses of the Administrative Agent (including reasonable attorney's fees of outside counsel) relating to any Revolver Increase. Notwithstanding anything herein to the contrary, Administrative Agent shall not have any obligation to increase its Commitment, and Administrative Agent may at its option, unconditionally and without cause, decline to increase its Commitment.

SECTION 3. FEES.

Section 3.1. Fees. (a) *Commitment Fee.* The Borrower shall pay to the Administrative Agent for the ratable account of the Lenders in accordance with their Revolver Percentages a commitment fee at the rate per annum equal to the Applicable Margin (computed on the basis of a year of 360 days and the actual number of days elapsed) times the daily amount by which the aggregate Commitments exceeds the principal amount of Revolving Loans and L/C Obligations then outstanding. Such commitment fee shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year (commencing on the first such date occurring after the Closing Date) and on the Termination Date, unless the Commitments are terminated in whole on an earlier date, in which event the commitment fee for the period to the date of such termination in whole shall be paid on the date of such termination.

(b) *Letter of Credit Fees.* Quarterly in arrears, on the last day of each March, June, September, and December, commencing on the first such date occurring after the Closing Date, the Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders in accordance with their Revolver Percentages, a letter of credit fee (the *"Letter of Credit Fee"*) at a rate per annum equal to the Applicable Margin (computed on the basis of a year of 360 days and the actual number of days elapsed) in effect during each day of such quarter applied to the daily average face amount of Letters of Credit outstanding during such quarter. In addition, the Borrower shall pay to the L/C Issuer for its own account the L/C Issuer's standard issuance, drawing, negotiation, amendment, assignment, and other administrative fees for each Letter of Credit as established by the L/C Issuer from time to time.

(c) *Closing Fee.* The Borrower shall pay to the Administrative Agent, for its own use and benefit, on the date hereof a non-refundable closing fee in the amount of $150,000.

SECTION 4. TAXES; CHANGE IN CIRCUMSTANCES, INCREASED COSTS, AND FUNDING INDEMNITY.

Section 4.1. Taxes. (a) *Certain Defined Terms.* For purposes of this Section, the term "Lender" includes any L/C Issuer and the term "applicable law" includes FATCA.

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

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

(d) *Indemnification by the Loan Parties.* The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) *Indemnification by the Lenders.* Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.2(d) 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 subsection (e).

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

(g) *Status of Lenders.* (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 4.1(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 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 originals of IRS Form W-8BEN; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), *"FATCA"* shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

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

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

Section 4.2. Change of Law. Notwithstanding any other provisions of this Agreement or any other Loan Document, if at any time any Change in Law makes it unlawful for any Lender to make or continue to maintain any Eurodollar Loans or to perform its obligations as contemplated hereby, such Lender shall promptly give notice thereof to the Borrower and such Lender's obligations to make or maintain Eurodollar Loans under this Agreement shall be suspended until it is no longer unlawful for such Lender to make or maintain Eurodollar Loans. The Borrower shall prepay on demand the outstanding principal amount of any such affected Eurodollar Loans, together with all interest accrued thereon and all other amounts then due and payable to such Lender under this Agreement; *provided, however,* subject to all of the terms and conditions of this Agreement, the Borrower may then elect to borrow the principal amount of the affected Eurodollar Loans from such Lender by means of Base Rate Loans from such Lender, which Base Rate Loans shall not be made ratably by the Lenders but only from such affected Lender.

Section 4.3. Unavailability of Deposits or Inability to Ascertain, or Inadequacy of LIBOR; Effect of Benchmark Transition Event.

(a) If on or prior to the first day of any Interest Period for any Borrowing of Eurodollar Loans:

(i) the Administrative Agent determines that deposits in U.S. Dollars (in the applicable amounts) are not being offered to it in the interbank eurodollar market for such Interest Period, or that by reason of circumstances affecting the interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable LIBOR, or

(ii) the Required Lenders advise the Administrative Agent that (x) LIBOR as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding their Eurodollar Loans for such Interest Period or (y) that the making or funding of Eurodollar Loans become impracticable,

then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Lenders to make Eurodollar Loans shall be suspended.

(b) Effect of Benchmark Transition Event

(i) *Benchmark Replacement*. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to the Borrower. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section 4.3 will occur prior to the applicable Benchmark Transition Start Date.

(ii) *Benchmark Replacement Conforming Changes*. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) *Notices; Standards for Decisions and Determinations*. The Administrative Agent will promptly notify the Borrower of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent pursuant to Section 4.3, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to Section 4.3.

(iv) *Benchmark Unavailability Period*. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Loan of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon LIBOR will not be used in any determination of Base Rate.

(v) *Certain Defined Terms*. As used in this Section 4.3:

"*Benchmark Replacement*" means the sum of: (A) the alternate benchmark rate (which may include, SOFR, Compounded SOFR or Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (x) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for syndicated credit facilities denominated in U.S. Dollars and (B) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than 0.75%, the Benchmark Replacement will be deemed to be 0.75% for the purposes of this Agreement.

"*Benchmark Replacement Adjustment*" means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in U.S. Dollars at such time.

"*Benchmark Replacement Conforming Changes*" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

"*Benchmark Replacement Date*" means the earlier to occur of the following events with respect to LIBOR:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"*Benchmark Transition Event*" means the occurrence of one or more of the following events with respect to LIBOR:

(1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

"*Benchmark Transition Start Date*" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent by notice to the Borrower and the Administrative Agent.

"*Benchmark Unavailability Period*" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with the Section 4.3 and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to this Section 4.3.

"*Compounded SOFR*" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with: (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that: (2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent determines are substantially consistent with at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time (as a result of amendment or as originally executed) that are publicly available for review.

"*Corresponding Tenor*" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the then-current Benchmark.

"*Early Opt-in Election*" means the occurrence of:

(1) a determination by the Administrative Agent that syndicated credit facilities denominated in U.S. Dollars being executed at such time, or that include language similar to that contained in Section 4.3, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(2) the election by the Administrative Agent to declare that an Early Opt-in Election with respect to such rate has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower.

"*Federal Reserve Bank of New York's Website*" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"*Relevant Governmental Body*" means, with respect to LIBOR or a SOFR-Based Rate (as applicable), the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"*SOFR*" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"*SOFR-Based Rate*" means SOFR, Compounded SOFR or Term SOFR.

"*Term SOFR*" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"*Unadjusted Benchmark Replacement*" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

Section 4.4. Increased Costs.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBOR) or any L/C Issuer;

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

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such L/C Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, L/C Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, L/C Issuer or other Recipient, the Borrower will pay to such Lender, L/C Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) *Certificates for Reimbursement.* A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 4.5. Funding Indemnity. If any Lender shall incur any loss, cost or expense (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or re-employment of deposits or other funds acquired by such Lender to fund or maintain any Eurodollar Loan or the relending or reinvesting of such deposits or amounts paid or prepaid to such Lender) as a result of:

(a) any payment, prepayment or conversion of a Eurodollar Loan on a date other than the last day of its Interest Period,

(b) any failure (because of a failure to meet the conditions of Section 7 or otherwise) by the Borrower to borrow or continue a Eurodollar Loan, or to convert a Base Rate Loan into a Eurodollar Loan on the date specified in a notice given pursuant to Section 2.6(a) or 2.2(b),

(c) any failure by the Borrower to make any payment of principal on any Eurodollar Loan when due (whether by acceleration or otherwise), or

(d) any acceleration of the maturity of a Eurodollar Loan as a result of the occurrence of any Event of Default hereunder,

then, upon the demand of such Lender, the Borrower shall pay to such Lender such amount as will reimburse such Lender for such loss, cost or expense. If any Lender makes such a claim for compensation, it shall provide to the Borrower, with a copy to the Administrative Agent, a certificate setting forth the amount of such loss, cost or expense in reasonable detail and the amounts shown on such certificate shall be conclusive absent manifest error.

Section 4.6. Discretion of Lender as to Manner of Funding. Notwithstanding any other provision of this Agreement, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it sees fit, it being understood, however, that for the purposes of this Agreement all determinations hereunder with respect to Eurodollar Loans shall be made as if each Lender had actually funded and maintained each Eurodollar Loan through the purchase of deposits in the interbank eurodollar market having a maturity corresponding to such Loan's Interest Period, and bearing an interest rate equal to LIBOR for such Interest Period.

Section 4.7. Lending Offices; Mitigation Obligations. Each Lender may, at its option, elect to make its Loans hereunder at the branch, office or affiliate specified in its Administrative Questionnaire (each a *"Lending Office"*) for each type of Loan available hereunder or at such other of its branches, offices or affiliates as it may from time to time elect and designate in a written notice to the Borrower and the Administrative Agent. If any Lender requests compensation under Section 4.4, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.1, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.1 or 4.4, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

SECTION 5. PLACE AND APPLICATION OF PAYMENTS.

Section 5.1. Place and Application of Payments. All payments of principal of and interest on the Loans and the Reimbursement Obligations, and all other Obligations payable by the Borrower under this Agreement and the other Loan Documents, shall be made by the Borrower to the Administrative Agent by no later than 12:00 Noon (Chicago time) on the due date thereof (or if the due date is not a Business Day, the next Business Day after such date) at the office of the Administrative Agent in Chicago, Illinois (or such other location as the Administrative Agent may designate to the Borrower), for the benefit of the Lender(s) or L/C Issuer entitled thereto. Any payments received after such time shall be deemed to have been received by the Administrative Agent on the next Business Day. All such payments shall be made in U.S. Dollars, in immediately available funds at the place of payment, in each case without set-off or counterclaim. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest on Loans and on Reimbursement Obligations in which the Lenders have purchased Participating Interests ratably to the Lenders and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuers hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuers, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Issuer, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate per annum equal to: (i) from the date the distribution was made to the date two (2) Business Days after payment by such Lender is due hereunder, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Lender to the date such payment is made by such Lender, the Base Rate in effect for each such day.

Section 5.2. Non-Business Days. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment shall be extended to the next succeeding Business Day on which date such payment shall be due and payable. In the case of any payment of principal falling due on a day which is not a Business Day, interest on such principal amount shall continue to accrue during such extension at the rate per annum then in effect, which accrued amount shall be due and payable on the next scheduled date for the payment of interest.

Section 5.3. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation for each such day.

Section 5.4. Account Debit. The Borrower hereby irrevocably authorizes the Administrative Agent to charge any of the Borrower's deposit accounts maintained with the Administrative Agent for the amounts from time to time necessary to pay any then due Obligations; *provided* that the Borrower acknowledges and agrees that the Administrative Agent shall not be under an obligation to do so and the Administrative Agent shall not incur any liability to the Borrower or any other Person for the Administrative Agent's failure to do so.

SECTION 6. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants to the Administrative Agent and the Lenders as follows:

Section 6.1. Organization and Qualification. Each Loan Party is duly organized, validly existing, and in good standing as a corporation, limited liability company, or partnership, as applicable, under the laws of the jurisdiction in which it is organized, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying, except where the failure to do so would not have a Material Adverse Effect.

Section 6.2. Subsidiaries. Each Subsidiary that is not a Loan Party is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying, except where the failure to do so would not have a Material Adverse Effect. Schedule 6.2 hereto identifies each Subsidiary (including Subsidiaries that are Loan Parties), the jurisdiction of its organization, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by any Loan Party and its Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class of its authorized capital stock and other equity interests and the number of shares of each class issued and outstanding. All of the outstanding shares of capital stock and other equity interests of each Subsidiary are validly issued and outstanding and fully paid and nonassessable and all such shares and other equity interests indicated on Schedule 6.2 as owned by the relevant Loan Party or another Subsidiary are owned, beneficially and of record, by such Loan Party or such Subsidiary free and clear of all Liens other than the Liens granted in favor of the Administrative Agent pursuant to the Collateral Documents or otherwise permitted by this Agreement. There are no outstanding commitments or other obligations of any Subsidiary to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Subsidiary.

Section 6.3. Authority and Validity of Obligations. Each Loan Party has full right and authority to enter into this Agreement and the other Loan Documents executed by it, to make the borrowings herein provided for (in the case of the Borrower), to guarantee the Secured Obligations (in the case of each Guarantor), to grant to the Administrative Agent the Liens described in the Collateral Documents executed by such Loan Party, and to perform all of its obligations hereunder and under the other Loan Documents executed by it. The Loan Documents delivered by the Loan Parties and their Subsidiaries have been duly authorized, executed, and delivered by such Persons and constitute valid and binding obligations of such Loan Parties and their Subsidiaries enforceable against each of them in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law); and this Agreement and the other Loan Documents do not, nor does the performance or observance by any Loan Party or any Subsidiary of any of the matters and things herein or therein provided for, (a) contravene or constitute a default under any provision of law or any judgment, injunction, order or decree binding upon any Loan Party or any Subsidiary of a Loan Party or any provision of the organizational documents (*e.g.*, charter, certificate or articles of incorporation and by-laws, certificate or articles of association and operating agreement, partnership agreement, or other similar organizational documents) of any Loan Party or any Subsidiary of a Loan Party, (b) contravene or constitute a default under any covenant, indenture or agreement of or affecting any Loan Party or any Subsidiary of a Loan Party or any of their respective Property, in each case where such contravention or default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (c) result in the creation or imposition of any Lien on any Property of any Loan Party or any Subsidiary of a Loan Party other than the Liens granted in favor of the Administrative Agent pursuant to the Collateral Documents.

Section 6.4. Use of Proceeds; Margin Stock. The Borrower shall use the proceeds of the Facility to (i) refinance existing Indebtedness outstanding on the Closing Date, (ii) finance Capital Expenditures, Permitted Acquisitions, for its general working capital purposes and for such other legal and proper purposes as are consistent with all applicable laws and (iii) to fund certain fees and expenses associated with closing the Facility. No Loan Party nor any of its Subsidiaries is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan or any other extension of credit made hereunder will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock. Margin stock (as hereinabove defined) constitutes less than 25% of the assets of the Loan Parties and their Subsidiaries which are subject to any limitation on sale, pledge or other restriction hereunder.

Section 6.5. Financial Reports. The consolidated balance sheet of the Parent and its Subsidiaries as at September 30, 2020, and the related consolidated statements of income, retained earnings and cash flows of the Parent and its Subsidiaries for the fiscal year then ended and the unaudited interim consolidated balance sheet of the Parent and its Subsidiaries as at December 31, 2020, and the related consolidated statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries for the three (3) months then ended, in each case, heretofore furnished to the Administrative Agent, fairly present in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at said dates and the consolidated results of their operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis (except for the absence of normal year-end audit adjustments and footnotes disclosures). A true and correct copy of the quality of earnings report dated as of November 10, 2020 by PricewaterhouseCoopers LLP, independent public accountants, has been furnished to the Administrative Agent. No Loan Party nor any of its Subsidiaries has contingent liabilities which are material to it other than as indicated on such financial statements.

Section 6.6. No Material Adverse Change. Since September 30, 2020, there has been no change in the condition (financial or otherwise) or business prospects of any Loan Party or any Subsidiary of a Loan Party except those occurring in the ordinary course of business, none of which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 6.7. Full Disclosure. (a) The written statements and information furnished to the Administrative Agent and the Lenders in connection with the negotiation of this Agreement and the other Loan Documents and the commitments by the Lenders to provide all or part of the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading, the Administrative Agent and the Lenders acknowledging that as to any projections furnished to the Administrative Agent and the Lenders, the Loan Parties only represent that the same were prepared on the basis of information and estimates the Loan Parties believed to be reasonable at the time of their preparation (it being understood and agreed that (x) any financial or business projections or forecasts furnished are subject to significant uncertainties and contingencies, which may be beyond the control of any Loan Party, (y) no assurance is given by any Loan Party that the results or forecast in any such projections will be realized and (z) the actual results may differ from the forecast results set forth in such projections and such differences may be material).

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 6.8. Trademarks, Franchises, and Licenses. The Loan Parties and their Subsidiaries own, possess, or have the right to use all patents, licenses, franchises, trademarks, trade names, copyrights, trade secrets, know how, and confidential commercial and proprietary information necessary to conduct their businesses as now conducted, without known conflict with any patent, license, trademark, trade name, trade style, copyright or other proprietary right of any other Person except for any such failure to own, possess, or have the right to use that could not reasonably be expected to have a Material Adverse Effect.

Section 6.9. Governmental Authority and Licensing. The Loan Parties and their Subsidiaries have received all licenses, permits and approvals of all federal, state, and local governmental authorities, if any, necessary to conduct their businesses, in each case where the failure to obtain or maintain the same could reasonably be expected to have a Material Adverse Effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit or approval is pending or, to the knowledge of the any Loan Party, threatened.

Section 6.10. Good Title. The Loan Parties have good and defensible title (or valid leasehold interests) to their assets (other than for irregularities, deficiencies or defects in title that do not materially interfere with the Loan Parties' ability to conduct their business as currently conducted or utilize such assets for their intended purposes) material to their business as reflected on the most recent consolidated balance sheet of the Loan Parties and their Subsidiaries furnished to the Administrative Agent and the Lenders (except for sales of assets in the ordinary course of business), subject to no Liens other than such thereof as are permitted by Section 8.8.

Section 6.11. Litigation and Other Controversies. There is no litigation or governmental or arbitration proceeding or labor controversy pending, nor to the knowledge of any Loan Party threatened, against any Loan Party or any Subsidiary of a Loan Party or any of their respective Property which if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.12. Taxes. All federal tax returns and all other material tax returns required to be filed by any Loan Party or any Subsidiary of a Loan Party in any jurisdiction have, in fact, been filed, and all such taxes upon any Loan Party or any Subsidiary of a Loan Party or upon any of their respective Property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. No Loan Party knows of any proposed additional Tax assessment against it or its Subsidiaries for which adequate provisions in accordance with GAAP have not been made on their accounts. Adequate provisions in accordance with GAAP for Taxes on the books of each Loan Party and each of its Subsidiaries have been made for all open years, and for its current fiscal period.

Section 6.13. Approvals. No authorization, consent, license or exemption from, or filing or registration with, any court or governmental department, agency or instrumentality, nor any approval or consent of any other Person, is or will be necessary to the valid execution, delivery or performance by any Loan Party or any Subsidiary of a Loan Party of any Loan Document, except for (i) such approvals which have been obtained prior to the date of this Agreement and remain in full force and effect and (ii) filings which are necessary to perfect the security interests under the Collateral Documents.

Section 6.14. Affiliate Transactions. No Loan Party nor any of its Subsidiaries is a party to any contracts or agreements with any of its Affiliates on terms and conditions which are less favorable to such Loan Party or such Subsidiary than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 6.15. Investment Company. No Loan Party is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 6.16. ERISA. Except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all material respects with ERISA and the Code to the extent applicable to it and has not incurred any liability to the PBGC or a Plan under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA. No Loan Party nor any of its Subsidiaries has any contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in article 6 of Title I of ERISA.

Section 6.17. Compliance with Laws. (a) The Loan Parties and their Subsidiaries are in compliance with all Legal Requirements applicable to or pertaining to their Property or business operations, where any such non-compliance, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Except for such matters, individually or in the aggregate, which could not reasonably be expected to result in a Material Adverse Effect, the Loan Parties represent and warrant that: (i) the Loan Parties and their Subsidiaries, and each of the Premises, comply in all material respects with all applicable Environmental Laws; (ii) the Loan Parties and their Subsidiaries have obtained, maintain and are in compliance with all approvals, permits, or authorizations of Governmental Authorities required for their operations and each of the Premises; (iii) the Loan Parties and their Subsidiaries have not, and no Loan Party has actual knowledge of any other Person who has, caused any Release, threatened Release or disposal of any Hazardous Material at, on, or from any of the Premises in any material quantity and, to the knowledge of each Loan Party, none of the Premises are adversely affected by any such Release, threatened Release or disposal of a Hazardous Material; (iv) the Loan Parties and their Subsidiaries are not subject to and have no written notice or actual knowledge of any Environmental Claim involving any Loan Party or any Subsidiary of a Loan Party or any of the Premises, and there are no conditions or occurrences at any of the Premises which could reasonably be anticipated to form the basis for such an Environmental Claim; (v) none of the Premises contain and have contained any: (1) underground storage tanks, (2) material amounts of asbestos containing building material, (3) landfills or dumps, (4) hazardous waste management facilities as defined pursuant to any Environmental Law, or (5) sites on or nominated for the National Priority List or similar state list; (vi) the Loan Parties and their Subsidiaries have not used a material quantity of any Hazardous Material and have conducted no Hazardous Material Activity at any of the Premises;(vii) none of the Premises are subject to any, and no Loan Party has knowledge of any imminent restriction on the ownership, occupancy, use or transferability of the Premises in connection with any (1) Environmental Law or (2) Release, threatened Release or disposal of a Hazardous Material; and (viii) there are no conditions or circumstances at any of the Premises which pose a material risk to the environment or the health or safety of Persons; and (ix) the Loan Parties and their Subsidiaries have no knowledge of any capital expenditures necessary to bring the Premises or their respective business or equipment into compliance with Environmental Laws. The Loan Parties have delivered to the Administrative Agent and the Lenders complete and accurate copies of all material environmental reports, studies, assessments and investigation results in the Loan Parties' possession or control and that relate to any Loan Party's or Subsidiary's operations or to any of the Premises.

(c) Each Loan Party and each of its Subsidiaries is in material compliance with all Anti-Corruption Laws. Each Loan Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws. No Loan Party nor any Subsidiary has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Loan Party or such Subsidiary or to any other Person, in violation of any Anti-Corruption Laws.

Section 6.18. OFAC. (a) Each Loan Party is in compliance in all material respects with the requirements of all OFAC Sanctions Programs applicable to it, (b) each Subsidiary of each Loan Party is in compliance in all material respects with the requirements of all OFAC Sanctions Programs applicable to such Subsidiary, (c) each Loan Party has provided to the Administrative Agent, the L/C Issuer and the Lenders all information requested by them regarding such Loan Party and its Affiliates and Subsidiaries necessary for the Administrative Agent, the L/C Issuer and the Lenders to comply with all applicable OFAC Sanctions Programs, and (d) no Loan Party nor any of its Affiliates or Subsidiaries, nor, to the knowledge of any Loan Party, any officer, director or Affiliate of any Loan Party or any of its Affiliates or Subsidiaries is or is owned or controlled by Persons that are, (i) the target of any OFAC Sanctions Programs or (ii) located, organized or resident in a country or territory that is, or whose government is the subject to any OFAC Sanctions Programs.

Section 6.19. Labor Matters. There are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary of a Loan Party pending or, to the actual knowledge of any Loan Party, threatened in writing. Other than as set forth on Schedule 6.19, there are no collective bargaining agreements in effect between any Loan Party or any Subsidiary of a Loan Party and any labor union; and no Loan Party nor any of its Subsidiaries is under any obligation to assume any collective bargaining agreement to or conduct any negotiations with any labor union with respect to any future agreements. Each Loan Party and its Subsidiaries have remitted on a timely basis all amounts required to have been withheld and remitted (including withholdings from employee wages and salaries relating to income tax, employment insurance, and pension plan contributions), goods and services tax and all other amounts which if not paid when due could result in the creation of a Lien against any of its Property, except for Liens permitted by Section 8.8.

Section 6.20. Other Agreements. No Loan Party nor any of its Subsidiaries is in default under the terms of any covenant, indenture or agreement of or affecting such Person or any of its Property, which default if uncured could reasonably be expected to have a Material Adverse Effect.

Section 6.21. Solvency. The Loan Parties and their Subsidiaries are solvent, able to pay their debts as they become due, and have sufficient capital to carry on their business and all businesses in which they are about to engage.

Section 6.22. No Default or Event of Default. No Default or Event of Default has occurred and is continuing.

Section 6.23. No Broker Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated thereby.

Section 6.24. Bonding Capacity. Concurrently with the initial Credit Event and thereafter, the Borrower and its Subsidiaries have available bonding capacity under one or more Bonding Agreements in an amount sufficient to operate their respective businesses in the ordinary course. The Borrower and its Subsidiaries are in compliance in all material respects with all terms and conditions set forth in each Bonding Agreement and no default has occurred thereunder.

Section 6.25. Security Documents. (a) The Security Agreement is effective to create in favor of the Administrative Agent legal, valid and enforceable Liens on, and security interests in, the Collateral (as defined in the Security Agreement) and, (i) when financing statements and other filings in appropriate form are filed in the appropriate offices, and (ii) upon the taking of possession or control by the Administrative Agent of the Collateral (as defined in the Security Agreement) with respect to which a security interest may be perfected only by possession or control, the Liens created by the Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in the Collateral (as defined in the Security Agreement) (other than (A) the patents, trademarks, trade styles, copyrights, and other intellectual property rights (including all registrations and applications therefor) and (B) such Collateral (as defined in the Security Agreement) in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction or in respect of which perfection is not required at such time by this Agreement or the Security Agreement), in each case subject to no Liens other than those permitted by Section 8.8.

(b) When (i) the Security Agreement or a short form thereof is filed in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and (ii) financing statements and other filings in appropriate form are filed in the applicable offices, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in the patents, trademarks, trade styles, copyrights, and other intellectual property rights (including all registrations and applications therefor), in each case subject to no Liens other than those permitted by Section 8.8.

SECTION 7. CONDITIONS PRECEDENT.

Section 7.1. All Credit Events. At the time of each Credit Event hereunder:

(a) each of the representations and warranties set forth herein and in the other Loan Documents shall be true and correct in all material respects as of said time (where not already qualified by materiality, otherwise in all respects), except to the extent the same expressly relate to an earlier date, in which case they shall be true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as of such earlier date;

(b) no Default or Event of Default shall have occurred and be continuing or would occur as a result of such Credit Event;

(c) after giving effect to such extension of credit the aggregate principal amount of all Revolving Loans and L/C Obligations outstanding under this Agreement shall not exceed (x) if Usage is less than or equal to 35%, the Commitment or (y) if Usage is greater than 35%, the lesser of (i) the Commitments and (ii) the Borrowing Base as then determined and computed pursuant to a Borrowing Base Certificate delivered concurrently with such Credit Event;

(d) in the case of a Borrowing the Administrative Agent shall have received the notice required by Section 2.6, in the case of the issuance of any Letter of Credit the L/C Issuer shall have received a duly completed Application for such Letter of Credit together with any fees called for by Section 3.1, and, in the case of an extension or increase in the amount of a Letter of Credit, a written request therefor in a form acceptable to the L/C Issuer together with fees called for by Section 3.1; and

(e) such Credit Event shall not violate any order, judgment or decree of any court or other authority or any provision of law or regulation applicable to the Administrative Agent, the L/C Issuer or any Lender (including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System) as then in effect.

Each request for a Borrowing hereunder and each request for the issuance of, increase in the amount of, or extension of the expiration date of, a Letter of Credit shall be deemed to be a representation and warranty by the Borrower on the date on such Credit Event as to the facts specified in subsections (a) through (d), both inclusive, of this Section; *provided, however,* that the Lenders may continue to make advances under the Facility, in the sole discretion of the Lenders with Commitments, notwithstanding the failure of the Borrower to satisfy one or more of the conditions set forth above and any such advances so made shall not be deemed a waiver of any Default or other condition set forth above that may then exist.

Section 7.2. Initial Credit Event. Before or concurrently with the initial Credit Event:

(a) the Administrative Agent shall have received this Agreement duly executed by the Borrower and its Domestic Subsidiaries, as Guarantors, the L/C Issuer, and the Lenders;

(b) if requested by any Lender, the Administrative Agent shall have received for such Lender such Lender's duly executed Notes of the Borrower dated the date hereof and otherwise in compliance with the provisions of Section 2.10;

(c) the Administrative Agent shall have received the Security Agreement duly executed by the Loan Parties, together with (i) original stock certificates or other similar instruments or securities representing all of the issued and outstanding shares of capital stock or other equity interests in each Subsidiary (limited to certificated interests, if any, and in the case of any first tier Foreign Subsidiary to 66% of the Voting Stock and 100% of any other equity interests as provided in Section 12.1) as of the Closing Date, (ii) stock powers executed in blank and undated and voting proxies for the Collateral consisting of the stock or other equity interest in each Subsidiary, (iii) UCC financing statements to be filed against each Loan Party, as debtor, in favor of the Administrative Agent, as secured party, (iv) patent, trademark, and copyright collateral agreements to the extent requested by the Administrative Agent, (v) deposit account, securities account, and commodity account control agreements to the extent requested by the Administrative Agent, (vi) Collateral Access Agreements to the extent requested by the Administrative Agent, and (vii) a duly completed and executed Perfection Certificate;

(d) the Administrative Agent shall have received evidence of insurance required to be maintained under the Loan Documents, naming the Administrative Agent as mortgagee/lender's loss payee and as an additional insured, as applicable;

(e) the Administrative Agent shall have received copies of each Loan Party's articles of incorporation (in each case recently certified by the Secretary of State or other appropriate official of such Loan Party's jurisdiction of organization) and bylaws (or comparable organizational documents) and any amendments thereto, certified in each instance by its Secretary or Assistant Secretary (or comparable Responsible Officer);

(f) the Administrative Agent shall have received copies of resolutions of each Loan Party's Board of Directors (or similar governing body) authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, together with specimen signatures of the persons authorized to execute such documents on each Loan Party's behalf, all certified in each instance by its Secretary or Assistant Secretary (or comparable Responsible Officer);

(g) the Administrative Agent shall have received copies of the certificates of good standing for each Loan Party (dated no earlier than 30 days prior to the date hereof) from the office of the secretary of the state of its incorporation or organization and of each state in which it is qualified to do business as a foreign corporation or organization;

(h) the Administrative Agent shall have received a list of the Borrower's Authorized Representatives;

(i) the Administrative Agent shall have received a certificate as to the Borrower's Designated Disbursement Account;

(j) the Administrative Agent shall have received the initial fees called for by Section 3.1;

(k) the capital and organizational structure of the Loan Parties and their Subsidiaries shall be satisfactory to the Administrative Agent and the Lenders;

(l) the aggregate surety bonding availability under the terms and conditions of the Bonding Agreements shall be satisfactory to the Administrative Agent;

(m) each Lender shall have received (i) audited financial statements and unaudited monthly financial statements (including an income statement, a balance sheet, and a cash flow statement) of the Loan Parties for the prior three (3) years, including unaudited monthly financial statements for the period ended September 30, 2020, three (3) year projected financial statements, and a closing balance sheet adjusted to give effect to the transaction in form and substance reasonably acceptable to the Administrative Agent and certified to by a Financial Officer of the Borrower;

(n) the Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying that (i) the solvency of the Loan Parties and their Subsidiaries as of the Closing Date after giving effect to the initial Credit Event and the transactions contemplated hereby and payment of all costs and expenses in connection therewith; (ii) since September 30, 2020, no Material Adverse Effect has occurred; (iii) attached thereto are true, correct and complete copies of the Surety's General Indemnity Agreement and all Bonding Agreements the Loan Parties are a party to on the Closing Date, which Surety's General Indemnity Agreement and Bonding Agreements shall be in form and substance satisfactory to the Administrative Agent; and (iv) attached thereto is a true, correct and complete schedule of all Bonds outstanding on the Closing Date;

(o) the Administrative Agent shall have received (x) financing statement, tax, and judgment lien search results against each Loan Party and its Property evidencing the absence of Liens thereon except as permitted by Section 8.8 and (y) evidence that the collateral description in that certain UCC-1 financing statement naming "Wells Fargo Equipment Finance, Inc." as Secured Party and "Shimmick Construction Company, Inc." as Debtor, with filing number 17-7575236275, has been amended to cover only specific items of equipment, in form and substance satisfactory to the Administrative Agent;

(p) the Administrative Agent shall have received pay-off and lien release letters from secured creditors of the Loan Parties (other than secured parties intended to remain outstanding after the Closing Date with Indebtedness and Liens permitted by Sections 8.7 and 8.8) setting forth, among other things, the total amount of Indebtedness outstanding and owing to them (or outstanding letters of credit issued for the account of any Loan Party or its Subsidiaries) and containing an undertaking to cause to be delivered to the Administrative Agent UCC termination statements and any other lien release instruments necessary to release their Liens on the assets of any Loan Party or any Subsidiary of a Loan Party, which pay-off and lien release letters shall be in form and substance acceptable to the Administrative Agent;

(q) the Administrative Agent shall have received the favorable written opinion of counsel to each Loan Party (except as provided for in Section 8.26), in form and substance satisfactory to the Administrative Agent;

(r) each of the Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information requested by any such Lender required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the United States Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) including, without limitation, the information described in Section 13.20; and the Administrative Agent shall have received a fully executed Internal Revenue Service Form W-9 (or its equivalent) for the Borrower and each other Loan Party;

(s) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, sufficiently in advance of the Closing Date, any Lender that has requested, in a written notice to the Borrower, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification; and

(t) the Administrative Agent shall have received, sufficiently in advance of the Closing Date, the results of background checks on management, Oroco Capital, LLC and its managing partners; and

(u) the Administrative Agent shall have received such other agreements, instruments, documents, certificates, and opinions as the Administrative Agent may reasonably request.

For purposes of determining compliance with the conditions specified above, the Administrative Agent and each Lender shall be deemed to be satisfied with each document and each other matter required to be satisfactory to such Lender unless, prior to the Closing Date, the Administrative Agent or such Lender delivers a notice to the Borrower specifying the Administrative Agent's or such Lender's objections and any such Lender has not made available its pro rata share of any borrowing scheduled to be made on the Closing Date.

SECTION 8. COVENANTS.

Each Loan Party agrees that, so long as any credit is available to or in use by the Borrower hereunder, except to the extent compliance in any case or cases is waived in writing pursuant to the terms of Section 13.3:

Section 8.1. Maintenance of Business. Each Loan Party shall, and shall cause each of its Subsidiaries to, preserve and maintain its existence, except as otherwise provided in Section 8.10(c). Each Loan Party shall, and shall cause each of its Subsidiaries to, preserve and keep in force and effect all licenses, permits, franchises, approvals, patents, trademarks, trade names, copyrights, and other proprietary rights necessary to the proper conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect.

Section 8.2. Maintenance of Properties. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain, preserve, and keep its Property that is necessary for the proper conduct of its business in good repair, working order and condition (ordinary wear and tear excepted), and shall maintain such Property in good and working condition, except to the extent that, in the reasonable business judgment of such Person, any such Property is no longer necessary for the proper conduct of the business of such Person.

*Section 8.3. Taxes and Assessment*s. Each Loan Party shall duly pay and discharge, and shall cause each of its Subsidiaries to duly pay and discharge, all federal taxes and all other material taxes, rates, assessments, fees, and governmental charges upon or against it or its Property, in each case before the same become delinquent or before the expiration of any extension period and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves are provided therefor.

Section 8.4. Insurance. Each Loan Party shall insure and keep insured, and shall cause each of its Subsidiaries to insure and keep insured, with insurance companies believed in good faith to be financially sound and reputable, all insurable Property owned by it which is of a character usually insured by Persons similarly situated and operating like Properties against loss or damage from such hazards and risks, and in such amounts (but in no event at any time in an amount less than the replacement value of the Collateral), as are insured by Persons similarly situated and operating like Properties; and such Loan Party shall insure, and shall cause each of its Subsidiaries to insure, such other hazards and risks with insurance companies believed in good faith to be financially sound and reputable as and to the extent usually insured by Persons similarly situated and conducting similar businesses (including commercial general liability and business interruption; it being expressly understood and agreed that the insurance (including type, scope, coverage and insurance companies) maintained by the Loan Parties and their Subsidiaries as of the Closing Date is reasonably satisfactory to the Administrative Agent for Borrower's business as conducted on the Closing Date). The Borrower shall, upon the reasonable written request of the Administrative Agent, furnish to the Administrative Agent (and the Administrative Agent shall furnish to the Lenders) a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 8.4. The Borrower shall deliver endorsements to all such property and general liability insurance of the Loan Parties naming the Administrative Agent as additional insured (in the case of general liability insurance) or 'lender' loss payee (in the case of property insurance), as applicable, and the Borrower shall use commercially reasonable efforts to ensure such endorsements shall also provide for at least thirty (30) days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder), in each case solely with respect to such insurance as is customarily treated in such a manner in respect of syndicated loan transactions of the type contemplated by this Agreement. The Borrower shall deliver to the Administrative Agent (a) on the Closing Date and at such other times as the Administrative Agent shall reasonably request (provided that such requests shall be no more frequent than quarterly), certificates evidencing the maintenance of insurance required hereunder, (b) prior to the termination of any such policies, certificates evidencing the renewal thereof, and (c) promptly following request by the Administrative Agent (provided that such requests shall be no more frequent than quarterly), copies of all insurance policies of the Loan Parties and their Subsidiaries.The Borrower also agrees to deliver to the Administrative Agent, promptly as rendered, true copies of all reports made in any reporting forms to insurance companies.

Section 8.5. Financial Reports; Notices. The Loan Parties shall, and shall cause each of their Subsidiaries to, maintain proper books of records and accounts reasonably necessary to prepare financial statements required to be delivered pursuant to this Section in accordance with GAAP and shall furnish to the Administrative Agent, the L/C Issuer and each Lender:

(a) if Usage is greater than 35% at any time during any calendar month, no later than 20 days after the last day of such calendar month, a Borrowing Base Certificate showing the computation of the Borrowing Base in reasonable detail as of the close of business on the last day of such month, together with an accounts receivable and accounts payable aging, prepared by the Borrower and certified to by a Financial Officer of the Borrower;

(b) as soon as available, and in any event no later than 45 days after the last day of each fiscal quarter of each fiscal year of the Borrower, a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the last day of such fiscal quarter and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal quarter and for the fiscal year-to-date period then ended, each in reasonable detail showing in comparative form the figures for the corresponding date and period in the previous fiscal year, prepared by the Borrower in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments) and certified to by a Financial Officer of the Borrower;

(c) as soon as available, and in any event no later than 120 days after the last day of each fiscal year of the Borrower, a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the last day of the fiscal year then ended and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied in the case of the consolidated financial statements by an unqualified opinion of PricewaterhouseCoopers LLP or another firm of independent public accountants of recognized standing, selected by the Borrower and reasonably satisfactory to the Administrative Agent, to the effect that the consolidated financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the consolidated financial condition of the Borrower and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(d) promptly after receipt thereof, any additional written reports or management letters concerning material adverse aspects of any Loan Party's or any of its Subsidiary's operations and financial affairs given to it by its independent public accountants;

(e) promptly after the sending or filing thereof, copies of each financial statement, report, notice or proxy statement sent by any Loan Party or any Subsidiary of a Loan Party to its stockholders or other equity holders, and copies of each regular, periodic or special report, registration statement or prospectus (including all Form 10-K, Form 10-Q and Form 8-K reports) filed by any Loan Party or any Subsidiary of a Loan Party with any securities exchange or the Securities and Exchange Commission or any successor agency;

(f) promptly after receipt thereof, a copy of each audit made by any regulatory agency of the books and records of any Loan Party or any Subsidiary of a Loan Party or of any material noncompliance with any applicable law or regulation relating to any Loan Party or any Subsidiary of a Loan Party or their respective business;

(g) as soon as available, and in any event no later than 30 days following the end of each fiscal year of the Borrower, a copy of the consolidated and consolidating business plan for the Borrower and its Subsidiaries for following fiscal year, such business plan to show the projected consolidated and consolidating revenues, expenses and balance sheet of the Borrower and its Subsidiaries on a quarter-by-quarter basis, such business plan to be in reasonable detail prepared by the Borrower and in form satisfactory to the Administrative Agent (which shall include a summary of all assumptions made in preparing such business plan);

(h) notice of any Change of Control;

(i) promptly after actual knowledge thereof shall have come to the attention of any Responsible Officer of any Loan Party, written notice of (i) any threatened or pending litigation or governmental or arbitration proceeding or labor controversy against any Loan Party or any Subsidiary of a Loan Party or any of their Property which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, (ii) the occurrence of any Material Adverse Effect, (iii) the occurrence of any Default; (iv) any change in the information provided in the Beneficial Ownership Certification delivered to any Lender that would result in a change to the list of beneficial owners identified in such certification, (v) any amendment or other modification to any Bonding Agreement or the Surety's General Indemnity Agreement (together with a copy of such amendment or modification) and copies of any notices received under any Bonding Agreement or the Surety's General Indemnity Agreement, (vi) any new Bonding Agreement entered into after the Closing Date (together with a copy of such agreement), or (vii) any event or change in circumstance that occurs regarding the bonding capacity or bonding requirements of either Borrower or any Subsidiary, including without limitation notice of (A) each reduction in the aggregate bonding capacity of the Borrower and its Subsidiaries, and (B) any failure or inability of the Borrower or a Subsidiary to obtain bonding for any new project that is committed to by the Borrower or a Subsidiary or the refusal of any bonding company or any other Surety to provide bonding for any such project;

(j) with each of the financial statements delivered pursuant to subsections (b) and (c) above, (x) work in process reports in form and substance reasonably satisfactory to the Administrative Agent, including, without limitation, reasonable detail with respect to contracts in process and actual gross profit of each contract, (y) a backlog analysis and contract backlog report substantially in the form delivered to the Administrative Agent prior to the Closing Date, or in such other form reasonably satisfactory to the Administrative Agent, and (z) a written certificate in the form attached hereto as Exhibit F signed by a Financial Officer of the Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred and is continuing during the period covered by such statements or, if any such Default or Event of Default has occurred and is continuing during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by the relevant Loan Party or its Subsidiary to remedy the same. Such certificate shall also set forth the calculations supporting such statements in respect of Section 8.23 (Financial Covenants); and

(k) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Loan Party or any Subsidiary of a Loan Party, or compliance with the terms of any Loan Document, including but not limited to an updated schedule of all Bonds outstanding, as the Administrative Agent or any Lender may reasonably request.

Notwithstanding the foregoing or anything to the contrary in any Loan Document, neither any Loan Party nor any Subsidiary is required to provide information (i) in respect of which disclosure is prohibited by applicable laws, rules or regulations, (ii) that is subject to attorney client or similar privilege or constitutes attorney work product or (iii) the disclosure of which is restricted by binding agreements not entered into with an Affiliate of a Loan Party; provided that such restriction was not created in contemplation of the requirements set forth in this Agreement.

Section 8.6. Inspection; Field Audits. Each Loan Party shall, and shall cause each of its Subsidiaries to, permit the Administrative Agent (and each Lender that elects to accompany the Administrative Agent on any such visit and/or inspection (in case of the Lenders, at such Lender's sole cost and expense)), and each of their duly authorized representatives and agents to visit and inspect any of its Property, corporate books, and financial records, to examine and make copies of its books of accounts and other financial records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers, employees and independent public accountants (and by this provision the Loan Parties hereby authorize such accountants to discuss with the Administrative Agent and such Lenders the finances and affairs of the Loan Parties and their Subsidiaries) at such reasonable times and intervals during normal business hours in a manner that does not unduly interfere with the business and operations of the Loan Parties and their Subsidiaries as the Administrative Agent may designate in writing and, so long as no Default or Event of Default then exists, with reasonable prior written notice to the Borrower. The Borrower shall pay to the Administrative Agent charges for field audits of the Collateral, inspections and visits to Property, inspections of corporate books and financial records, examinations and copies of books of accounts and financial record and other activities permitted in this Section performed by the Administrative Agent or its agents or third party firms, in such amounts as the Administrative Agent may from time to time request (the Administrative Agent acknowledging and agreeing that any internal charges for such audits and inspections shall be computed in the same manner as it at the time customarily uses for the assessment of charges for similar collateral audits); *provided, however,* that in the absence of any Default or Event of Default, the Borrower shall not be required to pay or reimburse the Administrative Agent for more than one (1) such audit per calendar year.

Section 8.7. Borrowings and Guaranties. No Loan Party shall, nor shall it permit any of its Subsidiaries to, issue, incur, assume, create or have outstanding any Indebtedness, or incur liabilities under any Hedging Agreement, or be or become liable as endorser, guarantor, surety or otherwise for any Indebtedness or undertaking of any Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any Person; *provided, however,* that the foregoing shall not restrict nor operate to prevent:

(a) the Secured Obligations of the Loan Parties and their Subsidiaries owing to the Administrative Agent and the Lenders (and their Affiliates);

(b) purchase money indebtedness and Capitalized Lease Obligations of the Loan Parties and their Subsidiaries in an amount not to exceed $10,000,000 in the aggregate at any one time outstanding;

(c) obligations of the Loan Parties and their Subsidiaries arising out of interest rate, foreign currency, and commodity Hedging Agreements entered into with financial institutions in connection with bona fide hedging activities in the ordinary course of business and not for speculative purposes;

(d) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business; and

(e) unsecured Indebtedness of the Loan Parties and their Subsidiaries not otherwise permitted by this Section in an amount not to exceed $500,000 in the aggregate at any one time outstanding.

Section 8.8. Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, create, incur or permit to exist any Lien of any kind on any Property owned by any such Person; *provided, however,* that the foregoing shall not apply to nor operate to prevent or prohibit:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, Taxes, assessments, statutory obligations or other similar charges (other than Liens arising under ERISA), good faith cash deposits in connection with tenders, contracts or leases to which any Loan Party or any Subsidiary of a Loan Party is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not for borrowed money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', suppliers', warehousemen's, repairmen's or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) judgment liens and judicial attachment liens not constituting an Event of Default under Section 9.1(h) and the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of such judgment liens and attachments and liabilities of the Loan Parties and their Subsidiaries secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of $500,000 at any one time outstanding;

(d) Liens on Property of any Loan Party or any Subsidiary of a Loan Party created solely for the purpose of securing Indebtedness permitted by Section 8.7(b) or any Lien granted as a replacement or substitute therefor, representing or incurred to finance the purchase price of such Property; *provided* that no such Lien shall extend to or cover other Property of such Loan Party or such Subsidiary other than the respective Property so acquired, and the principal amount of Indebtedness secured by any such Lien shall at no time exceed the purchase price of such Property, as reduced by repayments of principal thereon;

(e) any interest or title of a lessor or sublessor under any operating lease, including the filing of Uniform Commercial Code financing statements solely as a precautionary measure in connection with operating leases entered into by any Loan Party or any Subsidiary of a Loan Party in the ordinary course of its business;

(f) easements, rights-of-way, restrictions, covenants, licenses, encroachments, protrusions and other similar encumbrances against real property incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and which do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of any Loan Party or any Subsidiary of a Loan Party;

(g) bankers' Liens, rights of setoff and other similar Liens (including under Section 4-210 of the Uniform Commercial Code) in one or more deposit accounts maintained by any Loan Party or any Subsidiary of a Loan Party, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(h) Liens on equipment of any Loan Party or any Subsidiary of a Loan Party created solely for the purpose of securing Indebtedness pursuant to a Bonding Agreement; *provided* that no such Lien shall extend to or cover other Property of such Loan Party or such Subsidiary other than the respective Property so connected to the applicable Bond;

(i) Liens granted in favor of the Administrative Agent pursuant to the Collateral Documents;

(j) inchoate Liens for taxes not yet due and payable or delinquent and Liens for taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves in accordance with GAAP;

(k) Liens which may arise as a result of municipal and zoning codes and ordinances, building and other land use laws imposed by any governmental authority which are not violated in any material respect by existing improvements or the present use or occupancy of any real property, or in the case of any real property subject to a mortgage, encumbrances disclosed in the title insurance policy issued to the Administrative Agent;

(l) Liens on amounts deposited to secure Borrower's and its Subsidiaries' obligations in connection with the making or entering into of leases or subleases in the ordinary course of business;

(m) Liens securing Borrower's and its Subsidiaries' reimbursement and indemnity obligations with respect to appeal bonds obtained in the ordinary course of business;

(n) non-exclusive licenses and sublicenses of intellectual property rights granted in the ordinary course of business; and

(o) rights of setoff or bankers' liens in favor of banks or other depository institutions on cash deposits held in deposit accounts at such bank or depository institution, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business.

Section 8.9. Investments, Acquisitions, Loans and Advances. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances to (other than for travel advances and other similar cash advances made to employees in the ordinary course of business), any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof; *provided, however,* that the foregoing shall not apply to nor operate to prevent or prohibit:

(a) cash and Cash Equivalents;

(b) the Loan Parties' existing investments in their respective Subsidiaries outstanding on the Closing Date;

(c) intercompany advances made from time to time between the Loan Parties in the ordinary course of business to finance their working capital needs;

(d) intercompany advances from time to time owing between a Loan Party and any Subsidiary that is not a Guarantor hereunder in the ordinary course of business to finance their working capital needs, *provided* that the aggregate amount of such advances to any Subsidiaries that are not Guarantors hereunder together with any investments therein do not exceed $500,000 at any one time outstanding;

(e) Permitted Acquisitions;

(f) (i) other investments existing on the Closing Date not otherwise permitted above and listed and identified on Schedule 8.9 and (ii) investments consisting of any modification, replacement, renewal, reinvestment or extension of any investment described in clause (i) above;

(g) investments in Construction Joint Ventures which are made in the ordinary course of business; *provided, however,* that the aggregate investments in Construction Joint Ventures shall not at any time exceed 20.0%% of the combined consolidated Net Worth of the Borrower and its Subsidiaries;

(h) advances made in connection with purchases of goods and services in the ordinary course of business;

(i) investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of insolvency, bankruptcy, reorganization, or other similar proceeding involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(j) deposits of cash made in the ordinary course of business to secure performance of (i) operating leases and (ii) other contractual obligations that do not constitute Indebtedness;

(k) earnest money deposits made in cash in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition;

(l) equity investments by any Loan Party in any Subsidiary of such Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law;

(m) purchases and other acquisitions of inventory, materials, equipment, intangible property and other assets in the ordinary course of business; and

(n) other investments, loans, and advances in addition to those otherwise permitted by this Section in an amount not to exceed $1,000,000 in the aggregate at any one time outstanding.

In determining the amount of investments, acquisitions, loans, and advances permitted under this Section, investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein), and loans and advances shall be taken at the principal amount thereof then remaining unpaid.

Section 8.10. Mergers, Consolidations and Sales. No Loan Party shall, nor shall it permit any of its Subsidiaries to, be a party to any merger or consolidation or amalgamation, or sell, transfer, lease or otherwise dispose of all or any part of its Property, including any disposition of Property as part of a sale and leaseback transaction, or in any event sell or discount (with or without recourse) any of its notes or accounts receivable; *provided, however,* that this Section shall not apply to nor operate to prevent:

(a) the sale or lease of inventory or other assets in the ordinary course of business;

(b) the sale, transfer, lease or other disposition of Property of any Loan Party to one another in the ordinary course of its business;

(c) the merger of any Loan Party with and into the Borrower or any other Loan Party, provided that, in the case of any merger involving the Borrower, the Borrower is the corporation surviving the merger;

(d) the sale, assignment, transfer, disposition or discount of delinquent notes or accounts receivable in the ordinary course of business for purposes of collection only (and not for the purpose of any bulk sale or securitization transaction);

(e) the sale, transfer, lease or other disposition of (i) any Property that, in the reasonable business judgment of the relevant Loan Party or its Subsidiary, has become obsolete or worn out, and which is disposed of in the ordinary course of business or (ii) Property that, in the reasonably business judgment of the Loan Party, is not material to the business of the Loan Party;

(f) the Disposition of Property of any Loan Party or any Subsidiary of a Loan Party (including any Disposition of Property as part of a sale and leaseback transaction) aggregating for all Loan Parties and their Subsidiaries not more than $1,000,000 during any fiscal year of the Borrower, *provided* that (i) each such Disposition shall be made for fair value and (ii) at least 80% of the total consideration received at the closing of such Disposition shall consist of cash and at least 80% of the total consideration received after taking into account all final purchase price adjustments and/or contingent payments (including working capital adjustment or earn-out provisions) expressly contemplated by the transaction documents, when received shall consist of cash;

(g) the use of money, cash or Cash Equivalents in the ordinary course of business to the extent not prohibited by the terms of this Agreement or the other Loan Documents;

(h) the non-exclusive licensing and sublicensing of intellectual property rights in the ordinary course of business and the leasing and subleasing of any other Property;

(i) the granting of Liens permitted hereunder;

(j) any involuntary loss, damage or destruction of Property, and the sale, abandonment or other disposition of any such damaged Property;

(k) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of Property or other Event of Loss;

(l) the abandonment, cancellation or lapse of issued intellectual property of a Loan Party or Subsidiary thereof to the extent, in such Loan Party's reasonable business judgment, not economically desirable in the conduct of such Loan Party's business or so long as such lapse is not materially adverse to the interests of the Lenders and (ii) the expiration of patents in accordance with their statutory terms;

(m) the unwinding or terminating of hedging arrangements or transactions contemplated by any Swap Contract which are not prohibited hereunder;

(n) Permitted Acquisitions; and

(o) the settlement, release or surrender of tort or other litigation claims upon terms and conditions determined by Borrower in its good faith business judgment.

Section 8.11. Maintenance of Subsidiaries. No Loan Party shall assign, sell or transfer, nor shall it permit any of its Subsidiaries to issue, assign, sell or transfer, any shares of capital stock or other equity interests of a Subsidiary; *provided, however,* that the foregoing shall not operate to prevent (a) the issuance, sale, and transfer to any person of any shares of capital stock of a Subsidiary solely for the purpose of qualifying, and to the extent legally necessary to qualify, such person as a director of such Subsidiary, (b) any transaction permitted by Section 8.10(c) above, and (c) Liens on the capital stock or other equity interests of Subsidiaries granted to the Administrative Agent pursuant to the Collateral Documents.

Section 8.12. Dividends and Certain Other Restricted Payments. No Loan Party shall, nor shall it permit any of its Subsidiaries to, (a) declare or pay any dividends on or make any other distributions in respect of any class or series of its capital stock or other equity interests (other than dividends or distributions payable solely in its capital stock or other equity interests) or (b) directly or indirectly purchase, redeem, or otherwise acquire or retire any of its capital stock or other equity interests or any warrants, options, or similar instruments to acquire the same (collectively referred to herein as *"Restricted Payments"*); *provided, however,* that the foregoing shall not operate to prevent or prohibit:

(i) the making of dividends or distributions by any Subsidiary to any Borrower;

(ii) the making of distributions to the Parent to permit the Parent to pay (x) franchise taxes and other similar licensing expenses incurred in the ordinary course of business, and (y) in the event the Borrower files a consolidated income tax return with the Parent, or the Parent is otherwise required to take into account the income of the Borrower in determining the Parent's income tax liability, federal and state income taxes then due and owing, *provided* that the amount of such distribution in respect of income taxes shall not be greater than the amount of income taxes that the Borrower would have been required to pay if it did not file a consolidated return with the Parent or was otherwise required to pay taxes on a stand-alone basis and the amounts so paid to the Parent are used by the Parent to pay such tax liabilities; and

(iii) the Borrower from making dividends and distributions during any fiscal year in amounts necessary to allow each of its shareholders to make payments in respect of its federal income tax liability (and, if applicable, state income tax liability) attributable to its pro rata share of the Borrower's taxable income (determined in accordance with the Code) (including estimated tax payments determined in good faith by the Borrower which are required to be made by its shareholders with respect thereto) so long as the Borrower shall have elected to be treated as an S Corporation for income tax purposes.

Section 8.13. ERISA. Each Loan Party shall, and shall cause each of its Subsidiaries to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of a Lien against any of its Property. Each Loan Party shall, and shall cause each of its Subsidiaries to, promptly notify the Administrative Agent and each Lender of: (a) the occurrence of any reportable event (as defined in ERISA) with respect to a Plan, (b) receipt of any notice from the PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (c) its intention to terminate or withdraw from any Plan, and (d) the occurrence of any event with respect to any Plan which would result in the incurrence by any Loan Party or any Subsidiary of a Loan Party of any material liability, fine or penalty, or any material increase in the contingent liability of any Loan Party or any Subsidiary of a Loan Party with respect to any post-retirement Welfare Plan benefit.

Section 8.14. Compliance with Laws. (a) Each Loan Party shall, and shall cause each of its Subsidiaries to, comply in all respects with all Legal Requirements applicable to or pertaining to its Property or business operations, where any such non-compliance, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Without limiting the agreements set forth in Section 8.14(a) above, each Loan Party shall, and shall cause each of its Subsidiaries to, at all times, do the following to the extent the failure to do so, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect: (i) comply in all material respects with, and maintain each of the Premises in compliance in all material respects with, all applicable Environmental Laws; (ii) use commercially reasonable efforts to require that each tenant and subtenant, if any, of any of the Premises or any part thereof comply in all material respects with all applicable Environmental Laws; (iii) obtain and maintain in full force and effect all material governmental approvals required by any applicable Environmental Law for the operation of their business and each of the Premises; (iv) cure any material violation by it or at any of the Premises of applicable Environmental Laws; (v) not allow the presence or operation at any of the Premises of any (1) landfill or dump or (2) hazardous waste management facility or solid waste disposal facility as defined pursuant to applicable Environmental Law; (vi) not manufacture, use, generate, transport, treat, store, Release, dispose or handle any Hazardous Material (or allow any tenant or subtenant to do any of the foregoing) at any of the Premises except in the ordinary course of its business and where it could not reasonably be expected to have a Material Adverse Effect; (vii) within ten (10) Business Days notify the Administrative Agent in writing of and provide any reasonably requested documents upon learning of any of the following in connection with any Loan Party or any Subsidiary of a Loan Party or any of the Premises: (1) any material Environmental Liability; (2) any material Environmental Claim; (3) any material violation of an Environmental Law or material Release, threatened Release or disposal of a Hazardous Material; (4) any restriction on the ownership, occupancy, use or transferability of any Premises pursuant to any (x) Release, threatened Release or disposal of a Hazardous Material or (y) Environmental Law; or (5) any environmental, natural resource, health or safety condition, which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect; (viii) conduct at its expense any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any material Release, threatened Release or violation of any applicable Environmental Law, (ix) abide by and observe any restrictions on the use of the Premises imposed by any Governmental Authority as set forth in a deed or other instrument affecting any Loan Party's or any of its Subsidiary's interest therein; (x) promptly provide or otherwise make available to the Administrative Agent any reasonably requested environmental record concerning the Premises which any Loan Party or any Subsidiary of a Loan Party possesses or can reasonably obtain; and (xi) perform, satisfy, and implement any operation, maintenance or corrective actions or other requirements of any Governmental Authority or Environmental Law, or included in any no further action letter or covenant not to sue issued by any Governmental Authority under any Environmental Law.

Section 8.15. Compliance with OFAC Sanctions Programs and Anti-Corruption Laws. (a) Each Loan Party shall at all times comply with the requirements of all OFAC Sanctions Programs applicable to such Loan Party and shall cause each of its Subsidiaries to comply with the requirements of all OFAC Sanctions Programs applicable to such Subsidiary.

(b) Each Loan Party shall provide the Administrative Agent and the Lenders any information regarding the Loan Parties, their Affiliates, and their Subsidiaries necessary for the Administrative Agent and the Lenders to comply with all applicable OFAC Sanctions Programs; subject however, in the case of Affiliates, to such Loan Party's ability to provide information applicable to them.

(c) If any Loan Party obtains actual knowledge or receives any written notice that any Loan Party, any Affiliate or any Subsidiary of any Loan Party, or any officer, director or Affiliate of any Loan Party or that any Person that owns or controls any such Person is the target of any OFAC Sanctions Programs or is located, organized or resident in a country or territory that is, or whose government is, the subject of any OFAC Sanctions Programs (such occurrence, an *"OFAC Event"*), such Loan Party shall promptly (i) give written notice to the Administrative Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all applicable laws with respect to such OFAC Event (regardless of whether the target Person is located within the jurisdiction of the United States of America), including the OFAC Sanctions Programs, and each Loan Party hereby authorizes and consents to the Administrative Agent and the Lenders taking any and all steps the Administrative Agent and the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all applicable laws with respect to any such OFAC Event, including the requirements of the OFAC Sanctions Programs (including the freezing and/or blocking of assets and reporting such action to OFAC).

(d) No Loan Party will, directly or, to any Loan Party's actual knowledge, indirectly, use the proceeds of the Facility, or lend, contribute or otherwise make available such proceeds to any other Person, (i) to fund any activities or business of or with any Person or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of any OFAC Sanctions Programs, or (ii) in any other manner that would result in a violation of OFAC Sanctions Programs or Anti-Corruption Laws by any Person (including any Person participating in the Facility, whether as underwriter, lender, advisor, investor, or otherwise).

(e) No Loan Party will, nor will it permit any Subsidiary to, violate any Anti-Corruption Law in any material respect.

(f) Each Loan Party will maintain in effect policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries, and their respective directors, officers, employees, and agents with applicable Anti-Corruption Laws.

Section 8.16. Burdensome Contracts With Affiliates. No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any contract, agreement or business arrangement with any of its Affiliates on terms and conditions which are less favorable to such Loan Party or such Subsidiary than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other; *provided* that the foregoing restriction shall not apply to transactions between or among the Loan Parties.

Section 8.17. No Changes in Fiscal Year. The fiscal year of the Borrower and its Subsidiaries ends on September 30 of each year; and the Borrower shall not, nor shall it permit any Subsidiary to, change its fiscal year from its present basis; provided that Borrower shall be permitted to change its fiscal year end to December 31, by providing written notice to the Administrative Agent at least five (5) Business Days prior to such change.

Section 8.18. Formation of Subsidiaries; Guaranty Requirements. Promptly upon the formation or acquisition of any Subsidiary, the Loan Parties shall provide the Administrative Agent and the Lenders notice thereof (at which time Schedule 6.2 shall be deemed amended to include reference to such Subsidiary). The payment and performance of the Secured Obligations of the Borrower shall at all times be guaranteed by Parent and all the Domestic Subsidiaries of Borrower pursuant to Section 11 or pursuant to one or more Guaranty Agreements in form and substance reasonably acceptable to the Administrative Agent, as the same may be amended, modified or supplemented from time to time. The Loan Parties shall, and shall cause their Subsidiaries to, timely comply with the requirements of Sections 11 and 12 with respect to any Subsidiary that is required to become a Guarantor hereunder. Except for Foreign Subsidiaries existing on the Closing Date and identified on Schedule 6.2, no Loan Party, nor shall it permit any of its Subsidiaries to, form or acquire any Foreign Subsidiary.

Section 8.19. Change in the Nature of Business. No Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any business or activity if as a result the general nature of the business of such Loan Party or any of its Subsidiaries would be changed in any material respect from the general nature of the business engaged in by it as of the Closing Date.

Notwithstanding anything contained in the Agreement to the contrary, the Parent shall not engage in any business or other activity, own any material assets or property, incur any Indebtedness or material liabilities or grant Liens on any part of its Property, other than (i) its guarantee of the Secured Obligations and the performance of its obligations under the Loan Documents and the granting of Liens on its assets to the Administrative Agent to secure such guaranteed obligations, (ii) ownership of the capital stock of the Borrower or equity interests of another Person acquired in a Permitted Acquisition, (iii) maintenance of its corporate existence, and (iv) activities relating to legal, Tax, and accounting matters with respect to any of the foregoing activities.

Section 8.20. Use of Proceeds. The Borrower shall use the credit extended under this Agreement solely for the purposes set forth in, or otherwise permitted by, Section 6.4.

Section 8.21. No Restrictions. Except as provided herein, no Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Loan Party or any Subsidiary of a Loan Party to: (a) pay dividends or make any other distribution on any Subsidiary's capital stock or other equity interests owned by such Loan Party or any other Subsidiary, (b) pay any Indebtedness owed to any Loan Party or any other Subsidiary, (c) make loans or advances to any Loan Party or any Subsidiary, (d) transfer any of its Property to any Loan Party or any other Subsidiary, or (e) guarantee the Secured Obligations and/or grant Liens on its assets to the Administrative Agent as required by the Loan Documents other than (i) customary restrictions on assignment or transfer of any specified Property or asset set forth in an asset sale agreement or similar contract for the conveyance of such Property or asset, (ii) any agreement, instrument or other document evidencing a Lien (or the Indebtedness secured thereby) permitted hereby restricting (on customary terms) the transfer of any Property or assets subject thereto, (iii) customary restrictions on dispositions of real property interests found in reciprocal easement agreements, (iv) customary restrictions in agreements for the sale or acquisition of assets on the transfer, encumbrance or other action with respect to such assets during an interim period prior to the closing of the sale or acquisition of such assets, (v) customary restrictions in contracts that prohibit the assignment of such contract, (vi) customary provisions in joint venture agreements, limited liability company operating agreements, partnership agreements, stockholders agreements, other organizational documents and other similar agreements; provided that no such restrictions shall prohibit or otherwise impair the ability of a Loan Party to grant Liens to the Administrative Agent on property otherwise qualifying as Collateral or to pay the Obligations, (vii) any negative pledge incurred or provided in favor of any holder of any secured Indebtedness permitted hereunder if such restrictions or conditions apply only to the property or assets subject to such Indebtedness, or (viii) pursuant to any guarantees of the type otherwise permitted in this Agreement.

Section 8.22. Subordinated Debt. No Loan Party shall, nor shall it permit any of its Subsidiaries to, (a) amend or modify any of the terms or conditions relating to Subordinated Debt (except as permitted by the terms of the applicable subordination agreement), (b) make any voluntary prepayment of Subordinated Debt or effect any voluntary redemption thereof (except as otherwise permitted herein and the terms of the applicable subordination agreement), or (c) make any payment on account of Subordinated Debt which is prohibited under the terms of any instrument or agreement subordinating the same to the Obligations. Notwithstanding the foregoing, the Loan Parties may agree to a decrease in the interest rate applicable thereto or to a deferral of repayment of any of the principal of or interest on the Subordinated Debt beyond the current due dates therefor.

Section 8.23. Financial Covenants. (a) *Total Leverage Ratio*. As of the last day of each fiscal quarter of the Borrower ending on or about March 31, 2021 and at all times thereafter, the Borrower shall not permit the Total Leverage Ratio to be greater than 2.00 to 1.00.

(b) *Liquidity*. As of the last day of each fiscal quarter of the Borrower ending on or about March 31, 2021 and at all times thereafter, the Borrower shall not permit Liquidity to be less than $50,000,000.

Section 8.24. Bonding Capacity. The Borrower and its Subsidiaries shall (i) have available bonding capacity under one or more Bonding Agreements in an amount sufficient to operate their respective businesses in the ordinary course, and (ii) be in compliance in all material respects with all terms and conditions set forth in each Bonding Agreement and the Surety's General Indemnity Agreement and shall not permit a default to occur thereunder, as set forth in, or otherwise permitted by, Section 6.24.

Section 8.25. Modification of Certain Documents. No Loan Party shall do any of the following:

(a) waive or otherwise modify any term of any Constituent Document of, or otherwise change the capital structure of, any Loan Party (including the terms of any of their outstanding Voting Stock), in each case except for those modifications and waivers that (x) do not elect, or permit the election, to treat the Voting Stock of any limited liability company (or similar entity) as certificated unless such certificates are delivered to the Administrative Agent to the extent they represent Voting Stock pledged under the Security Agreement and (y) do not affect the interests of the Administrative Agent or any Lender under the Loan Documents or in the Collateral in a materially adverse manner;

(b) permit the Obligations to cease qualifying as *"Senior Debt"*, *"Designated Senior Debt"* or a similar term under and as defined in any documentation governing any Subordinated Debt; and

(c) modify any term of any Bonding Agreement or the Surety's General Indemnity Agreement such that the Property subject to any Lien in favor of any Surety attaches to Property not directly in connection with the applicable Bond.

Section 8.26. Post-Closing Covenant. Not later than ninety (90) days following the Closing Date (or such later time as the Administrative Agent may agree in its sole discretion), the Administrative Agent shall have received the favorable written opinion of Nevada local counsel to The Leasing Corporation, in form and substance satisfactory to the Administrative Agent.

SECTION 9. EVENTS OF DEFAULT AND REMEDIES.

Section 9.1. Events of Default. Any one or more of the following shall constitute an *"Event of Default"* hereunder:

(a) default in the payment when due of all or any part of the principal of any Loan (whether at the stated maturity thereof or at any other time provided for in this Agreement) or of any Reimbursement Obligation, or default and continuance thereof for a period of three (3) Business Days in the payment when due of any interest, fee or other Obligation payable hereunder or under any other Loan Document;

(b) default in the observance or performance of any covenant set forth in Sections 8.1, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.17, 8.18, 8.19, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25 or 8.26 or of any provision in any Loan Document dealing with the use, disposition or remittance of the proceeds of Collateral or requiring the maintenance of insurance thereon;

(c) default in the observance or performance of any covenant set forth in Section 8.5 which is not remedied within three (3) Business Days after the earlier of (i) the date on which such failure shall first become actually known to any Responsible Officer of any Loan Party or (ii) written notice thereof is given to the Borrower by the Administrative Agent;

(d) default in the observance or performance of any other provision hereof or of any other Loan Document which is not remedied within thirty (30) days after the earlier of (i) the date on which such failure shall first become actually known to any Responsible Officer of any Loan Party or (ii) written notice thereof is given to the Borrower by the Administrative Agent;

(e) any representation or warranty made herein or in any other Loan Document or in any certificate furnished to the Administrative Agent or the Lenders pursuant hereto or thereto proves untrue in any material respect as of the date of the issuance or making or deemed making thereof;

(f) (i) [reserved], or (ii) any of the Loan Documents shall for any reason not be or shall cease to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, or (iii) any Collateral Document shall fail to create a valid and perfected first priority Lien in favor of the Administrative Agent in any Collateral purported to be covered thereby except as expressly permitted by the terms hereof other than in each case (A) to the extent resulting from the failure of a Lender or any agent for a Lender to maintain possession of certificates actually delivered to it or to file Uniform Commercial Code continuation statements and (B) to the extent resulting from an action taken by a Lender or any agent for a Lender, including the filing of Uniform Commercial Code termination statements, or (iv) any Loan Party takes any action for the purpose of terminating, repudiating or rescinding any Loan Document executed by it or any of its obligations thereunder prior to payment in full of the Secured Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations), or (v) any subordination provision in any document or instrument (including, without limitation, any intercreditor or subordination agreement) relating to any Subordinated Debt shall cease to be in full force and effect, or any Person (including the holder of any Subordinated Debt) shall contest in any manner the validity, binding nature or enforceability of any such provision;

(g) an event of default (after giving effect to all grace periods and cure periods) shall occur under any Material Indebtedness issued, assumed or guaranteed by any Loan Party, or under any indenture, agreement or other instrument under which the same may be issued, and such event of default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such Material Indebtedness (whether or not such maturity is in fact accelerated), or any such Material Indebtedness shall not be paid when due (whether by demand, lapse of time, acceleration or otherwise); *provided* that this clause (f) shall not apply to Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness to the extent that such Loan Party's obligations with respect to such Indebtedness are extinguished in full upon such sale or transfer;

(h) (i) any final, non-appealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, by a court of competent jurisdiction, shall be entered or filed against any Loan Party, or against the Property of any Loan Party, in an aggregate amount for all such Persons in excess of $1,500,000 (except to the extent fully covered by third party indemnity or third party insurance pursuant to which the insurer has agreed to cover), and which remains undischarged, unvacated, unbonded or unstayed for a period of 45 days after the entry thereof, or any action shall be legally taken by a judgment creditor to attach or levy upon any Property of any Loan Party to enforce any such judgment, or (ii) any Loan Party shall fail within forty five (45) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(i) any Loan Party or any member of its Controlled Group shall fail to pay when due an amount or amounts aggregating for all such Persons in excess of $500,000 which it shall have become liable to pay to the PBGC or to a Plan under Title IV of ERISA; or notice of intent to terminate a Plan or Plans having aggregate Unfunded Vested Liabilities in excess of $500,000 (collectively, a *"Material Plan"*) shall be filed under Title IV of ERISA by any Loan Party or any Subsidiary of a Loan Party, or any other member of its Controlled Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan or a proceeding shall be instituted by a fiduciary of any Material Plan against any Loan Party or any Subsidiary of a Loan Party, or any member of its Controlled Group, to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within thirty (30) days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated;

(j) any Change of Control shall occur;

(k) any Loan Party or any Subsidiary of a Loan Party shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate or similar action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 9.1(l); or

(l) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for any Loan Party or any Subsidiary of a Loan Party, or any substantial part of any of its Property, or a proceeding described in Section 9.1(k)(v) shall be instituted against any Loan Party or any Subsidiary of a Loan Party, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 days; or

(m) Bonding Agreements:

(i) any Surety for the Borrower or any of its Subsidiaries for any reason ceases to issue bonds, undertakings or instruments of guaranty and the Borrower and its Subsidiaries shall fail to cause another Person reasonably acceptable to the Administrative Agent (provided that any such Person shall be deemed to be acceptable if its bonds, undertakings or instruments of guaranty are accepted by contract providers for the Borrower and its Subsidiaries) to issue bonds, undertakings or instruments of guaranty within thirty (30) days of the date that such original Surety ceased to issue bonds, undertakings or instruments of guaranty; or

(ii) (A) at any time, any Surety for the Borrower or any of its Subsidiaries shall violate any term of any agreement with the Administrative Agent or any Lender to which it is a party, which violation would adversely affect the rights or interests of the Administrative Agent or such Lender under the Loan Documents and such violation shall continue for a period of ten (10) Business Days after the Administrative Agent's delivery of written notice thereof to such Surety and the Borrower, (B) any Surety exercises any rights or remedies as a secured party with respect to any Collateral, or (C) any Surety takes possession of any Collateral and such action continues for a period of ten (10) Business Days after the earlier of (A) the Administrative Agent's delivery of written notice thereof to the Borrower and (B) a Responsible Officer of the Borrower having obtained knowledge thereof; or

(iii) the Borrower or any of its Subsidiaries defaults in the payment when due of any amount due under any Bonding Agreement or the Surety's General Indemnity Agreement or breaches or defaults with respect to any other term of any Bonding Agreement or the Surety's General Indemnity Agreement, if the effect of such failure to pay, default or breach is to cause the related Surety to take possession of the work under any of the bonded contracts of the Borrower or any of its Subsidiaries; or

(iv) the Borrower or any Subsidiary breaches or defaults with respect to any term under any of the bonded contracts of the Borrower or such Subsidiary, if the effect of such default or breach is to cause the related Surety to take possession of the work under such bonded contract.

Section 9.2. Non-Bankruptcy Defaults. When any Event of Default (other than those described in subsection (j) or (k) of Section 9.1 with respect to the Borrower) has occurred and is continuing, the Administrative Agent shall, by written notice to the Borrower: (a) if so directed by the Required Lenders, terminate the remaining Commitments and all other obligations of the Lenders hereunder on the date stated in such notice (which may be the date thereof); (b) if so directed by the Required Lenders, declare the principal of and the accrued interest on all outstanding Loans to be forthwith due and payable and thereupon all outstanding Loans, including both principal and interest thereon, shall be and become immediately due and payable together with all other amounts payable under the Loan Documents without further demand, presentment, protest or notice of any kind; and (c) if so directed by the Required Lenders, demand that the Borrower immediately deliver to the Administrative Agent Cash Collateral in an amount equal to 105% of the aggregate amount of each Letter of Credit then outstanding, and the Borrower agrees to immediately make such payment and acknowledges and agrees that the Lenders would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Administrative Agent, for the benefit of the Lenders, shall have the right to require the Borrower to specifically perform such undertaking whether or not any drawings or other demands for payment have been made under any Letter of Credit. In addition, the Administrative Agent may exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable law or equity when any such Event of Default has occurred and is continuing. The Administrative Agent shall give notice to the Borrower under Section 9.1(d) promptly upon being requested to do so by any Lender. The Administrative Agent, after giving notice to the Borrower pursuant to Section 9.1(d) or this Section 9.2, shall also promptly send a copy of such notice to the other Lenders, but the failure to do so shall not impair or annul the effect of such notice.

Section 9.3. Bankruptcy Defaults. When any Event of Default described in subsections (k) or (l) of Section 9.1 with respect to the Borrower has occurred and is continuing, then all outstanding Loans shall immediately become due and payable together with all other amounts payable under the Loan Documents without presentment, demand, protest or notice of any kind, the obligation of the Lenders to extend further credit pursuant to any of the terms hereof shall immediately terminate and the Borrower shall immediately deliver to the Administrative Agent Cash Collateral in an amount equal to 105% of the aggregate amount of each Letter of Credit then outstanding, the Borrower acknowledging and agreeing that the Lenders would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Lenders, and the Administrative Agent on their behalf, shall have the right to require the Borrower to specifically perform such undertaking whether or not any draws or other demands for payment have been made under any of the Letters of Credit. In addition, the Administrative Agent may exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable law or equity when any such Event of Default has occurred and is continuing.

Section 9.4. Collateral for Undrawn Letters of Credit. (a) If the prepayment of the amount available for drawing under any or all outstanding Letters of Credit is required under any of Sections 2.3(b), 2.8(b), 2.13, 2.14, 9.2 or 9.3 above, the Borrower shall forthwith pay the amount required to be so prepaid, to be held by the Administrative Agent as provided in subsection (b) below.

(b) All amounts prepaid pursuant to subsection (a) above shall be held by the Administrative Agent in one or more separate collateral accounts (each such account, and the credit balances, properties, and any investments from time to time held therein, and any substitutions for such account, any certificate of deposit or other instrument evidencing any of the foregoing and all proceeds of and earnings on any of the foregoing being collectively called the *"Collateral Account"*) as security for, and for application by the Administrative Agent (to the extent available) to, the reimbursement of any payment under any Letter of Credit then or thereafter made by the L/C Issuer, and to the payment of the unpaid balance of all other Secured Obligations. The Collateral Account shall be held in the name of and subject to the exclusive dominion and control of the Administrative Agent for the benefit of the Administrative Agent, the Lenders, and the L/C Issuer. If and when requested by the Borrower, the Administrative Agent shall invest funds held in the Collateral Account from time to time in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America with a remaining maturity of one year or less, *provided* that the Administrative Agent is irrevocably authorized to sell investments held in the Collateral Account when and as required to make payments out of the Collateral Account for application to amounts due and owing from the Borrower to the L/C Issuer, the Administrative Agent or the Lenders. Subject to the terms of Sections 2.13 and 2.14, if the Borrower shall have made payment of all obligations referred to in subsection (a) above required under Section 2.8(b), at the request of the Borrower the Administrative Agent shall release to the Borrower amounts held in the Collateral Account so long as at the time of the release and after giving effect thereto no Default exists. After all Letters of Credit have expired or been cancelled and the expiration or termination of all Commitments, at the request of the Borrower, the Administrative Agent shall release any remaining amounts held in the Collateral Account following payment in full in cash of all Secured Obligations.

Section 9.5. Post-Default Collections. Anything contained herein or in the other Loan Documents to the contrary notwithstanding (including, without limitation, Section 2.8(b)), all payments and collections received in respect of the Obligations and all proceeds of the Collateral and payments made under or in respect of the Guaranty Agreements received, in each instance, by the Administrative Agent after acceleration or the final maturity of the Obligations or termination of the Commitments as a result of an Event of Default shall be remitted to the Administrative Agent and distributed as follows:

(a) first, to the payment of any outstanding costs and expenses incurred by the Administrative Agent, and any security trustee therefor, in monitoring, verifying, protecting, preserving or enforcing the Liens on the Collateral, in protecting, preserving or enforcing rights under the Loan Documents, and in any event including all costs and expenses of a character which the Loan Parties have agreed to pay the Administrative Agent under Section 13.4 (such funds to be retained by the Administrative Agent for its own account unless it has previously been reimbursed for such costs and expenses by the Lenders, in which event such amounts shall be remitted to the Lenders to reimburse them for payments theretofore made to the Administrative Agent);

(b) second, to the payment of any outstanding interest and fees due under the Loan Documents to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof;

(c) third, to the payment of principal on the Loans, unpaid Reimbursement Obligations, together with amounts to be held by the Administrative Agent as collateral security for any outstanding L/C Obligations pursuant to Section 9.4 (until the Administrative Agent is holding an amount of cash equal to 105% of the then outstanding amount of all such L/C Obligations), and Hedging Liability, the aggregate amount paid to, or held as collateral security for, the Lenders and L/C Issuer and, in the case of Hedging Liability, their Affiliates to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof;

(d) fourth, to the payment of all other unpaid Secured Obligations and all other Indebtedness, obligations, and liabilities of the Borrower and its Subsidiaries secured by the Loan Documents (including, without limitation, Bank Product Obligations) to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof; and

(e) finally, to the Borrower or whoever else may be lawfully entitled thereto.

SECTION 10. THE ADMINISTRATIVE AGENT.

Section 10.1. Appointment and Authority. Each of the Lenders and the L/C Issuers hereby irrevocably appoints BMO Harris Bank N.A. to act on its behalf as the Administrative Agent hereunder and under 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 or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 10 are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, 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 10.2. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such

Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 10.3. Action by Administrative Agent; 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 in such capacity shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of 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 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 or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. The Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any other Loan Document unless it first receives any further assurances of its indemnification from the Lenders that it may require, including prepayment of any related expenses and any other protection it requires against any and all costs, expense, and liability which may be incurred by it by reason of taking or continuing to take any such action; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party 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) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.2, 9.3, 9.4, 9.5 and 13.3), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Any such action taken or failure to act pursuant to the foregoing shall be binding on all Lenders. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender, or the L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties shall be responsible for or have any duty or obligation to any Lender or L/C Issuer or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Section 7.1 or 7.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 10.4. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, 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 be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 10.5. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other 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 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 10.6. Resignation of Administrative Agent. (a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to written approval (not to be unreasonably withheld) by the Borrower (unless an Event of Default shall exist at such time), to appoint a successor, which shall be a bank with an office in the United States of America, or an Affiliate of any such bank with an office in the United States of America. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the *"Resignation Effective Date"*), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the L/C Issuers, 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) With effect from the Resignation Effective Date, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, 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 and L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. If on the Resignation Effective Date, no successor has been appointed and accepted such appointment, the Administrative Agent's rights in the Collateral Documents shall be assigned without representation, recourse or warranty to the Lenders and L/C Issuer as their interests may appear. 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 Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section 10 and Section 13.4 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 10.7. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Upon a Lender's written request, the Administrative Agent agrees to forward to such Lender, when complete, copies of any field audit, examination, or appraisal report prepared by or for the Administrative Agent with respect to the Borrower or any Loan Party or the Collateral (herein, *"Reports"*). Each Lender hereby agrees that (a) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (b) the Administrative Agent (i) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (ii) shall not be liable for any information contained in any Report; (c) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Borrower and the other Loan Parties and will rely significantly upon the books and records of Borrower and the other Loan Parties, as well as on representations of personnel of the Borrower and the other Loan Parties, and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (d) it will keep all Reports confidential and strictly for its internal use, not share the Report with any other Person except as otherwise permitted pursuant to this Agreement; and (e) without limiting the generality of any other indemnification provision contained in this Agreement, it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney fees) incurred by as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.8. L/C Issue. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith. The L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Section 10 with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the Applications pertaining to such Letters of Credit as fully as if the term "Administrative Agent", as used in this Section 10, included the L/C Issuer with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to such L/C Issuer. Any resignation by the Person then acting as Administrative Agent pursuant to Section 10.6 shall also constitute its resignation or the resignation of its Affiliate as L/C Issuer except as it may otherwise agree. If such Person then acting as L/C Issuer so resigns, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Loans or fund risk participations in Reimbursement Obligations pursuant to Section 2.3. Upon the appointment by the Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer (other than any rights to indemnity payments or other amounts that remain owing to the retiring L/C Issuer), and (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents other than with respect to its outstanding Letters of Credit, and (iii) upon the request of the resigning L/C Issuer, the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the resigning L/C Issuer to effectively assume the obligations of the resigning L/C Issuer with respect to such Letters of Credit.

Section 10.9. Hedging Liability and Bank Product Obligations. By virtue of a Lender's execution of this Agreement or an assignment agreement pursuant to Section 13.2, as the case may be, any Affiliate of such Lender with whom the Borrower or any other Loan Party has entered into an agreement creating Hedging Liability or Bank Product Obligations shall be deemed a Lender party hereto for purposes of any reference in a Loan Document to the parties for whom the Administrative Agent is acting, it being understood and agreed that the rights and benefits of such Affiliate under the Loan Documents consist exclusively of such Affiliate's right to share in payments and collections out of the Collateral and the Guaranty Agreements as more fully set forth in Section 9.5. In connection with any such distribution of payments and collections, or any request for the release of the Guaranty Agreements and the Administrative Agent's Liens in connection with the termination of the Commitments and the payment in full of the Obligations, the Administrative Agent shall be entitled to assume no amounts are due to any Lender or its Affiliate with respect to Hedging Liability or Bank Product Obligations unless such Lender has notified the Administrative Agent in writing of the amount of any such liability owed to it or its Affiliate prior to such distribution or payment or release of Guaranty Agreements and Liens.

Section 10.10. Designation of Additional Agents. The Administrative Agent shall have the continuing right, for purposes hereof, at any time and from time to time to designate one or more of the Lenders (and/or its or their Affiliates) as "syndication agents," "documentation agents," "book runners," "lead arrangers," "arrangers," or other designations for purposes hereto, but such designation shall have no substantive effect, and such Lenders and their Affiliates shall have no additional powers, duties or responsibilities as a result thereof.

Section 10.11. Authorization to Enter into, and Enforcement of, the Collateral Documents; Possession of Collateral. The Administrative Agent is hereby irrevocably authorized by each of the Lenders and the L/C Issuer to execute and deliver the Collateral Documents on behalf of each of the Lenders, the L/C Issuer, and their Affiliates and to take such action and exercise such powers under the Collateral Documents as the Administrative Agent considers appropriate; *provided* the Administrative Agent shall not amend the Collateral Documents unless such amendment is agreed to in writing by the Required Lenders. Upon the occurrence of an Event of Default, the Administrative Agent shall take such action to enforce its Lien on the Collateral and to preserve and protect the Collateral as may be directed by the Required Lenders. Unless and until the Required Lenders give such direction, the Administrative Agent may (but shall not be obligated to) take or refrain from taking such actions as it deems appropriate and in the best interest of all the Lenders and L/C Issuer. Each Lender and L/C Issuer acknowledges and agrees that it will be bound by the terms and conditions of the Collateral Documents upon the execution and delivery thereof by the Administrative Agent. 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, the L/C Issuer or their Affiliates for any failure to monitor or maintain any portion of the Collateral. The Lenders and L/C Issuer hereby irrevocably authorize (and each of their Affiliates holding any Bank Product Obligations and Hedging Liability entitled to the benefits of the Collateral shall be deemed to authorize) the Administrative Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by the Administrative Agent (or any security trustee therefore) under the provisions of the Uniform Commercial Code, including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 of the United States Bankruptcy Code, or at any sale or foreclosure conducted by the Administrative Agent or any security trustee therefore (whether by judicial action or otherwise) in accordance with applicable law. Except as otherwise specifically provided for herein, no Lender, L/C Issuer, or their Affiliates, other than the Administrative Agent, shall have the right to institute any suit, action or proceeding in equity or at law for the foreclosure or other realization upon any Collateral or for the execution of any trust or power in respect of the Collateral or for the appointment of a receiver or for the enforcement of any other remedy under the Collateral Documents; it being understood and intended that no one or more of the Lenders or L/C Issuer or their Affiliates shall have any right in any manner whatsoever to affect, disturb or prejudice the Lien of the Administrative Agent (or any security trustee therefor) under the Collateral Documents by its or their action or to enforce any right thereunder, and that all proceedings at law or in equity shall be instituted, had, and maintained by the Administrative Agent (or its security trustee) in the manner provided for in the relevant Collateral Documents for the benefit of the Lenders, the L/C Issuer, and their Affiliates. Each Lender and L/C Issuer is hereby appointed agent for the purpose of perfecting the Administrative Agent's security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code or other applicable law can be perfected only by possession. Should any Lender or L/C Issuer (other than the Administrative Agent) obtain possession of any Collateral, such Lender or L/C Issuer shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or in accordance with the Administrative Agent's instructions.

Section 10.12. Authorization to Release, Limit or Subordinate Liens or to Release Guaranties. The Administrative Agent is hereby irrevocably authorized by each of the Lenders, the L/C Issuer, and their Affiliates to (a) release any Lien covering any Collateral that is sold, transferred, or otherwise disposed of in accordance with the terms and conditions of this Agreement and the relevant Collateral Documents (including a sale, transfer, or disposition permitted by the terms of Section 8.10 or which has otherwise been consented to in accordance with Section 13.3), (b) release or subordinate any Lien on Collateral consisting of goods financed with purchase money indebtedness or under a Capital Lease to the extent such purchase money indebtedness or Capitalized Lease Obligation, and the Lien securing the same, are permitted by Sections 8.7(b) and 8.8(d), (c) reduce or limit the amount of the Indebtedness secured by any particular item of Collateral to an amount not less than the estimated value thereof to the extent necessary to reduce mortgage registry, filing and similar tax, (d) release Liens on the Collateral following termination or expiration of the Commitments and payment in full in cash of the Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit that have been Cash Collateralized to the satisfaction of the Administrative Agent and relevant L/C Issuer) and, if then due, Hedging Liability and Bank Product Obligations, and (e) release any Subsidiary from its obligations as a Guarantor if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents. Upon the Administrative Agent's request, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Property or to release any Person form its obligations as a Guarantor under the Loan Documents.

Section 10.13. Authorization of Administrative Agent to 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 L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, 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, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under the Loan Documents including, but not limited to, Sections 3.1, 4.4, 4.5, and 13.4) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, 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 Sections 3.1 and 13.4. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or L/C Issuer or to authorize the Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

SECTION 11. THE GUARANTEES.

Section 11.1. The Guarantees. To induce the Lenders and L/C Issuer to provide the credits described herein and in consideration of benefits expected to accrue to the Borrower by reason of the Commitments and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parent and each Subsidiary party hereto (including any Subsidiary executing an Additional Guarantor Supplement in the form attached hereto as Exhibit G or such other form acceptable to the Administrative Agent) and the Borrower (as to the Secured Obligations of another Loan Party) hereby unconditionally and irrevocably guarantees jointly and severally to the Administrative Agent, the Lenders, and the L/C Issuer and their Affiliates, the due and punctual payment of all present and future Secured Obligations, including, but not limited to, the due and punctual payment of principal of and interest on the Loans, the Reimbursement Obligations, and the due and punctual payment of all other Obligations now or hereafter owed by the Borrower under the Loan Documents and the due and punctual payment of all Hedging Liability and Bank Product Obligations, in each case as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, according to the terms hereof and thereof (including all interest, costs, fees, and charges after the entry of an order for relief against the Borrower or such other obligor in a case under the United States Bankruptcy Code or any similar proceeding, whether or not such interest, costs, fees and charges would be an allowed claim against the Borrower or any such obligor in any such proceeding); *provided, however,* that, with respect to any Guarantor, its Guarantee of Hedging Liability of any Loan Party shall exclude all Excluded Swap Obligations. In case of failure by the Borrower or other obligor punctually to pay any Secured Obligations guaranteed hereby, each Guarantor hereby unconditionally agrees to make such payment or to cause such payment to be made punctually as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, and as if such payment were made by the Borrower or such obligor.

Section 11.2. Guarantee Unconditional. The obligations of each Guarantor under this Section 11 shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged, or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver, or release in respect of any obligation of any Loan Party or other obligor or of any other guarantor under this Agreement or any other Loan Document or by operation of law or otherwise;

(b) any modification or amendment of or supplement to this Agreement or any other Loan Document or any agreement relating to Hedging Liability or Bank Product Obligations;

(c) any change in the corporate existence, structure, or ownership of, or any insolvency, bankruptcy, reorganization, or other similar proceeding affecting, any Loan Party or other obligor, any other guarantor, or any of their respective assets, or any resulting release or discharge of any obligation of any Loan Party or other obligor or of any other guarantor contained in any Loan Document;

(d) the existence of any claim, set-off, or other rights which any Loan Party or other obligor or any other guarantor may have at any time against the Administrative Agent, any Lender, the L/C Issuer or any other Person, whether or not arising in connection herewith;

(e) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against any Loan Party or other obligor, any other guarantor, or any other Person or Property;

(f) any application of any sums by whomsoever paid or howsoever realized to any obligation of any Loan Party or other obligor, regardless of what obligations of any Loan Party or other obligor remain unpaid;

(g) any invalidity or unenforceability relating to or against any Loan Party or other obligor or any other guarantor for any reason of this Agreement or of any other Loan Document or any agreement relating to Hedging Liability or Bank Product Obligations or any provision of applicable law or regulation purporting to prohibit the payment by any Loan Party or other obligor or any other guarantor of the principal of or interest on any Loan or any Reimbursement Obligation or any other amount payable under the Loan Documents or any agreement relating to Hedging Liability or Bank Product Obligations (other than unasserted contingent indemnification obligations and unasserted expense reimbursement obligations); or

(h) any other act or omission to act or delay of any kind by the Administrative Agent, any Lender, the L/C Issuer or any other Person or any other circumstance whatsoever that might, but for the provisions of this subsection, constitute a legal or equitable discharge of the obligations of any Guarantor under this Section 11.

Section 11.3. Discharge Only upon Payment in Full; Reinstatement in Certain Circumstances. Each Guarantor's obligations under this Section 11 shall remain in full force and effect until the Commitments are terminated, all Letters of Credit have expired, and the principal of and interest on the Loans and all other amounts payable by the Borrower and the other Loan Parties under this Agreement and all other Loan Documents and, if then outstanding and unpaid, all Hedging Liability and Bank Product Obligations shall have been paid in full (other than unasserted contingent indemnification obligations and unasserted expense reimbursement obligations). If at any time any payment of the principal of or interest on any Loan or any Reimbursement Obligation or any other amount payable by any Loan Party or other obligor or any guarantor under the Loan Documents or any agreement relating to Hedging Liability or Bank Product Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, or reorganization of such Loan Party or other obligor or of any guarantor, or otherwise, each Guarantor's obligations under this Section 11 with respect to such payment shall be reinstated at such time as though such payment had become due but had not been made at such time.

Section 11.4. Subrogation. Each Guarantor agrees it will not exercise any rights which it may acquire by way of subrogation by any payment made hereunder, or otherwise, until all the Secured Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations) shall have been paid in full subsequent to or concurrently with the termination of all the Commitments and expiration of all Letters of Credit. If any amount shall be paid to a Guarantor on account of such subrogation rights at any time prior to the later of (x) the payment in full of the Secured Obligations and all other amounts payable by the Loan Parties hereunder and the other Loan Documents (other than unasserted contingent indemnification obligations and unasserted expense reimbursement obligations) and (y) the termination of the Commitments and expiration of all Letters of Credit, such amount shall be held in trust for the benefit of the Administrative Agent, the Lenders, and the L/C Issuer (and their Affiliates) and shall forthwith be paid to the Administrative Agent for the benefit of the Lenders and L/C Issuer (and their Affiliates) or be credited and applied upon the Secured Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

Section 11.5. Subordination. Each Guarantor (each referred to herein as a *"Subordinated Creditor"*) hereby subordinates the payment of all Indebtedness, obligations, and liabilities of the Borrower or other Loan Party owing to such Subordinated Creditor, whether now existing or hereafter arising, to the indefeasible payment in full in cash of all Secured Obligations. During the existence of any Event of Default, subject to Section 11.4, any such Indebtedness, obligation, or liability of the Borrower or other Loan Party owing to such Subordinated Creditor shall be enforced and performance received by such Subordinated Creditor as trustee for the benefit of the holders of the Secured Obligations and the proceeds thereof shall be paid over to the Administrative Agent for application to the Secured Obligations (whether or not then due), but without reducing or affecting in any manner the liability of such Guarantor under this Section 11.

Section 11.6. Waivers. To the extent permitted by law, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and any notice not provided for herein, as well as any requirement that at any time any action be taken by the Administrative Agent, any Lender, the L/C Issuer or any other Person against the Borrower or any other Loan Party or other obligor, another guarantor, or any other Person.

Section 11.7. Limit on Recovery. Notwithstanding any other provision hereof, the right of recovery against each Guarantor under this Section 11 shall not exceed $1.00 less than the lowest amount which would render such Guarantor's obligations under this Section 11 void or voidable under applicable law, including, without limitation, fraudulent conveyance law.

Section 11.8. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower or other Loan Party or other obligor under this Agreement or any other Loan Document, or under any agreement relating to Hedging Liability or Bank Product Obligations, is stayed upon the insolvency, bankruptcy or reorganization of the Borrower or such other Loan Party or obligor, all such amounts otherwise subject to acceleration under the terms of this Agreement or the other Loan Documents, or under any agreement relating to Hedging Liability or Bank Product Obligations, shall nonetheless be payable by the Guarantors hereunder forthwith on demand by the Administrative Agent made at the request or otherwise with the consent of the Required Lenders.

Section 11.9. Benefit to Guarantors. The Loan Parties are engaged in related businesses and integrated to such an extent that the financial strength and flexibility of the Borrower and the other Loan Parties has a direct impact on the success of each other Loan Party. Each Guarantor will derive substantial direct and indirect benefit from the extensions of credit hereunder, and each Guarantor acknowledges that this guarantee is necessary or convenient to the conduct, promotion and attainment of its business.

Section 11.10. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty Agreement in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Guaranty Agreement, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until discharged in accordance with Section 11.3. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 12. COLLATERAL.

Section 12.1. Collateral. The Secured Obligations shall be secured by valid, perfected, and enforceable Liens on all right, title, and interest of each Loan Party in all of its accounts, chattel paper, instruments, documents, general intangibles, letter-of-credit rights, supporting obligations, deposit accounts, investment property, inventory and farm products, equipment, fixtures, commercial tort claims, real estate and certain other Property, whether now owned or hereafter acquired or arising, and all proceeds thereof; *provided, however,* that: (i) the Collateral shall not include Excluded Property, (ii) until an Event of Default has occurred and is continuing and thereafter until otherwise required by the Administrative Agent or the Required Lenders, Liens on vehicles or other goods which are subject to a certificate of title law need not be perfected, and (iii) the Collateral need not include (or be perfected if a Lien is granted) those assets of any Loan Party as to which the Administrative Agent in its sole discretion determines that the cost of obtaining a security interest in or perfection thereof are excessive in relation to the value of the security to be afforded thereby. Each Loan Party acknowledges and agrees that the Liens on the Collateral shall be granted to the Administrative Agent for the benefit of the holders of the Secured Obligations and shall be valid and perfected first priority Liens (to the extent perfection by filing, registration, recordation, possession or control is required herein or in any other Loan Document) subject to the proviso appearing at the end of the preceding sentence and to Liens permitted by Section 8.8, in each case pursuant to one or more Collateral Documents from such Persons, each in form and substance satisfactory to the Administrative Agent.

Section 12.2. Depository Banks. Within ninety (90) days of the Closing Date, each Loan Party shall maintain the Administrative Agent (or one of its Affiliates) as its primary depository bank, including for its principal operating, administrative, cash management, lockbox arrangements, collection activity, and other deposit accounts for the conduct of its business. Within ninety (90) days of the Closing Date, except for Excluded Deposit Accounts, all deposit accounts shall be maintained with the Administrative Agent or such other bank(s) reasonably acceptable to the Administrative Agent subject to deposit account control agreements in favor of Administrative Agent on terms reasonably satisfactory to Administrative Agent (all such deposit accounts maintained with the Administrative Agent or with such other bank(s) subject to a deposit account control agreement being hereinafter collectively referred to as the *"Assigned Accounts"*). Each Loan Party shall make such arrangements as may be reasonably requested by the Administrative Agent to assure that all proceeds of the Collateral are deposited (in the same form as received) in one or more Assigned Accounts. Any proceeds of Collateral received by any Loan Party shall be promptly deposited into an Assigned Account and, until so deposited, shall held by it in trust for the Administrative Agent and the Lenders. Each Loan Party acknowledges and agrees that the Administrative Agent has (and is hereby granted to the extent it does not already have) a Lien on each Assigned Account and all funds contained therein to secure the Secured Obligations. The Administrative Agent agrees with the Loan Parties that if and so long as no Default or Event of Default has occurred or is continuing, amounts on deposit in the Assigned Accounts will (subject to the rules and regulations as from time to time in effect applicable to such demand deposit accounts) be made available to the relevant Loan Party for use in the conduct of its business. Upon the occurrence of a Default, the Administrative Agent may apply the funds on deposit in any and all such Assigned Accounts to the Secured Obligations (whether or not then due).

Section 12.3. Liens on Real Property. In the event that any Loan Party owns or hereafter acquires any fee interest in real property (other than Excluded Property), such Loan Party shall execute and deliver to the Administrative Agent a mortgage or deed of trust reasonably acceptable in form and substance to the Administrative Agent for the purpose of granting to the Administrative Agent (or a security trustee therefor) a Lien on such real property to secure the Secured Obligations, shall pay all documented taxes, costs, and expenses actually incurred by the Administrative Agent in recording such mortgage or deed of trust, and shall supply to the Administrative Agent, upon Administrative Agent's request and at the Borrower's cost and expense a survey, environmental report, hazard insurance policy, and a mortgagee's policy of title insurance from a title insurer reasonably acceptable to the Administrative Agent insuring the validity of such mortgage or deed of trust and its status as a first Lien (subject to Liens permitted by this Agreement) on the real property encumbered thereby and such other customary instrument, documents, certificates, and opinions reasonably required by the Administrative Agent in connection therewith.

Section 12.4. Further Assurances. Each Loan Party agrees that it shall, from time to time at the request of the Administrative Agent, execute and deliver such documents and do such acts and things as the Administrative Agent may reasonably request in order to provide for or perfect or protect such Liens on the Collateral as contemplated by and subject to any qualifications in any of the Loan Documents. In the event any Loan Party forms or acquires any other Subsidiary after the date hereof, except as otherwise provided in the definition of Guarantor, the Loan Parties shall promptly upon such formation or acquisition cause such newly formed or acquired Subsidiary to execute a Guaranty Agreement and such Collateral Documents as the Administrative Agent may then require, and the Loan Parties shall also deliver to the Administrative Agent, or cause such Subsidiary to deliver to the Administrative Agent, at the Borrower's reasonable and documented cost and expense, such other customary instruments, documents, certificates, and opinions reasonably required by the Administrative Agent in connection therewith.

SECTION 13. MISCELLANEOUS.

Section 13.1. Notices. (a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to the Borrower or any other Loan Party, to it at 8201 Edgewater Drive, Suite 202 Oakland, CA 94621;

(ii) if to the Administrative Agent or L/C Issuer, to BMO Harris Bank N.A. at 115 South LaSalle Street 20 West, Chicago, IL 60603, Attention of John Armstrong (Email Address john.a.armstrong@bmo.com; Telephone No. 312-953-0798); and

(iv) if to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in subsection (b) below, shall be effective as provided in said subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Sections 2.2, 2.3 and 2.6 if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Sections by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) *Change of Address, etc.* Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) *Platform.* (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the L/C Issuers and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the *"Platform"*).

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the *"Agent Parties"*) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform. *"Communications"* means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or any L/C Issuer by means of electronic communications pursuant to this Section, including through the Platform.

Section 13.2. Successors and Assigns.

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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

(i) *Minimum Amounts.* (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the relevant Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if *"Trade Date"* is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000 in the case of any assignment in respect of the Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) *Proportionate Amounts.* Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate facilities on a non-pro rata basis.

(iii) *Required Consents.* No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of each L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Facility.

(iv) *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 no fee shall apply for assignments to an Affiliate of a Lender or an Approved Fund and the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any other assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) *No Assignment to Certain Persons.* No such assignment shall be made to (A) the Borrower or any other Loan Party or any Loan Party's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) *No Assignment to Natural Persons.* No such assignment shall be made to a natural Person.

(vii) *Certain Additional Payments.* In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each L/C Issuer and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Revolver Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 13.4 and 13.6 with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. 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 paragraph (d) of this Section.

(c) *Register.* The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Chicago, Illinois 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 Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the *"Register"*). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations.* Any Lender may at any time at its own cost, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any other Loan Party or any Loan Party's Affiliates or Subsidiaries) (each, a *"Participant"*) in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the L/C Issuers and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.8 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 13.3 that expressly relate to amendments requiring the unanimous consent of the Lenders in the Facility in which such Participant participates. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.1, 4.4, and 4.5 (subject to the requirements and limitations therein, including the requirements under Section 4.1(g) (it being understood that the documentation required under Section 4.1(g) 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 paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of Sections 2.12 and 4.7 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.1 or 4.4, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.12 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.6 (Right of Setoff) as though it were a Lender; provided that such Participant agrees to be subject to Section 13.7 (Sharing of Payments by Lenders) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the *"Participant Register"*); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Certain Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement 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; *provided further*, however, the right of any such pledgee or grantee (other than any Federal Reserve Bank) to further transfer all or any portion of the rights pledged or granted to it, whether by means of foreclosure or otherwise, shall be at all times subject to the terms of this Agreement.

Section 13.3. Amendments. Any provision of this Agreement or the other Loan Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by (a) the Borrower, (b) the Required Lenders (except as otherwise stated below to require only the consent of the Lenders affected thereby), and (c) if the rights or duties of the Administrative Agent or the L/C Issuer are affected thereby, the Administrative Agent or the L/C Issuer, as applicable; *provided* that:

(i) no amendment or waiver pursuant to this Section 13.3 shall (A) increase any Commitment of any Lender without the consent of such Lender or (B) reduce the amount of or postpone the date for any scheduled payment of any principal of or interest on any Loan or of any Reimbursement Obligation or of any fee payable hereunder without the consent of the Lender to which such payment is owing or which has committed to make such Loan or Letter of Credit (or participate therein) hereunder; *provided, however,* that only the consent of the Required Lenders shall be necessary (i) to amend the default rate provided in Section 2.9 or to waive any obligation of the Borrower to pay interest or fees at the default rate as set forth therein or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest or any fee payable hereunder;

(ii) no amendment or waiver pursuant to this Section 13.3 shall, unless signed by each Lender, change the definition of Required Lenders, change the provisions of this Section 13.3, change Section 13.7 in a manner that would affect the ratable sharing of setoffs required thereby, change the application of payments contained in Section 3.1 or 9.5, release any material Guarantor or all or substantially all of the Collateral (except as otherwise provided for in the Loan Documents), or affect the number of Lenders required to take any action hereunder or under any other Loan Document;

(iii) no amendment or waiver pursuant to this Section 13.3 shall, unless signed by each Lender affected thereby, extend the Termination Date, or extend the stated expiration date of any Letter of Credit beyond the Termination Date;

(iv) no waiver or amendment shall, unless signed by the Required Lenders, change the definition of Borrowing Base (or waive any mandatory prepayment due under Section 2.8(b)(vi)) so as to make more credit available as a consequence thereof, change the definition of Required Lenders or any provision of the last sentence of Section 7.1 or, solely for the purposes of Section 7.1(b), after the occurrence of any Default, any other provision of this Agreement that would result in such Default no longer continuing; and

(v) no amendment to Section 11 shall be made without the consent of the Guarantor(s) affected thereby.

Notwithstanding anything to the contrary herein, (1) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender, (2) if the Administrative Agent and the Borrower 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 (3) guarantees, collateral security documents and related documents executed by the Borrower or any other Loan Party in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented or waived without the consent of any Lender if such amendment, supplement or waiver is delivered in order to (x) comply with local law or advice of local counsel, (y) cure ambiguities, omissions, mistakes or defects or (z) cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 13.4. Costs and Expenses; Indemnification. (a) *Costs and Expenses.* The Borrower shall pay (i) all reasonable, documented out-of-pocket costs and expenses of the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of outside counsel for the Administrative Agent and its Affiliates, the preparation, negotiation, execution, delivery and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), including, without limitation, the reasonable fees, charges and expenses incurred in connection with (x) the creation, perfection or protection of the Liens under the Loan Documents (including all title insurance fees and all search, filing and recording fees) and (y) environmental assessments, insurance reviews, collateral audits and valuations, and field exams as provided herein, (ii) disbursements of outside counsel for the Administrative Agent and its Affiliates and all reasonable, documented, out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable, documented, out-of-pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside counsel) incurred by the Administrative Agent, the L/C Issuer or any Lender in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or any Letters of Credit issued hereunder, including all such reasonable, documented, out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (including all such costs and expenses incurred in connection with any proceeding under the United States Bankruptcy Code involving the Borrower or any other Loan Party as a debtor thereunder).

(b) *Indemnification by the Loan Parties.* Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer, 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), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any third party or the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof), any L/C Issuer, and their Related Parties, the administration and enforcement of this Agreement and the other Loan Documents (including all such costs and expenses incurred in connection with any proceeding under the United States Bankruptcy Code involving the Borrower or any other Loan Party as a debtor thereunder), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any Environmental Claim or Environmental Liability, including with respect to the actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, related in any way to any Loan Party 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 (including, without limitation, any settlement arrangement arising from or relating to the foregoing); *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, bad faith 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 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; provided, further, that Borrower (or its Subsidiaries or affiliates) shall not be liable for any indirect, special, punitive or consequential damages including, without limitation, lost profits (other than in respect of any damages awarded to a third party not affiliated with such Indemnitee by a final, non-appealable judgment of a court of competent jurisdiction). Notwithstanding anything herein to the contrary, the Borrower shall not be liable for any settlement of any proceeding effected without the Borrower's written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with Borrower's consent or if there is a final and non-appealable judgment by a court of competent jurisdiction for the plaintiff in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with the other provisions of this Section. The Borrower shall not, without the prior written consent of any Indemnitee (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceedings in respect of which indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability or claims that are the subject matter of such proceedings, and (ii) does not include any statement as to or any admission of fault, culpability, wrong doing or a failure to act by or on behalf of any Indemnitee. Notwithstanding the foregoing, each indemnified person shall be obligated to refund or return any and all amounts paid by the Borrower under this paragraph to such indemnified person for any losses, claims, damages, liabilities and expenses to the extent such indemnified person is not entitled to payment of such amounts in accordance with the terms hereof. This subsection (b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) *Reimbursement by Lenders.* To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by any of them to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are imposed on, incurred by, or asserted against, Administrative Agent, the L/C Issuer or a Related Party in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by Administrative Agent, the L/C Issuer, or a Related Party in connection therewith, then, in each case, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer 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 each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that with respect to such unpaid amounts owed to any L/C Issuer solely in its capacity as such, only the Lenders party to the Facility shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Lenders' pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each such Lender's share of the Revolving Credit Exposure at such time); and *provided, further,* 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), such L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or such L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 13.15.

(d) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Loan Parties 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, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) 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 or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) *Payments.* All amounts due under this Section shall be payable promptly after written demand therefor.

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

(g) *Excluded Damages.* The parties agree that the costs and expenses indemnified by Borrower hereunder shall not include (i) allocated costs of in-house legal counsel, (ii) absent an actual conflict of interest where the affected party informs the Administrative Agent and the Borrower of such conflict, reasonable, documented, out-of-pocket fees and expenses of more than a single legal counsel to the Administrative Agent, the Lenders and any LC Issuer (taken together) in each relevant jurisdiction and one special regulatory counsel and (iii) expenses relating to disputes solely between or among the Administrative Agent, the Lenders and any L/C Issuer or disputes solely between or among the Administrative Agent, the Lenders and any L/C Issuer and their respective Affiliates (other than disputes between or among the Administrative Agent (in its capacity as such) on the one hand, and one or more Lenders or L/C Issuer, or one or more of their Affiliates, on the other hand).

Section 13.5. No Waiver, Cumulative Remedies. No delay or failure on the part of the Administrative Agent, the L/C Issuer, or any Lender, or on the part of the holder or holders of any of the Obligations, in the exercise of any power or right under any Loan Document shall operate as a waiver thereof or as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The rights and remedies hereunder of the Administrative Agent, the L/C Issuer, the Lenders, and of the holder or holders of any of the Obligations are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.

Section 13.6. Right of Setoff. In addition to any rights now or hereafter granted under the Loan Documents or applicable law and not by way of limitation of any such rights, if an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender, such L/C Issuer 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 or any other Loan Document to such Lender or such L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this 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 or such L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.13 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer 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 13.7. 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 Section shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Obligations to any assignee or participant, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party 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 each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 13.8. Survival of Representations. All representations and warranties made herein or in any other Loan Document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 13.9. Survival of Indemnities. All indemnities and other provisions relative to reimbursement to the Lenders and L/C Issuer of amounts sufficient to protect the yield of the Lenders and L/C Issuer with respect to the Loans and Letters of Credit, including, but not limited to, Sections 4.1, 4.4, 4.5, and 13.4, shall survive the termination of this Agreement and the other Loan Documents and the payment of the Obligations.

Section 13.10. Counterparts; Integration; Effectiveness.

(a) Counterparts; Integration; Effectiveness. 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 and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 7.2, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (e.g., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement. For purposes of determining compliance with the conditions specified in Section 7.2, each Lender and L/C Issuer that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender or L/C Issuer unless the Administrative Agent shall have received notice from such Lender or L/C Issuer prior to the Closing Date specifying its objection thereto.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronics Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 13.11. Headings. Section headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

Section 13.12. Severability of Provisions. Any provision of any Loan Document which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Agreement and the other Loan Documents may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Agreement and other Loan Documents are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Agreement or the other Loan Documents invalid or unenforceable.

Section 13.13. Construction. The parties acknowledge and agree that the Loan Documents shall not be construed more favorably in favor of any party hereto based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation of the Loan Documents. The provisions of this Agreement relating to Subsidiaries shall only apply during such times as the Borrower has one or more Subsidiaries. NOTHING CONTAINED HEREIN SHALL BE DEEMED OR CONSTRUED TO PERMIT ANY ACT OR OMISSION WHICH IS PROHIBITED BY THE TERMS OF ANY COLLATERAL DOCUMENT, THE COVENANTS AND AGREEMENTS CONTAINED HEREIN BEING IN ADDITION TO AND NOT IN SUBSTITUTION FOR THE COVENANTS AND AGREEMENTS CONTAINED IN THE COLLATERAL DOCUMENTS.

Section 13.14. Excess Interest. Notwithstanding any provision to the contrary contained herein or in any other Loan Document, no such provision shall require the payment or permit the collection of any amount of interest in excess of the maximum amount of interest permitted by applicable law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the Loans or other obligations outstanding under this Agreement or any other Loan Document (*"Excess Interest"*). If any Excess Interest is provided for, or is adjudicated to be provided for, herein or in any other Loan Document, then in such event (a) the provisions of this Section shall govern and control, (b) neither the Borrower nor any guarantor or endorser shall be obligated to pay any Excess Interest, (c) any Excess Interest that the Administrative Agent or any Lender may have received hereunder shall, at the option of the Administrative Agent, (i) be applied as a credit against the then outstanding principal amount of Obligations hereunder and accrued and unpaid interest thereon (not to exceed the maximum amount permitted by applicable law), (ii) be refunded to the Borrower, or (iii) any combination of the foregoing, (d) the interest rate payable hereunder or under any other Loan Document shall be automatically subject to reduction to the maximum lawful contract rate allowed under applicable usury laws (the *"Maximum Rate"*), and this Agreement and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the relevant interest rate, and (e) neither the Borrower nor any guarantor or endorser shall have any action against the Administrative Agent or any Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest except for a breach of an obligation of Administrative Agent or Lender described herein. Notwithstanding the foregoing, if for any period of time interest on any of Borrower's Obligations is calculated at the Maximum Rate rather than the applicable rate under this Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on the Borrower's Obligations shall remain at the Maximum Rate until the Lenders have received the amount of interest which such Lenders would have received during such period on the Borrower's Obligations had the rate of interest not been limited to the Maximum Rate during such period.

Section 13.15. Lender's and L/C Issuer's Obligations Several. The obligations of the Lenders and L/C Issuer hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Lenders or L/C Issuer pursuant hereto shall be deemed to constitute the Lenders and L/C Issuer a partnership, association, joint venture or other entity.

Section 13.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between any Loan Party and its Subsidiaries and the Administrative Agent, the L/C Issuer, or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Administrative Agent, the L/C Issuer, or any Lender has advised or is advising any Loan Party or any of its Subsidiaries on other matters, (ii) the arranging and other services regarding this Agreement provided by the Administrative Agent, the L/C Issuer, and the Lenders are arm's-length commercial transactions between such Loan Parties and their Affiliates, on the one hand, and the Administrative Agent, the L/C Issuer, and the Lenders, on the other hand, (iii) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Administrative Agent, the L/C Issuer, 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 any Loan Party or any of its Affiliates, or any other Person; (ii) none of the Administrative Agent, the L/C Issuer, and the Lenders has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the L/C Issuer, 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 any Loan Party and its Affiliates, and none of the Administrative Agent, the L/C Issuer, and the Lenders has any obligation to disclose any of such interests to any Loan Party or its Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the L/C Issuer, 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 13.17. Governing Law; Jurisdiction; Consent to Service of Process. (a) THIS AGREEMENT, THE NOTES AND THE OTHER LOAN DOCUMENTS (EXCEPT AS OTHERWISE SPECIFIED THEREIN), AND THE RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each party hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by applicable Legal Requirements, in such federal court. Each party hereto hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. Nothing in this Agreement or any other Loan Document or otherwise shall affect any right that the Administrative Agent, the L/C Issuer or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any Guarantor or its respective properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Legal Requirements, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 13.17(b). Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirements, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopy or e-mail) in Section 13.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable Legal Requirements.

Section 13.18. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 13.19. USA Patriot Act. Each Lender and L/C Issuer that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the *"Act"*) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify, and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or L/C Issuer to identify the Borrower in accordance with the Act.

Section 13.20. Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties to the extent to any such Person has a need to know such Information (it being understood that the Persons to whom such disclosure is made will first be informed of the confidential nature of such Information and instructed to keep such Information confidential) and that the Person disclosing the Information will be responsible for any failure of each Person described in this clause (a) to whom such disclosure is made to comply with the terms of this Section 13.20; (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case it agrees to inform Borrower promptly thereof prior to such disclosure, unless prohibited by applicable law from so informing Borrower or except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examinations); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process of any court or administrative agency or in any pending, legal, judicial or administrative proceeding or otherwise as requested by a governmental authority (in which case, to the extent permitted by law, rule or regulation, it agrees (except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examinations) to inform Borrower promptly thereof); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement, running favor of Borrower with respect to such provisions, containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap or derivative transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating any Loan Party or its Subsidiaries or the Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility; (h) with the prior written consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, *"Information"* means all information received from a Loan Party or any of its Subsidiaries relating to a Loan Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by a Loan Party or any of its Subsidiaries; *provided* that, in the case of information received from a Loan Party or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential.

[SIGNATURE PAGES TO FOLLOW]

This Credit Agreement is entered into between us for the uses and purposes hereinabove set forth as of the date first above written.

"BORROWER"

SHIMMICK CONSTRUCTION COMPANY, INC.

By /s/ Steven Earl Richards
Name Steven Earl Richards
Title President

"PARENT"

SCCI NATIONAL HOLDINGS, INC.

By /s/ Steven Earl Richards
Name Steven Earl Richards
Title President

"GUARANTORS"

RUST CONSTRUCTORS INC.

By /s/ Erica B. Robinett
Name Erica B. Robinett
Title Vice President, Secretary

THE LEASING CORPORATION

By /s/ Steven Earl Richards
Name Steven Earl Richards
Title President

"ADMINISTRATIVE AGENT", "LENDER" and *"L/C ISSUER"*

BMO HARRIS BANK N.A., as Lender, L/C Issuer and Administrative Agent

By /s/ John Armstrong
Name John Armstrong
Title Managing Director

[Signature Page to Credit Agreement]

EXHIBIT A

NOTICE OF PAYMENT REQUEST

[Date]

[Name of Lender]

[Address]

Attention:

Reference is made to the Credit Agreement, dated as of February 26, 2021, among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the direct and indirect Subsidiaries of the Borrower from time to time party thereto, as Guarantors, the Lenders party thereto, and BMO Harris Bank N.A., as Administrative Agent (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*). Capitalized terms used herein and not defined herein have the meanings assigned to them in the Credit Agreement. [The Borrower has failed to pay its Reimbursement Obligation in the amount of $_____. Your Revolver Percentage of the unpaid Reimbursement Obligation is $_____] or [_____ has been required to return a payment by the Borrower of a Reimbursement Obligation in the amount of $_____. Your Revolver Percentage of the returned Reimbursement Obligation is $_____.]

Very truly yours,

_____, as L/C Issuer

By _____
Name _____
Title _____

EXHIBIT B

NOTICE OF BORROWING

Date: ____ __, 202__

To: BMO Harris Bank N.A., as Administrative Agent under the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the "*Credit Agreement*"), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

Ladies and Gentlemen:

The Borrower refers to the Credit Agreement, the terms defined therein being used herein as therein defined, and hereby gives you notice irrevocably, pursuant to Section 2.6 of the Credit Agreement, of the Borrowing specified below:

1. The Business Day of the proposed Borrowing is ____ __, 202__.
2. The aggregate amount of the proposed Borrowing is $_____.
3. The Borrowing is being advanced under the Facility.
4. The Borrowing is to be comprised of $_____ of **[Base Rate] [Eurodollar]** Loans.

[5. The duration of the Interest Period for the Eurodollar Loans included in the Borrowing shall be _____ months.]

The Borrower hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Borrowing, before and after giving effect thereto and to the application of the proceeds therefrom:

(a) the representations and warranties contained in Section 6 of the Credit Agreement are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as though made on and as of such date (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as of such earlier date); and

(b) no Default or Event of Default has occurred and is continuing or would result from such proposed Borrowing.

SHIMMICK CONSTRUCTION COMPANY, INC.

By _____
Name _____
Title _____

EXHIBIT C

NOTICE OF CONTINUATION/CONVERSION

Date: ____ __, 202__

To: BMO Harris Bank N.A., as Administrative Agent under the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the "*Credit Agreement*"), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

Ladies and Gentlemen:

The Borrower refers to the Credit Agreement, the terms defined therein being used herein as therein defined, and hereby gives you notice irrevocably, pursuant to Section 2.6 of the Credit Agreement, of the **[conversion] [continuation]** of the Loans specified herein, that:

1. The conversion/continuation Date is ____ __, 202__.
2. The aggregate amount of the Revolving Loans to be **[converted] [continued]** is $_____.
3. The Loans are to be [**converted into] [continued as] [Eurodollar] [Base Rate]** Loans.
4. **[If applicable:]** The duration of the Interest Period for the Revolving Loans included in the **[conversion] [continuation]** shall be _____ months.

SHIMMICK CONSTRUCTION COMPANY, INC.

By _____
Name _____
Title _____

EXHIBIT D

REVOLVING NOTE

U.S. $_____

____ __, 202__

FOR VALUE RECEIVED, the undersigned, Shimmick Construction Company, Inc., a California corporation (the *"Borrower"*), hereby promises to pay to _____ (the *"Lender"*) or its registered assigns on the Termination Date of the hereinafter defined Credit Agreement, at the principal office of the Administrative Agent in Chicago, Illinois (or such other location as the Administrative Agent may designate to the Borrower), in immediately available funds, the principal sum of _____ Dollars ($_____) or, if less, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower pursuant to the Credit Agreement, together with interest on the principal amount of each Revolving Loan from time to time outstanding hereunder at the rates, and payable in the manner and on the dates, specified in the Credit Agreement.

This Revolving Note (this *"Note"*) is the Revolving Note referred to in the Credit Agreement dated as of February 26, 2021, by and among the Borrower, the Parent, the Guarantors party thereto, the Lenders and L/C Issuer party thereto, and BMO Harris Bank N.A., as Administrative Agent (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*), and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Credit Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Credit Agreement. This Note shall be governed by and construed in accordance with the internal laws of the State of New York.

Voluntary prepayments may be made hereon, certain prepayments are required to be made hereon, and this Note may be declared due prior to the expressed maturity hereof, all in the events, on the terms and in the manner as provided for in the Credit Agreement.

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder.

Shimmick Construction Company, Inc.

By _____
Name _____
Title _____

EXHIBIT E

SHIMMICK CONSTRUCTION COMPANY, INC.

BORROWING BASE CERTIFICATE

To: BMO Harris Bank N.A., as Administrative Agent under, and the Lenders and L/C Issuer party to, the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

This Borrowing Base Certificate is furnished to you pursuant to the Credit Agreement. Unless otherwise defined herein, the terms used in this Borrowing Base Certificate and on any attachments to this Borrowing Base Certificate shall have the meanings ascribed thereto in the Credit Agreement.

The computations set forth in this Borrowing Base Certificate and on any attachments to this Borrowing Base Certificate are, to the knowledge of the Borrower, true, complete and correct as of the date of this Certificate and have been made in accordance with the relevant sections of the Credit Agreement.

SEE ATTACHED WORKSHEET FOR BORROWING BASE CALCULATION.

In the event of a conflict between the attached calculations and any certifications relating thereto and the Credit Agreement and related definitions used in calculating the Borrowing Base, the Credit Agreement and such related definitions shall govern and control.

Dated as of this _____ day of _____, 202__.

Shimmick Construction Company, Inc.

By _____

Name _____

Title _____

SHIMMICK CONSTRUCTION COMPANY, INC.

BORROWING BASE CERTIFICATE WORKSHEET

FOR CREDIT AGREEMENT DATED AS OF FEBRUARY 26, 2021

CALCULATIONS AS OF _____ ____, 202__

A. RECEIVABLES IN BORROWING BASE

1. Gross Receivables		_____
Less		
(a) Ineligible sales (including receivables for which a Loan Party was required to have issued a surety bond with respect to such Loan Party's performance of the services giving rise to such receivables and all other so called "bonded receivables")	_____	
(b) Owed by an account debtor who is an Affiliate	_____	
(c) Owed by an account debtor who is in an insolvency or reorganization proceeding	_____	
(d) Credits/allowances	_____	
(e) Unpaid more than ____ days from due date	_____	
(f) Unpaid more than ____ date days from invoice date	_____	
(g) Otherwise ineligible	_____	
2. Total Deductions (sum of lines A1a - A1g)		_____
3. Eligible Receivables (line A1 minus line A2)		_____
4. Eligible Receivables in Borrowing Base (line A3 x 85%)		_____

B. INVENTORY IN BORROWING BASE

1. Gross inventory of Finished Goods and Raw Materials _____

2. Less

(a) Finished Goods and Raw Materials not located at approved locations _____

(b) Obsolete, slow moving, or not merchantable _____

(c) Otherwise ineligible _____

2. Total Deductions (sum of lines B2a - B2c above) _____

3. Eligible Inventory (line B1 minus line B2) _____

4. Eligible Inventory in Borrowing Base (line B3 x 50%) _____

C. EQUIPMENT IN BORROWING BASE

1. Net Orderly Liquidation Value of Eligible Equipment _____

2. Eligible Equipment in Borrowing Base (line C1 x 80%) _____

D. TOTAL BORROWING BASE

1. Line A4 _____

2. Line B4 _____

4. Line C2 _____

5. Sum of Lines D1, D2, D3 and D4 (Borrowing Base)

E. FACILITY ADVANCES

1. Revolving Loans _____

2. Letters of Credit _____

3. Total Outstandings (Sum of lines E1 and E2) _____

F. AVAILABLE BORROWING BASE COLLATERAL

(line D5 minus line E3) _____

Dated as of this _____ day of _____, 202__.

Shimmick Construction Company, Inc.

By _____
Name _____
Title _____

EXHIBIT F

SHIMMICK CONSTRUCTION COMPANY, INC.

COMPLIANCE CERTIFICATE

To: BMO Harris Bank N.A., as Administrative Agent under, and the Lenders and L/C Issuer party to, the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

This Compliance Certificate is furnished to you pursuant to the Credit Agreement. Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Credit Agreement.

THE BORROWER HEREBY CERTIFIES THAT:

1. I am the duly elected _____ of _____;

2. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements;

3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate, except as set forth below;

4. The financial statements required by Section 8.5 of the Credit Agreement and being furnished to you concurrently with this Compliance Certificate are true, correct and complete as of the date and for the periods covered thereby; and

5. The Schedule I hereto sets forth financial data and computations evidencing the Borrower's compliance with certain covenants of the Credit Agreement, all of which data and computations are, to the best of my knowledge, true, complete and correct and have been made in accordance with the relevant Sections of the Credit Agreement.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

_____

_____

_____

_____

The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Compliance Certificate in support hereof, are made and delivered this _____ day of _____ 202__.

Shimmick Construction Company, Inc.

By _____
Name _____
Title _____

SCHEDULE I

TO COMPLIANCE CERTIFICATE

SHIMMICK CONSTRUCTION COMPANY, INC.

COMPLIANCE CALCULATIONS

FOR CREDIT AGREEMENT DATED AS OF FEBRUARY 26, 2021

CALCULATIONS AS OF _____ __, 202__

A.	Total Leverage Ratio (Section 8.23(a))		
	1.	Total Funded Debt	$_____
	2.	Net Income for past 4 quarters	_____
	3.	Interest Expense for past 4 quarters	
	4.	Income taxes for past 4 quarters	
	5.	Depreciation and Amortization Expense for past 4 quarters	_____
	6.	Non-cash write-offs of unbilled receivables related to the Specified Projects for past 4 quarters	_____
	7.	Sum of Lines A2, A3, A4, A5 and A6 (*"EBITDA"*)	_____
	8.	Ratio of Line A1 to A7	_____:1.00
	9.	Line A8 ratio must not exceed	2.00:1.00
	10.	The Borrower is in compliance (circle yes or no)	yes/no
B.	Liquidity (Section 8.23(b))		
	1.	Cash	$_____
	2.	Excess Availability	$_____
	3.	Sum of Lines B1 and B2 (*"Liquidity"*)	$_____
	4.	Line B3 must not be less than	$50,000,000
	5.	The Borrower is in compliance (circle yes or no)	yes/no

EXHIBIT G

ADDITIONAL GUARANTOR SUPPLEMENT

Date: _____ __, 202__

To: BMO Harris Bank N.A., as Administrative Agent under the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to the Credit Agreement described above. Terms not defined herein which are defined in the Credit Agreement shall have for the purposes hereof the meaning provided therein. The undersigned, **[name of Subsidiary Guarantor]**, a **[jurisdiction of incorporation or organization]** hereby elects to be a *"Guarantor"* for all purposes of the Credit Agreement, effective from the date hereof. The undersigned confirms that the representations and warranties set forth in Section 6 of the Credit Agreement are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as to the undersigned as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as of such earlier date) and the undersigned shall comply with each of the covenants set forth in Section 8 of the Credit Agreement applicable to it.

Without limiting the generality of the foregoing, the undersigned hereby agrees to perform all the obligations of a Guarantor under, and to be bound in all respects by the terms of, the Credit Agreement, including without limitation Section 11 thereof, to the same extent and with the same force and effect as if the undersigned were a signatory party thereto.

The undersigned acknowledges that this Agreement shall be effective upon its execution and delivery by the undersigned to the Administrative Agent, and it shall not be necessary for the Administrative Agent, the L/C Issuer or any Lender or any of their Affiliates entitled to the benefits hereof, to execute this Agreement or any other acceptance hereof. This Agreement may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of a counterpart hereof by facsimile transmission or by e-mail transmission of an Adobe portable document format file (also known as a "PDF" file) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall be construed in accordance with and governed by the internal laws of the State of New York.

Very truly yours,

[NAME OF SUBSIDIARY GUARANTOR]

By _____
Name _____
Title _____

EXHIBIT H

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][each]**[1] Assignor identified in item 1 below (**[the][each, an]** *"Assignor"*) and **[the][each]**[2] Assignee identified in item 2 below ([the] [each, an] *"Assignee"*). **[It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]**[3] **hereunder are several and not joint.]**[4] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the *"Credit Agreement"*), receipt of a copy of which is hereby acknowledged by **[the][each]** 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][each]** Assignor hereby irrevocably sells and assigns to **[the Assignee][the respective Assignees]**, and **[the][each]** Assignee hereby irrevocably purchases and assumes from **[the Assignor][the respective Assignors]**, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of **[the Assignor's][the respective Assignors']** rights and obligations in **[its capacity as a Lender][their respective capacities as Lenders]** under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of **[the Assignor][the respective Assignors]** under the respective facilities identified below (including without limitation any letters of credit and guarantees included in such facilities), 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)][the respective Assignors (in their respective capacities as Lenders)]** 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, but not limited to, 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][any]** Assignor to **[the][any]** Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as **[the][an]** *"Assigned Interest"*). Each such sale and assignment is without recourse to **[the][any]** Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by **[the][any]** Assignor.

---

1 For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

2 For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

3 Select as appropriate.

4 Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor**[s]**: _____

   [Assignor [is] [is not] a Defaulting Lender]

2. Assignee**[s]**: _____

   _____

   [for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]

3. Borrower: Shimmick Construction Company, Inc.

4. Administrative Agent: BMO HARRIS BANK N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: Credit Agreement dated as of February 26, 2021 among the Borrower, SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the direct and indirect Subsidiaries of the Borrower from time to time party thereto, as Guarantors, the Lenders parties thereto, the L/C Issuer, BMO HARRIS BANK N.A., as Administrative Agent, and the other agents parties thereto

6. Assigned Interest[s]:

Assignor[s][5]	Assignee[s][6]	Facility Assigned[7]	Aggregate Amount of Commitment/Loans for all Lenders[8]	Amount of Commitment/Loans Assigned[6]	Percentage Assigned of Commitment/ Loans[9]
			$	$	%
			$	$	%
			$	$	%

[**7. Trade Date: _____**][10]

5 List each Assignor, as appropriate.

6 List each Assignee, as appropriate.

7 Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., "Commitment", etc.)

8 Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

9 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

10 To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____ ____, 202__ **[To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the register therefor.]**

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

ASSIGNOR[S][11]

[NAME OF ASSIGNOR]

By _____
Name _____
Title _____

[NAME OF ASSIGNOR]

By _____

_____
Name _____
Title _____

ASSIGNEE[S][12]

[NAME OF ASSIGNEE]

By _____

_____
Name _____
Title _____

[NAME OF ASSIGNEE]

By _____

_____
Name _____
Title _____

11 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).
12 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[Consented to and][13] Accepted:

BMO HARRIS BANK N.A., as
Administrative Agent

By _____
Name _____
Title _____

[Consented to:][14]

[NAME OF RELEVANT PARTY]

By _____
Name _____
Title _____

13 To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.
14 To be added only if the consent of the Borrower and/or other parties (e.g. L/C Issuer) is required by the terms of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

SECTION 1. REPRESENTATIONS AND WARRANTIES.

Section 1.1. Assignor[s]. **[The][Each]** Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) **[the][such]** Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (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 (iv) it is **[not]** a Defaulting Lender; 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.

Section 1.2. Assignee[s]. **[The][Each]** Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 13.2(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 13.2(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of **[the][the relevant]** 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 has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 8.5 thereof, as applicable, 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][such]** 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][such]** Assigned Interest, and (vii) 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][such]** Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, **[the][any]** 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.

SECTION 2. PAYMENTS.

From and after the Effective Date, the Administrative Agent shall make all payments in respect of **[the][each]** Assigned Interest (including payments of principal, interest, fees and other amounts) to **[the][the relevant]** Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor**[s]** and the Assignee**[s]** shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves. 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][the relevant]** Assignee.

SECTION 3. GENERAL PROVISIONS.

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT I-1

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*) among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto, and **BMO HARRIS BANK N.A.**, as Administrative Agent (the *"Administrative Agent"*). Terms defined in the Credit Agreement are used herein with the same meaning.

Pursuant to the provisions of Section 4.1 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____, 202__

EXHIBIT I-2

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*) among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto, and **BMO HARRIS BANK N.A.**, as Administrative Agent (the *"Administrative Agent"*). Terms defined in the Credit Agreement are used herein with the same meaning.

Pursuant to the provisions of Section 4.1 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____, 202__

EXHIBIT I-3

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*) among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto, and **BMO HARRIS BANK N.A.**, as Administrative Agent (the *"Administrative Agent"*). Terms defined in the Credit Agreement are used herein with the same meaning.

Pursuant to the provisions of Section 4.1 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____, 202__

EXHIBIT I-4

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the *"Credit Agreement"*) among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto, and **BMO HARRIS BANK N.A.**, as Administrative Agent (the *"Administrative Agent"*). Terms defined in the Credit Agreement are used herein with the same meaning.

Pursuant to the provisions of Section 4.1 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____, 202__

EXHIBIT J

INCREASE REQUEST

Dated _____ ____, 202__

To: BMO Harris Bank N.A., as Administrative Agent under the Credit Agreement dated as of February 26, 2021 (as extended, renewed, amended or restated from time to time, the "*Credit Agreement*"), by and among Shimmick Construction Company, Inc., a California corporation (the "Borrower"), SCCI National Holdings, Inc., a Delaware corporation (the "Parent"), the Guarantors party thereto, the Lenders and L/C Issuer party thereto from time to time, and BMO Harris Bank N.A., as Administrative Agent

Ladies and Gentlemen:

The undersigned, Shimmick Construction Company, Inc., a California corporation (the "*Borrower*"), hereby refers to the Credit Agreement and requests that the Administrative Agent consent to an increase in the aggregate Commitment (the "*Revolver Increase*"), in accordance with Section 2.15 of the Credit Agreement, to be effected as [an increase in the Commitment of [Lender]] or [a new Commitment of [Lender]]. Capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.

After giving effect to such Revolver Increase, the Commitment of [the Lender] shall be $[_____].

THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACTUAL OBLIGATION UNDER, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Revolver Increase shall be effective when the executed consent of the Administrative Agent is received or otherwise in accordance with Section 2.15 of the Credit Agreement, but not in any case prior to February 26, 2024. It shall be a condition to the effectiveness of the Revolver Increase that all expenses referred to in Section 2.15 of the Credit Agreement shall have been paid.

Borrower hereby certifies that (a) no Default or Event of Default has occurred and is continuing and (b) each of the representations and warranties set forth in Section 6 of the Credit Agreement and in the other Loan Documents are and remain true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) on the effective date of this Revolver Increase, except to the extent the same expressly relate to an earlier date, in which case they shall be true and correct in all material respects (where not already qualified by materiality, otherwise in all respects) as of such earlier date.

[SIGNATURE PAGES TO FOLLOW]

Please indicate your consent to such Revolver Increase by signing the enclosed copy of this letter in the space provided below.

Very truly yours,

SHIMMICK CONSTRUCTION COMPANY, INC.

By _____
Name _____
Title _____

BMO HARRIS BANK N.A.

By _____
Name _____
Title _____

SCHEDULE 2.2

COMMITMENTS

[***]

SCHEDULE 6.2

SUBSIDIARIES

[***]

SCHEDULE 6.19

COLLECTIVE BARGAINING AGREEMENTS

[***]

SCHEDULE 8.9

PERMITTED INVESTMENTS

[***]

Exhibit 10.6

Execution Version

**Portions of this exhibit have been redacted in accordance with Item 601(b)(10) of Regulation S-K. The information is not material and would cause competitive harm to the registrant if publicly disclosed. [***] indicates that information has been redacted. **

CREDIT, SECURITY AND GUARANTY AGREEMENT

dated as of March 27, 2023

by and among

SHIMMICK CONSTRUCTION COMPANY, INC., RUST CONSTRUCTORS INC., THE LEASING CORPORATION,

and

the other entities shown on the signature pages hereto and any additional borrower that hereafter becomes party hereto,

each as a Borrower, and collectively as Borrowers,

and

SCCI NATIONAL HOLDINGS, INC.,

and

any guarantor that hereafter becomes party hereto, each as Guarantor, and collectively as Guarantors,

and

MIDCAP FUNDING IV TRUST,

as Agent,

and

THE LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

CREDIT, SECURITY AND GUARANTY AGREEMENT

THIS CREDIT, SECURITY AND GUARANTY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of March 27, 2023 by and among **SHIMMICK CONSTRUCTION COMPANY, INC.**, a California corporation ("**Shimmick**"), **RUST CONSTRUCTORS INC.**, a Delaware corporation, **THE LEASING CORPORATION,** a Nevada corporation, and each additional borrower that may hereafter be added to this Agreement (collectively, together with each of their successors and permitted assigns, each individually as a "**Borrower**", and collectively as "**Borrowers**"), **SCCI NATIONAL HOLDINGS, INC.**, a Delaware corporation ("**Holdings**"), and any entities that become party hereto as Guarantors (together with each of their successors and permitted assigns, each individually as a "**Guarantor**", and collectively as "**Guarantors**"), **MIDCAP FUNDING IV TRUST,** a Delaware statutory trust, as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

The Credit Parties have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Credit Parties, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the Equity Interests of any Person, whether or not involving a merger or consolidation with such other Person, or otherwise causing any Person to become a Subsidiary of a Credit Party, or (c) any merger or consolidation or any other combination with another Person.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to $45,000,000 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of $5,000,000 each for a total of up to $45,000,000.

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

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles). As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Aged Receivables Reserve**" means a reserve established by Agent in an amount equal to eighty-five percent (85%) of the aggregate amount of (x) Accounts that remain unpaid more than ninety (90) days past the due date therefor *plus* (y) Accounts that are subject to payment terms exceeding sixty (60) days, as adjusted from time to time by Agent in its Permitted Discretion.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Agent Assignee**" has the meaning set forth in Section 11.20(d).

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means with respect to Revolving Loans and all other Obligations four and one half of one percent (4.50%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition (including by merger, amalgamation, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) by any Credit Party or any Subsidiary thereof of any asset of such Credit Party or Subsidiary.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Availability Reserve**" means, as of any date, an amount equal to the Overdue Trade Payables as of such date, as determined or otherwise adjusted in the Agent's Permitted Discretion.

"**Available Tenor**" means, as of any date of determination with respect to the then-current Benchmark, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" or similar term pursuant to Section 2.2(o).

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

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

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base Rate**" means a per annum rate of interest equal to the greater of (a) the Floor and (b) the per annum rate of interest equal to the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that Agent may, upon prior written notice to Borrower Representative, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Base Rate Loan**" means a Loan that bears interest at a rate based on the Base Rate.

"**Benchmark**" means, initially, Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.2(o).

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent in consultation with Borrower Representative, giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Financing Documents.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Agent in consultation with Borrower Representative, giving due consideration to any selection or recommendation by the Relevant Governmental Body, or any evolving or then-prevailing market convention at such time, for determining a spread adjustment, or method for calculating or determining such spread adjustment, for such type of replacement for U.S. dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Date**" means the earlier to occur of the following events with respect to the then-current Benchmark: (a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or (b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date. For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark: (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official or resolution authority with jurisdiction over the administrator for such Benchmark (or such component), or a court or an entity with similar insolvency or resolution authority, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative. For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Start Date**" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"**Benchmark Unavailability Period**" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.2(o) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.2(o).

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law or (f) any Person resident in, organized under the laws of or incorporated in a Sanctioned Country.

"**Bona Fide Lending Affiliate**" means any bona fide debt fund, investment vehicle, regulated banking entity, non-regulated lending entity or other similar entity (in each case, other than a Person that is explicitly excluded pursuant to clause (i) of the definition of "Disqualified Person") that is primarily engaged in commercial loans and similar extensions of credit in the ordinary course of business.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Borrower Representative**" means Shimmick, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" means the sum of:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*

(b) the product of (i) seventy-five percent (75%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Costs in Excess of Billings; *plus*

(c) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate Net Orderly Liquidation Value at such time of the Eligible Equipment; *provided* that the amount calculated in clause (ii) above as of the date of the most recent appraisal, shall be reduced on the first day of each successive month following such appraisal by an amount equal to one twelfth ($1/12^{th}$) of five percent (5%) thereof (or such other amount as Agent shall determine in its Permitted Discretion, based on updated appraisals received by Agent subsequent to the Closing Date); *plus*

(d) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate Hard Costs at such time of the Eligible Unappraised Equipment; *plus*

(e) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the sum for all Eligible Unappraised Rolling Stock of an amount equal to (calculated for each item of Eligible Rolling Stock) the lowest Net Orderly Liquidation Value in respect thereof; *provided* that the amount calculated in clause (ii) above as of the date of the most recent appraisal, shall be reduced on the first day of each successive month following such appraisal by an amount equal to one twelfth ($1/12^{th}$) of five percent (5%) thereof (or such other amount as Agent shall determine in its Permitted Discretion, based on updated appraisals received by Agent subsequent to the Closing Date); *plus*

(f) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the sum for all Eligible Unappraised Rolling Stock of an amount equal to (calculated for each item of Eligible Unappraised Rolling Stock) the Hard Costs of such item of Eligible Unappraised Rolling Stock; *minus*

(g) the amount of the Availability Reserve, the Aged Receivables Reserve, the Dilution Reserve, the Rent Reserve and any other reserves and/or adjustments established from time to time by Agent in its Permitted Discretion.

provided that the Borrowing Base shall be adjusted down, if necessary, such that availability attributable to Eligible Costs in Excess of Billings shall never exceed an amount equal to forty percent (40%) of the lesser of (x) the Revolving Loan Limit and (y) the sum of the amounts calculated pursuant to clauses (a) and (b) above.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto, and including, without limitation, (i) aged listings of accounts receivable and accounts payable (by invoice date), (ii) reasonably detailed reports with respect to Eligible Costs in Excess of Billings, "billings in excess of costs" and surety bonds related to the foregoing, in form and substance reasonably satisfactory to the Agent, and in any case, similar to the reports delivered to Agent on the Closing Date and (iii) a listing of all Eligible Equipment, Eligible Unappraised Equipment, Eligible Unappraised Rolling Stock and Eligible Rolling Stock, noting any additions to and deletions from the listing provided with the previously delivered Borrowing Base Certificate.

"**Borrowing Base Collateral**" means accounts, inventory and all other Collateral which is part of, or is of a type which could be included in, the Borrowing Base.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in New York, New York are authorized by Law to close; *provided*, however, that when used in the context of a SOFR Loan, the term "Business Day" shall also exclude any day that is not also a SOFR Business Day.

"**Capital Lease**" of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease or finance lease on the balance sheet of such Person.

"**Cash Dominion Event**" means the earliest to occur of (a) the occurrence and continuance of any Event of Default, (b) the date that Revolving Loan Availability is less than $7,000,000 or (c) the date that Liquidity is less than $25,000,000; *provided* that a Cash Dominion Event shall be deemed continuing until such time as no Event of Default is continuing and Revolving Loan Availability and Liquidity exceeds the required amount for fifteen (15) consecutive days.

"**Cash Dominion Period**" means any period beginning immediately upon the occurrence of a Cash Dominion Event for so long as such Cash Dominion Event is continuing.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally; (d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**Change in Control**" means any of the following: (a) Mitchell Goldsteen, or any entity wholly owned and controlled by him, or trusts primarily for the benefit of him or his descendants, shall cease, collectively, to, directly or indirectly, own and control at least fifty percent (50%) of the outstanding voting and economic interests of the Equity Interests of Holdings, (b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) other than those Persons described in clause (a) above, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of forty percent (40%) or more of the combined voting power of all voting stock of Holdings on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); (c) any change in the legal or beneficial ownership or control of the outstanding voting Equity Interests of the applicable Person necessary at all times to elect a majority of the board of directors (or similar governing body) of Holdings and to direct the management policies and decisions of Holdings, each other Credit Party and each Subsidiary of Holdings; (d) Holdings shall cease to, directly or indirectly own, in the aggregate, 100% of each class of the outstanding Equity Interests of its Subsidiaries (or, in the case of Permitted Servicing Joint Ventures, the percentage of such outstanding Equity Interests owned at the time of formation thereof), in each case, except as otherwise permitted by this Agreement; or (e) the occurrence of any "Change of Control", "Change in Control" or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person or under any Subordinated Debt Document.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral**" means all property, other than Excluded Property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Collateral Servicer**" means Corporation Service Company or such other third party collateral servicer or subagent acceptable to Agent.

"**Collateral Servicing Agreement**" means a Collateral Servicing Agreement or similar agreement satisfactory to Agent, by and among the Collateral Servicer, each Credit Party, and the Agent, (as the same may be amended, restated, extended or otherwise modified from time to time), pursuant to which the Collateral Servicer, amongst other things, agrees to receive, process and hold for the benefit of the Agent and Lenders the original certificates of title with respect to the Credit Parties' Rolling Stock and any other Collateral subject to a certificate of title statute.

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or any Benchmark Replacement (as defined in Section 2.2(o)), any technical, administrative or operational changes (including (a) changes to the definition of "Base Rate," "Business Day", "Interest Period," "Reference Time" or other definitions, (b) the addition of concepts such as "interest period", (c) changes to timing and/or frequency of determining rates, making interest payments, giving borrowing requests, prepayment, conversion or continuation notices, or length of lookback periods, (d) the applicability of Section 2.8 and (e) other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of Term SOFR or such Benchmark Replacement and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or determines that no such market practice exists, in such other manner as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Documents).

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of Holdings (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation"** means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Credit Party, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Credit Exposure**" means, at any time, any portion of the Revolving Loan Commitment or any other Obligations that remains outstanding; *provided*, *however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means each Borrower and Guarantor; and "**Credit Parties**" means all such Persons, collectively.

"**Credit Party Unrestricted Cash**" means unrestricted cash and Cash Equivalents of the Credit Parties that (a) are held in the name of a Credit Party in a Deposit Account or Securities Account located in the United States that is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent at bank or financial institution located in the United States and are otherwise subject to Agent's first priority perfected security interest, (b) is not subject to any Lien (other than Permitted Liens), and (c) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all Capital Leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) Disqualified Equity Interests, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business and (k) obligations in respect of documented litigation settlement agreements or similar written arrangements. Without duplication of any of the foregoing, Debt of Credit Parties shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, (i) so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document, (ii) any Lender that has notified the Credit Parties or Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), or (iii) any Lender that has, or has a direct or indirect parent company that has, (a) become the subject of any proceeding under the Bankruptcy Code or any other insolvency, debtor relief or debt adjustment or similar law (whether state, provincial, territorial, federal or foreign), or (b) 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; provided, that a Lender shall not be a Defaulted Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulted Lender under any one or more of clauses (i) through (iii) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulted Lender upon delivery of written notice of such determination to Agent and each Lender.

"**Defined Period**" means, for purposes of calculating the Leverage Ratio (and any component thereof) for any given fiscal quarter, the twelve (12) month period immediately preceding any such fiscal quarter.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Credit Party.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Credit Party and each financial institution in which such Credit Party maintains a Deposit Account (which is not an Excluded Account), which agreement provides that such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Credit Party, including as to any such agreement pertaining to any Lockbox Account, providing that during a Cash Dominion Period, such financial institution shall, at the direction of Agent, wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account.

"**Dilution**" means, as of any date of determination, a percentage, based upon the experience during any prior period selected from time to time by Agent in its sole discretion, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to each Borrower's Accounts during such period, by (b) each Borrower's billings with respect to Accounts during such period.

"**Dilution Reserve**" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts and Eligible Costs in Excess of billings by one (1) percentage point for each percentage point by which Dilution is in excess of five (5%) percent.

"**Disqualified Equity Interests**" means any Equity Interest that, by its terms (or by the terms of any security or any other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Equity Interests that are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale, liquidation or similar event), (b) is redeemable at the option of the holder thereof (other than for Equity Interests that are not otherwise Disqualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale, liquidation or similar event), (c) provides for and requires scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interest that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date in effect at the time of issuance.

"**Disqualified Person**" means any Person (i) designated by the Borrower Representative, by written notice delivered to Agent on or prior to the Closing Date, as a (x) disqualified institution or (y) direct competitor or (ii) any Person that is clearly identifiable, solely on the basis of such Person's name, as an Affiliate of any Person referred to in clause (i)(x) or (i)(y) above; provided, however, that in no event will a Bona Fide Lending Affiliate be a Disqualified Person unless it is explicitly identified under clause (i) above.

"**Distribution**" means as to any Person (a) any dividend or other distribution or payment (whether in cash, securities or other property) on, or in respect of, any Equity Interest in such Person (except those payable solely in its Equity Interests other than Disqualified Equity Interests), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person, or (ii) any option, warrant or other right to acquire any Equity Interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an Equity Interest in a Credit Party or a Subsidiary of a Credit Party (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Credit Party or an Affiliate of any Subsidiary of a Credit Party, (d) any lease or rental payments to an Affiliate or Subsidiary of a Credit Party (which is not itself a Credit Party), or (e) repayments of or debt service on loans or other indebtedness (other than conversion to Equity Interests other than Disqualified Equity Interests) held by any Person holding an Equity Interest in a Credit Party or a Subsidiary of a Credit Party, an Affiliate of a Credit Party or an Affiliate of any Subsidiary of a Credit Party unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**EBITDA**" means, for the applicable Defined Period, the sum of:

(a) Net income (or loss) for the Defined Period of Holdings and its Consolidated Subsidiaries, but excluding the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers; *plus*

(b) any provision for (or minus any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period; *plus*

(c) interest expense, net of interest income, deducted in the determination of net income for the Defined Period; *plus*

(d) amortization and depreciation deducted in the determination of net income for the Defined Period; *plus*

(e) to the extent deducted from net income, any non-cash costs or expenses incurred by Holdings or any of its Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement; *plus*

(f) the amount of any contingent liabilities together with any documented out of pocket costs and expenses incurred (including attorneys' fees), in each case incurred in connection with or otherwise relating to the acquisition of Holdings by its current owners in an amount not to exceed $9,500,000 in the aggregate during the term of this Agreement; *plus*

(g) the amount of fees, costs and expenses incurred by the Credit Parties in connection with the initial closing of this Agreement and the other Financing Documents executed in connection herewith, to the extent incurred within 60 days after the Closing Date; *plus*

(h) the amount of attorneys' fees and related costs and expenses incurred by the Credit Parties in connection with the Golden Gate Bridge Physical Suicide Deterrent System project, in an amount not to exceed $6,000,000 in any Defined Period ending prior to the twenty-four (24) month anniversary of the Closing Date; *plus*

(i) the amount of any loss recognition resulting from purchase price accounting adjustments made in connection with or otherwise relating to the acquisition of Holdings by its current owners; *plus*

(j) unusual or non-recurring fees, costs and expenses, in each case to the extent approved by Agent in writing; *plus*

(k) any other adjustments which may be agreed to by Agent in its sole discretion, in writing.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, (other than an account receivable constituting Eligible Costs in Excess of Billings) which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) [reserved];

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, (i) the services have not actually been performed or the services were undertaken in violation of any Law, or (ii) the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien (other than Liens in favor of Agent or other Permitted Liens that do not have priority over Agent's Lien), or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) [reserved];

(j) [reserved];

(k) (i) with respect to a single Account Debtor at any given time, the total unpaid Accounts of such Account Debtor obligated on the Account exceed thirty percent (30%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such thirty percent (30%) limitation shall be considered ineligible), or (ii) the total unpaid Accounts of the Account Debtor (other than the Account Debtor in subclause (i) of this clause (k)) obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

(l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any material respect;

(m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(n) solely to the extent any Borrower is required by Agent to assign its right to payment of such Account to Agent under Assignment of Claims Act, 31 USC §3727 (the "**Federal Assignment of Claims Act**") pursuant to, and to the extent required by, Section 4.5(c), the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless, subject to the terms of Section 4.5(b), the applicable Borrower has assigned its right to payment of such Account to Agent pursuant to the Federal Assignment of Claims Act or has otherwise complied with other applicable statutes or ordinances;

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(p) the Account Debtor has its principal place of business or executive office outside the United States;

(q) the Account is payable in a currency other than Dollars;

(r) the Account Debtor is an individual;

(s) except with respect to Account Debtors that, as of the Closing Date, have previously been directed by a Borrower to make payment to the applicable Lockbox Account, the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(t) the Account includes late charges or finance charges (but only such portion of the Account constituting such charges shall be ineligible);

(u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien (other than Permitted Liens that do not have priority over Agent's Lien);

(v) such Borrower is (or was) required to provide letters of credit, surety or performance bonds or other similar credit support in respect of the sale of goods or provisions of services from which the Account arises; or

(w) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion.

For the avoidance of doubt, all Accounts that are at any time excluded from Eligible Accounts by virtue of any one or more of the exclusionary criteria set forth above shall nevertheless constitute Collateral.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however,* that notwithstanding the foregoing, (x) so long as no Event of Default has occurred and is continuing, (i) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates and (ii) without the consent of Borrower Representative, no person shall qualify as an "Eligible Assignee" pursuant to clause (d) above to the extent such Person is a Disqualified Person, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Eligible Costs in Excess of Billings**" means, on a customer-by-customer basis (or, solely with respect to clause (iii) below, a contract-by-contract basis in respect of any such customer), an amount equal to the positive difference (if any) between (x) the aggregate amount of all costs and expenses actually incurred in connection with any Borrower's performance of its obligations pursuant to any or agreement to which such customer is a counterparty, so long as (i) the account receivable of Borrowers owing by such customer would otherwise constitute an Eligible Account, but for failing to comply with clauses (d), (e) and (m) of the definition of Eligible Account as a result of being unbilled, (ii) such Borrower's obligations under such contract are fully billed within 30 days following the date upon which such obligations were eligible for invoicing, (iii) such Borrower is not required to provide letters of credit, surety or performance bonds or other similar credit support in respect of such contract and (iv) such contract or agreement is otherwise in form and substance satisfactory to Agent in its Permitted Discretion (the "**Approved Contracts**") plus (y) the earned or estimated margin in accordance with GAAP less (z) the aggregate amount actually billed under the Approved Contracts, as evidenced by documentation satisfactory to Agent in its sole discretion, net of any associated "billings in excess of costs" under the Approved Contracts.

"**Eligible Equipment**" means Equipment (other than Rolling Stock) owned by a Borrower that is deemed to be Eligible Equipment based on the application of the eligibility criteria set forth in this definition. Without limiting the generality of the foregoing, no Equipment shall be Eligible Equipment if:

(a) such Equipment is not owned by a Borrower free and clear of all Liens and rights of any other Person (other than Permitted Liens);

(b) such Equipment is located outside of the continental United States;

(c) such Equipment is located on premises leased or rented by a Credit Party or with a bailee or warehouseman at a location with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent unless Agent has established a Rent Reserve with respect thereto;

(d) [reserved];

(e) such Equipment is consigned to or from a Borrower;

(f) the full purchase price for such Equipment has not been paid by a Borrower;

(g) such Equipment is "subject to" (within the meaning of Section 9-311 of the UCC) any certificate of title (or comparable) statute;

(h) such Equipment is obsolete, not in good working order and condition (ordinary wear and tear excepted) or is not used or held for use by a Borrower in the ordinary course of business of such Borrower;

(i) such Equipment is repossessed, attached, seized, made subject to a writ or distress warrant, levied upon or brought within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors;

(j) such Equipment is not covered by casualty insurance in accordance with Section 4.4;

(k) such Equipment is subject to any licensing or other agreement which restricts the ability of the applicable Borrower to use, sell, transport, rent or otherwise dispose of such Equipment or which restricts the Agent's ability to take possession of, sell or otherwise dispose of such Equipment;

(l) Agent shall not have received a written appraisal as to such Equipment, in form, scope and methodology acceptable to Agent, in its Permitted Discretion;

(m) if it is subject to any licensing or other agreement which restricts the ability of such Borrower to use, sell, transport, rent or otherwise dispose of such Equipment or which restricts the Agent's ability to take possession of, sell or otherwise dispose of such Equipment;

(n) if a Borrower is contractually obligated to provide possession of such Equipment to any Person for a term longer than three (3) months (or such longer period as may be agreed to in writing by the Agent in its Permitted Discretion); or

(o) such Equipment is not Collateral that is subject to the Agent's first priority perfected lien (other than any Permitted Liens that have been specifically identified to Agent in writing and for which Agent has, in its Permitted Discretion, established an adequate reserve against the Borrowing Base).

Agent and Borrowers agree that Equipment shall be subject to periodic appraisal by Agent and that valuation of Equipment shall be subject to adjustment pursuant to the results of such appraisal. For the avoidance of doubt, all Equipment that is at any time excluded from Eligible Equipment by virtue of any one or more of the criteria set forth above shall nevertheless constitute Collateral.

"**Eligible Rolling Stock**" means Rolling Stock owned by a Borrower that is deemed to be Eligible Rolling Stock, based on the criteria set forth below. Rolling Stock shall be Eligible Rolling Stock if, as of the date of the applicable Borrowing Base Certificate:

(a) Agent shall have received a written appraisal as to the Rolling Stock, in form, scope and methodology acceptable to Agent, in its Permitted Discretion;

(b) Borrower shall be the sole registered owner of such Rolling Stock;

(c) Such Rolling Stock shall be described (by model, make, manufacturer, Vehicle Identification Number and/or such other identifying information as may be appropriate, as determined by Agent, in its Permitted Discretion) in a schedule to be submitted by Borrowers to Agent on the date of such Borrowing Base Certificate;

(d) Agent shall have a perfected first priority Lien in such Rolling Stock and such Rolling Stock shall be subject to no other Liens, except for Permitted Liens;

(e) (i) Borrowers shall have delivered to Agent a duly executed Collateral Servicing Agreement (which shall be in form and substance reasonably satisfactory to Agent), (ii) Agent (or the Collateral Servicer on Agent's behalf) shall have received an original certificate of title or similar evidence of ownership acceptable to Agent with respect to such Rolling Stock and (iii) Agent shall be named as lienholder on any such certificate of title or other evidence of ownership;

(f) such Rolling Stock is in good operating condition, is not unmerchantable, is not out for repair except in the Ordinary Course of Business and meets in all material respects all standards imposed by any Laws applying to the use of such Rolling Stock;

(g) such Rolling Stock is located in the continental United States of America;

(h) such Rolling Stock, when not in transit or otherwise being utilized on a construction project in the Ordinary Course of Business, is primarily located on premises owned by a Borrower or premises with respect to which Agent has received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent or has established a Rent Reserve; and

(i) such Rolling Stock is acceptable to Agent in its Permitted Discretion as Collateral.

For the avoidance of doubt, all Rolling Stock that is at any time excluded from Eligible Rolling Stock by virtue of any one or more of the criteria set forth above shall nevertheless constitute Collateral.

"**Eligible Unappraised Equipment**" means Equipment (other than Rolling Stock) owned by a Borrower that is deemed to be Eligible Unappraised Equipment, based on the criteria set forth below. Equipment shall be Eligible Unappraised Equipment if, as of the date of the applicable Borrowing Base Certificate:

(a) such Equipment would otherwise constitute Eligible Equipment, but for failing to comply with clause (l) of the definition of Eligible Equipment as a result of being unappraised; and

(b) no more than twelve (12) months have elapsed since the date the applicable Borrower purchased or otherwise obtained ownership of such item of Equipment.

"**Eligible Unappraised Rolling Stock**" means Rolling Stock owned by a Borrower that is deemed to be Eligible Unappraised Rolling Stock, based on the criteria set forth below. Rolling Stock shall be Eligible Unappraised Rolling Stock if, as of the date of the applicable Borrowing Base Certificate:

(a) such Rolling Stock would otherwise constitute Eligible Rolling Stock, but for failing to comply with clause (a) of the definition of Eligible Rolling Stock as a result of being unappraised; and

(b) no more than twelve (12) months have elapsed since the date the applicable Borrower purchased or otherwise obtained title to such item of Rolling Stock.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Credit Party and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**Equipment**" means "equipment" as defined in Article 9 of the UCC.

"**Equity Interests**" means, with respect to any Person, all shares of capital stock, partnership interests, membership interests in a limited liability company or other ownership in participation or equivalent interests (however designated, whether voting or non-voting) of such Person's equity capital (including any warrants, options or other purchase rights with respect to the foregoing), whether now outstanding or issued after the Closing Date.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA** Plan" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Credit Party maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Erroneous Payment**" has the meaning specified therefor in Section 11.20.

"**Erroneous Payment Deficiency Assignment**" has the meaning specified therefor in Section 11.20.

"**Erroneous Payment Impacted Loans**" has the meaning specified therefor in Section 11.20.

"**Erroneous Payment Return Deficiency**" has the meaning specified therefor in Section 11.20.

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

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" means (a) segregated Deposit Accounts into which the only funds deposited are those intended solely to cover wages and payroll for employees of a Credit Party for a period of service no longer than two weeks at any time (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for wages and payroll from prior periods, (b) segregated Deposit Accounts constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such employees, (c) segregated Deposit Accounts in which there is not maintained at any point in time funds on deposit greater than $500,000 in the aggregate for all such accounts, (d) segregated Deposit Accounts maintained by any Permitted Servicing Joint Venture, including Deposit Accounts for receipt of collections and payment of operating expenses, so long as Credit Parties and their Subsidiaries are in compliance with Section 5.18, and (e) segregated Deposit Accounts or Securities Accounts holding cash or Cash Equivalents described in clauses (o) and (p) of the definition of Permitted Liens (and subject to the caps set forth therein); *provided* that the accounts described in clauses (a) through (e) above shall be used solely for the purposes described in such clauses.

"**Excluded Property**" means, collectively:

(a) any lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement to which any Credit Party is a party or any of its rights or interests thereunder if and to the extent that the grant of such security interest shall constitute a result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein or (ii) result in a breach or termination pursuant to the terms of, or default under, any such lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement;

(b) any governmental licenses or state or local franchises, charters and authorizations, to the extent that Agent may not validly possess a security interest in any such license, franchise, charter or authorization under applicable Law;

(c) Excluded Accounts;

(d) any "intent-to-use" trademarks or service mark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051 Section 1(c) or Section 1(d), respectively or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively by the United States Patent and Trademark Office; and

(e) any asset which is subject to a purchase money Lien or Capital Lease permitted hereunder to the extent the granting of a security interest in such asset is prohibited pursuant to the terms of the contract governing such purchase money Lien or Capital Lease;

provided that (x) any such limitation described in the foregoing clauses (a) and (b) on the security interests granted hereunder shall apply only to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable Law (including Sections 9-406, 9-407 and 9-408 of the UCC) or principles of equity, (y) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in such contract, agreement, permit, lease or license or in any applicable Law, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such contract, agreement, permit, lease, license, franchise, authorization or asset shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder, and (z) all rights to payment of money due or to become due pursuant to, and all products and proceeds (and rights to the proceeds) from the sale of, any Excluded Property shall be and at all times remain subject to the security interests created by this Agreement (unless such proceeds would independently constitute Excluded Property).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Revolving Loan Commitment, or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed in respect of a Lender 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 Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implementation of such sections of the Code.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however,* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Fee Letter**" means each agreement (if any) between Agent and Borrower relating to fees payable to Agent and/or Lenders in connection with this Agreement.

"**Financing Documents**" means this Agreement, any Notes, each Fee Letter (if any), the Security Documents, each Subordination Agreement and any other subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Floor**" means the rate per annum of interest equal to one percent (1.00%).

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Governmental Contract**" means any contract between the United States or any department, agency or instrumentality of the United States and a Credit Party.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" and "**Guarantors**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Hard Costs**" means, with respect to an item of Equipment or Rolling Stock, the net cash amount actually paid by the applicable Borrower to acquire title to such item, net of all incentives, discounts and rebates, and exclusive of freight, delivery charges, installation costs and charges, trade-in allowances, software costs, charges and fees, warranty costs, taxes, insurance and other incidental costs or expenses and all indirect costs or expenses of any kind.

"**Hazardous Materials**" means (a) any "hazardous substance" as defined in CERCLA, (b) any "hazardous waste" as defined by the Resource Conservation and Recovery Act, (c) asbestos, (d) polychlorinated biphenyls, (e) petroleum and its derivatives, by-products and other hydrocarbons, and (f) any other pollutant, toxic, radioactive, caustic or otherwise hazardous substance regulated under Environmental Laws.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Holdings**" has the meaning set forth in the introductory paragraph of this Agreement.

"**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 Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any Acquisition, or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Joinder Requirements**" has the meaning set forth in Section 4.11(c).

"**L/C Cash Collateral Accounts**" means, collectively, each segregated Deposit Account from time to time identified to Agent in writing established by Borrower for the sole purpose of securing Borrower's obligations under clause (h) of the definition Permitted Contingent Obligations and containing only such cash or Cash Equivalents that have been required to be pledged to secure such obligations of Borrower; *provided*, that the aggregate amount of cash or Cash Equivalents deposited in all such L/C Cash Collateral Accounts does not, at any time, exceed $15,000,000 in the aggregate.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Environmental Laws and applicable U.S. and non-U.S. export control laws and regulations, including without limitation the Export Administration Regulations.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**Leverage Ratio**" means, for any Defined Period, the ratio of (a) Total Debt as of the last day of such Defined Period to (b) EBITDA of the Credit Parties and their Subsidiaries for such Defined Period; *provided* that for purposes of calculating the Leverage Ratio to determine satisfaction of the condition precedent in Section 7.2(g), Total Debt shall be calculated as of the date of the requested advance after giving pro forma effect to such requested advance.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Credit Party or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"**Liquidity**" means an amount equal to the sum of (a) Revolving Loan Availability *plus* (b) Credit Party Unrestricted Cash at such time.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Revolving Loans.

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means one or more segregated accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business or properties of the Credit Parties, taken as a whole, (b) the rights and remedies of Agent or Lenders under any Financing Document or the ability of Agent or Lenders to enforce the Obligations or realize upon the Collateral, or the ability of any Credit Party to pay or perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document, or (e) the value of any material portion of the Collateral.

"**Material Contracts**" means (a) the Financing Documents, (b) the agreements listed on Schedule 3.17, and (c) each other agreement or contract to which such Credit Party or its Subsidiaries is a party, the termination of which would reasonably be expected to result in a Material Adverse Effect.

"**Maturity Date**" means the date that is five (5) years following the Closing Date.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Funding IV Trust, a Delaware statutory trust, and its successors and assigns.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (i) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month *multiplied by* (ii) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced above or in Section 2.2(a)) from (ii) the Minimum Balance *multiplied by* (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the existence of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Balance Percentage**" means twenty percent (20%).

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Credit Party or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Orderly Liquidation Value**" means the net amount (after all costs of sale), expressed in terms of money, which can be expected to be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis, as reflected in the most recent appraisal delivered hereunder.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

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

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party or any Subsidiary, the ordinary course of business of such Credit Party or Subsidiary, as conducted by such Credit Party in accordance with past practices and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Financing Document.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement, joint venture agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other Equity Interests of such Person.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing 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 Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Overdue Trade Payables**" means all amounts due and owing to any Credit Party's (a) sub-contractors or suppliers providing goods or services on projects, which are outstanding beyond the applicable time period specified for payment pursuant to the applicable federal or state "prompt pay" statute and/or (b) other trade creditors, which are outstanding ninety (90) days or more past their due date, in each case, taking into account the date upon which such obligations are eligible for invoicing and excluding any such amounts to the extent subject to a Permitted Contest.

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payment Recipient**" has the meaning specified therefor in Section 11.20 of this Agreement.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Permits**" means all governmental licenses, authorizations, supplier numbers, registrations, permits, certificates, franchises, qualifications, accreditations, consents and approvals.

"**Permitted Asset Dispositions**" means the following Asset Dispositions:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment (including Rolling Stock) in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries;

(c) abandonment of immaterial Intellectual Property that is, in the reasonable good faith judgment of a Borrower, no longer useful in the conduct of the business of the Borrowers or any of their Subsidiaries;

(d) dispositions consisting of the use or payment of cash or Cash Equivalents in the Ordinary Course of Business for equivalent value and in a manner that is not prohibited by the terms of this Agreement or the other Financing Documents;

(e) (i) Asset Dispositions from a Credit Party to any other Credit Party (other than Holdings), (ii) Asset Dispositions from any Subsidiary that is not a Credit Party to any Credit Party, (iii) Asset Dispositions among any Subsidiaries that are not Credit Parties;

(f) sales, forgiveness or discounting, on a non-recourse basis and in the Ordinary Course of Business, of past due Accounts in connection with the settlement of delinquent Accounts or in connection with the bankruptcy or reorganization of suppliers or customers in accordance with the applicable terms of this Agreement;

(g) to the extent constituting an Asset Disposition, the granting of Permitted Liens;

(h) (i) any termination of any lease, sublease, license or sub-license (other than any licenses constituting Material Contracts) in the Ordinary Course of Business (and any related Asset Disposition of improvements made to leased real property resulting therefrom), (ii) any expiration of any option agreement in respect of real or personal property, and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the Ordinary Course of Business; and

(i) other dispositions of tangible personal property (and not, for the avoidance of doubt, any Intellectual Property, Equity Interests or other intangible assets) so long as (i) the assets subject to such Asset Dispositions are sold for fair value, as determined by the Borrowers in good faith, (ii) at least 75% of the consideration therefor is cash or Cash Equivalents, (iii) no Event of Default has occurred and is continuing at the time such Assets Dispositions are made or would result therefrom, and (iv) the aggregate amount of such Asset Dispositions in any twelve (12) month period does not exceed $500,000.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Credit Party or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however,* that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Credit Parties' and their Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Credit Parties have given prior written notice to Agent of a Credit Party's or its Subsidiary's intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Credit Parties or their Subsidiaries; (e) Credit Parties have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Credit Parties and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Credit Parties and their Subsidiaries shall promptly comply with the requirements thereof.

"**Permitted Contingent Obligations**" means:

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6 or in connection with any other commercial agreement entered into by a Credit Party or a Subsidiary thereof in the Ordinary Course of Business;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any other Swap Contract, *provided, however*, that such obligations are (or were) entered into by Credit Party, Subsidiary or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; and

(h) Contingent Obligations existing or arising in connection with any letter of credit for the in the Ordinary Course of Business, *provided* that the aggregate amount of all such letter of credit reimbursement obligations does not at any time exceed $15,000,000 outstanding;

(i) Contingent Obligations arising under, and subject to the terms of, the Settlement Agreement, in an aggregate amount not to exceed $9,500,000;

(j) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $500,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Credit Parties' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt (including Capital Leases) not to exceed $500,000 at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment and any Permitted Refinancing thereof;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than Permitted Refinancings);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however,* that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums financed through the applicable insurance company;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) to the extent constituting Debt (without duplication) Permitted Contingent Obligations;

(i) Subordinated Debt;

(j) Debt consisting of unsecured intercompany loans and advances incurred by (1) any Borrower owing to any other Borrower, if any, (2) any Guarantor owing to any other Guarantor, and (3) any Guarantor owing to any Borrower, in each case, so long as such Debt constitutes a Permitted Investment of the applicable Credit Party pursuant to clause (h) of the definition of Permitted Investments;

(k) Debt in respect of netting services, overdraft protections and other like services, in each case incurred in the Ordinary Course of Business;

(l) Debt arising out of judgments, attachments or awards (to the extent not covered or paid by insurance as to which the relevant insurance company has acknowledged coverage) in an amount not otherwise resulting in an Event of Default;

(m) Debt in respect of workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of any Credit Party, in each case, in the Ordinary Course of Business;

(n) Debt, in an aggregate amount not to exceed $1,300,000 at any time outstanding, in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management or merchant services, in each case, incurred in the Ordinary Course of Business; and

(o) other unsecured Debt not to exceed $500,000 in the aggregate at any time at any time outstanding.

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

"**Permitted Distributions**" means the following Distributions:

(a) dividends or distributions by any Subsidiary or Joint Venture of any Borrower to such parent Borrower;

(b) Distributions payable solely in the Equity Interests (other than Disqualified Equity Interests) of such Person;

(c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however,* that such repurchase does not exceed $250,000 in the aggregate per fiscal year;

(d) Distributions to Holdings to permit such Person to pay the costs and expenses of their respective board of directors (or other similar governing body), including observer's fees and expenses, provided that any directors' fees shall only be paid to independent directors in an aggregate amount not to exceed $250,000 in any fiscal year;

(e) so long as a Borrower files a consolidated federal income tax return (or any combined, consolidated, unitary or other state or local tax return) with Holdings, such Borrower may make distributions to Holdings to permit Holdings to pay the consolidated, combined, unitary or other federal, state and local income, profits, franchise and capital Taxes then due and owing by Holdings in respect of such Borrower, so long as the amount of such Taxes shall not be greater, nor the receipt by such Borrower of Tax benefits less, than they would have been had such Borrower not filed consolidated income tax returns with Holdings; and

(f) cash dividends in the Ordinary Course of Business to Holdings to the extent necessary to permit Holdings (A) to pay general administrative costs and expenses (including corporate overhead, legal or similar expenses) and franchise fees and taxes and similar fees, taxes and expenses required to maintain the organizational existence of Holdings, in each case, which are reasonable and customary and incurred in the Ordinary Course of Business, plus any reasonable and customary indemnification claims made by directors, officers, members of management or employees of Holdings, in each case, to the extent attributable to the ownership or operations of Holdings or any of its Subsidiaries and (B) to pay audit and other accounting and reporting expenses at Holdings to the extent relating to the ownership or operations of its Subsidiaries.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) To the extent constituting an Investment, cash and Cash Equivalents owned by such Person;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans and advances outstanding pursuant to this clause (d) may not exceed $500,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of any Credit Party in any Subsidiary;

(g) Investments consisting of Deposit Accounts or Securities Accounts in which Agent has received a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable;

(h) Investments by any Credit Party or any Permitted Servicing Joint Ventures in (i) any Borrower, or (ii) any Guarantor to the extent such Guarantor has granted a Lien to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(c);

(i) Investments of cash and Cash Equivalents in any Permitted Servicing Joint Ventures but solely to the extent that (i) no Event of Default has occurred or would occur as a result of such Investments and (ii) the aggregate net amount of such Investments (after taking into account the amount of any dividends or distributions made in cash to Credit Parties from the Permitted Servicing Joint Ventures) made with respect to all Permitted Servicing Joint Ventures does not exceed $10,000,000 in any fiscal year;

(j) non-cash Investments consisting of entry into Permitted Servicing Joint Ventures by the services division of a Credit Party or a Subsidiary of a Credit Party; and

(k) other Investments in an amount not exceeding $500,000 in the aggregate.

"**Permitted Liens**" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA, or with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens on Collateral, other than Borrowing Base Collateral, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Borrowing Base Collateral, for sums not exceeding $1,000,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens and encumbrances in favor of Agent under the Financing Documents;

(g) Liens on Collateral existing on the date hereof and set forth on Schedule 5.2;

(h) any Lien on any equipment securing Debt permitted under clause (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(i) Liens with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(j) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to deposit or securities accounts in favor of banks, other depositary institutions and securities intermediaries solely to secure payment of fees and similar costs and expenses and arising in the Ordinary Course of Business;

(k) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;

(l) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under clause (f) of the definition of Permitted Debt;

(m) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to Deposit Accounts or Securities Accounts in favor of banks, other depositary institutions and securities intermediaries solely to secure payment of fees and similar costs and expenses and arising in the Ordinary Course of Business

(n) Leases or subleases of real property granted in the Ordinary Course of Business;

(o) Liens, deposits and pledges encumbering cash and Cash Equivalents with a value not to exceed $500,000 in the aggregate at any time, to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), public or statutory obligations, surety, indemnity, performance or other similar bonds or other similar obligations arising in the Ordinary Course of Business;

(p) Liens solely in respect of the L/C Cash Collateral Accounts and amounts deposited therein to the extent securing obligations permitted pursuant to clause (h) of the definition of Permitted Contingent Obligations; and

(q) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Credit Party's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Credit Party's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Credit Party or Subsidiary or involving a reorganization of a Credit Party or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Permitted Refinancing**" means Debt constituting a refinancing, extension or renewal of Debt; provided that the refinanced, extended, or renewed Debt (a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended (plus any reasonable and customary interest, fees, premiums and costs and expenses) (b) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (c) is not entered into as part of a sale leaseback transaction, (d) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, (e) the obligors of which are the same as the obligors of the Debt being refinanced or extended, (f) is otherwise on terms no less favorable to Credit Parties and their Subsidiaries, taken as a whole, than those of the Debt being refinanced or extended, and (g) no Event of Default has occurred and is continuing at the time such refinancing, extension or renewal occurs or would result therefrom.

"**Permitted Servicing Joint Venture**" means a joint venture, limited liability company or other business entity between a Credit Party and one or more third parties whether created through a contractual arrangement or ownership of Equity Interests (each, a "**Joint Venture**") that is set forth on Schedule 5.7 as a Joint Venture or which otherwise meets each and all of the following criteria: (a) the formation and governing documents for the Joint Venture provide that the liability of the Credit Party that is a party thereto (as among all of the parties to the Joint Venture) is expressly limited to no more than such Credit Party's pro rata portion of the scope of services and/or other liabilities arising from the Joint Venture, (b) the terms of which formation and governing documents provide for indemnification of such Credit Party against any damages (other than special, indirect or consequential) caused by any other member of the Joint Venture, (c) the scope of the services to be provided by the Joint Venture shall be consistent with the scope of services currently provided by the Credit Parties in the Ordinary Course of Business (taking into account any services that may be currently subcontracted by the Credit Parties in the Ordinary Course of Business), (d) the Joint Venture shall be formed solely for the purpose of bidding upon and entering into one or more contracts with one or more customers and (e) such Credit Party, the Joint Venture or the customer or customers of the Joint Venture shall obtain customary liability and commercial insurance, in amounts and from a reputable insurer as may be necessary for prudent execution of the work by the Joint Venture. For the avoidance of doubt, with respect to any unincorporated Joint Venture, the term "formation and governing documents" as used in this definition shall include the applicable contractual arrangement(s) between a Credit Party and one or more third parties pursuant to which such Joint Venture is operated.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Pledge Agreement**" means that certain Pledge Agreement, executed by Holdings and the other pledgors named therein in favor of the Agent, for the benefit of the Lenders, on the Closing Date, as amended, restated, supplemented or otherwise modified from time to time.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make Revolving Loans, such Lender's right to receive the unused line fee described in Section 2.2(b), the Revolving Loan Commitment Percentage of such Lender, (b) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (c) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the sum of the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

"**Protective Advance**" means all sums expended by Agent in accordance with the provisions of Section 10.4 to (a) protect the priority, validity and enforceability of any lien on, and security interests in, any Collateral and the instruments evidencing and securing the Obligations, (b) prevent the value of any Collateral from being diminished, or (c) protect any of the Collateral from being materially damaged, impaired, mismanaged or taken.

"**Reference Time**" means approximately a time substantially consistent with market practice two (2) SOFR Business Days prior to the first day of each calendar month. If by 5:00 pm (New York City time) on any interest lookback day, Term SOFR in respect of such interest lookback day has not been published on the SOFR Administrator's Website, then Term SOFR for such interest lookback day will be Term SOFR as published in respect of the first preceding SOFR Business Day for which Term SOFR was published on the SOFR Administrator's Website; provided that such first preceding SOFR Business Day is not more than three (3) SOFR Business Days prior to such interest lookback day.

"**Relevant Governmental Body**" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"**Rent Reserve**" means a reserve established by Agent in respect of each location (other than locations owned by a Credit Party or project sites for which a Credit Party is not obligated to pay rent or other charges relating to a landlord or bailee) at which Equipment and/or Rolling Stock of a Credit Party is located that is not subject to a satisfactory landlord waiver or bailee letter (in an initial amount, as of the Closing Date, equal to the sum (as determined by Agent in its Permitted Discretion) of three (3) months' rent, charges or fees), as applicable, as adjusted from time to time by Agent in its Permitted Discretion.

"**Required Lenders**" means at any time Lenders holding (a) fifty-one percent (51%) or more of the Revolving Loan Commitment, or (b) if the Revolving Loan Commitment has been terminated, fifty-one percent (51%) or more of the then aggregate outstanding principal balance of the Loans.

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

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Credit Party reasonably acceptable to Agent.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of Zero Dollars ($0) (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of Zero Dollars ($0)).

"**Revolving Loan Availability**" means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstandings.

"**Revolving Loan Borrowing**" means a borrowing of a Revolving Loan.

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be $0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranches activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $30,000,000 and if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $75,000,000.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

"**Revolving Loan Limit**" means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

"**Revolving Loan Outstandings**" means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**Rolling Stock**" means trucks, tractors, trailers, service vehicles, forklifts, cranes and other vehicles that are subject to a certificate of title registration requirement pursuant to applicable State law.

"**Sanctioned Country**" means any country or territory that is itself subject to comprehensive sanctions maintained by OFAC including at the time of this Agreement, Cuba, Iran, North Korea, Syria and the Crimea, Donetsk People's Republic and Luhansk People's Republic.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Credit Party.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Credit Party and each securities intermediary in which such Credit Party maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement, the Pledge Agreement, the Collateral Servicing Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Servicing Joint Venture Proposal Package**" means, with respect to any proposed Permitted Servicing Joint Venture, the following items, each in form reasonably satisfactory to the Agent:

(a) a copy of the proposed formation and governing documents for the proposed Permitted Servicing Joint Venture (if applicable), together with a description in reasonable detail of the proposed Permitted Servicing Joint Venture and the nature of the project or projects for which the proposed Permitted Servicing Joint Venture would be formed; and

(b) a certificate of a Responsible Officer of the Borrower Representative certifying that:

(i) such proposed Permitted Servicing Joint Venture satisfies the criteria set forth in the definition of "Permitted Servicing Joint Venture" or, if discretionary approval is required with respect to any such criteria, a request for such discretionary approval; and

(ii) no Event of Default exists and the entry into such proposed Permitted Servicing Joint Venture would not cause or result in an Event of Default.

"**Settlement Agreement**" means that certain Settlement Agreement and Mutual Release dated as of January 31, 2022, by and among SCC Group, LLC, AECOM and URS Holdings, Inc.

"**SOFR**" means, with respect to any SOFR Business Day, a rate per annum equal to the secured overnight financing rate for such SOFR Business Day.

"**SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of Term SOFR selected by Agent in its reasonable discretion).

"**SOFR Administrator's Website**" means the website of the SOFR Administrator, currently at https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html, or any successor source for Term SOFR identified by the SOFR Administrator from time to time.

"**SOFR Business Day**" means any day other than a Saturday or Sunday or a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**SOFR Interest Rate**" means, with respect to each day during which interest accrues on a Loan, the rate per annum (expressed as a percentage) equal to (a) Term SOFR for the applicable Interest Period for such day; or (b) if the then-current Benchmark has been replaced with a Benchmark Replacement pursuant to Section 2.2(o), such Benchmark Replacement for such day. Notwithstanding the foregoing, the SOFR Interest Rate shall not at any time be less the Floor.

"**SOFR Loan**" means a Loan that bears interest at a rate based on Term SOFR.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Credit Parties incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion, *provided*, that in each case the applicable Subordinated Debt remains subject to a Subordination Agreement.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"**Subordination Agreement**" means each agreement between Agent and another creditor of Credit Parties, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Credit Party and/or the Liens securing such Debt granted by any Credit Party to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such Equity Interests whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalents thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Credit Party.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

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

"**Term SOFR**" means the greater of (a) the forward-looking term rate for a period comparable to such Interest Period based on SOFR that is published by the SOFR Administrator and is displayed on the SOFR Administrator's Website at approximately the Reference Time for such Interest Period plus 0.11448% and (b) the Floor. Unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 2.2(o), in the event that a Benchmark Replacement with respect to Term SOFR is implemented, then all references herein to Term SOFR shall be deemed references to such Benchmark Replacement.

"**Termination Date**" means the earliest to occur of (a) the Maturity Date, (b) any date on which the maturity of the Loans is accelerated pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Total Debt**" means, without duplication, an amount equal to the total aggregate principal amount of Debt of the Credit Parties and their Subsidiaries of the types described in clauses (a), (b), (d), (e) and (g) of the definition of "Debt".

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

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means each Credit Party or Agent.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Credit Party and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided, however,* that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Any obligations of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) a capital lease obligation under GAAP as in effect prior to giving effect to FASB Accounting Standards Update No. 2016-02, Leases, shall not be treated as a capital lease obligation solely as a result of the adoption of changes in GAAP, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to also mean a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 Settlement and Funding Mechanics. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds.

Section 1.5 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

Section 1.6 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) [Reserved].

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided*, *however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold reserves from the Borrowing Base or Revolving Loan Limit, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's Permitted Discretion, such reserves are necessary; provided that, so long as no Default or Event of Default has occurred and is continuing Agent shall provide Borrower Representative with two (2) Business Days' prior written notice of any institution of a new reserve or increase of existing reserves by Agent.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations (other than unasserted contingent indemnification obligations) pertaining thereto incurred to, but excluding the Termination Date; *provided*, *however,* that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part. For the avoidance of doubt, nothing in this clause shall permit Borrowers to terminate or reduce the Revolving Loan Commitment other than in connection with a prepayment of all Obligations in full and termination of the Revolving Loan Commitment and the Financing Documents in accordance with Section 2.12(b).

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however,* that Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest.

(i) From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the SOFR Interest Rate *plus* the Applicable Margin. Interest on the Loans shall be paid monthly in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans during any Cash Dominion Period shall be subject to a three (3) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders. In the absence of a Cash Dominion Period, all funds transferred to the Payment Account for application to any Revolving Loans shall be applied in the manner set forth in the last sentence of Section 2.6(a).

(ii) In the event one or more of the following events occurs with respect to Term SOFR: (a) a public statement or publication of information by or on behalf of the SOFR Administrator announcing that the SOFR Administrator has ceased or will cease to provide Term SOFR for a 1-month period, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide Term SOFR for a 1-month period; (b) a public statement or publication of information by the regulatory supervisor for the SOFR Administrator, the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official or resolution authority with jurisdiction over the SOFR Administrator, or a court or an entity with similar insolvency or resolution authority, which states that the SOFR Administrator has ceased or will cease to provide Term SOFR for a 1-month period permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide Term SOFR for a 1-month period; or (c) a public statement or publication of information by the regulatory supervisor for the SOFR Administrator announcing that Term SOFR for a 1-month period is no longer, or as of a specified future date will no longer be, representative and Agent has provided Borrower Representative with notice of the same, any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loan at the end of the applicable Interest Period.

(iii) In connection with Term SOFR, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document. Agent will promptly notify Borrower Representative and the Lenders of the effectiveness of any Conforming Changes.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) one half of one percent (0.50%) per annum. The unused line fee shall be paid monthly in arrears on the first day of each month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(c) Minimum Balance Fee. On the first day of each month, commencing on April 1, 2023, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(d) Collateral Fee. From and following the Closing Date, on the first day of each month, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loan Outstandings during the immediately preceding month and (B) the Minimum Balance, *by* (ii) one half of one percent (0.50%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers during a Cash Dominion Event shall be subject to a three (3) Business Day clearance period. The collateral management fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Origination Fee. On the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) the Revolving Loan Commitment, *multiplied by* (ii) one percent (1.00%). Such fee shall be deemed fully-earned on the Closing Date and, once paid, shall be non-refundable.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or the automatic termination of the Revolving Loan Commitments (including any automatic termination due to the occurrence of an Event of Default described in Section 10.1(f) or otherwise)) prior to the Maturity Date, Borrowers shall pay to Agent, on the date of such termination or reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the Revolving Loan Commitment so terminated or reduced *by* the following applicable percentage amount: (x) zero percent (0.00%) for any termination or permanent reduction occurring in the two years following the Closing Date, and (y) one half of one percent (0.50%) thereafter, but excluding any termination or permanent reduction occurring on the Maturity Date. All fees payable pursuant to this paragraph shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(g) [Reserved].

(h) [Reserved].

(i) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable and documented fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers, in each case, subject to the limitations set forth in Section 4.6 (in the case of audits and field examinations) and Section 4.14(d) (in the case of valuations or appraisals of the Collateral).

(j) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(k) [Reserved].

(l) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(m) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

(n) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay to Agent or Lenders, as applicable, the fees set forth in each Fee Letter (if any).

(o) Benchmark Replacement Setting; Conforming Changes.

(i) Upon the occurrence of a Benchmark Transition Event, Agent and Borrowers may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after Agent has posted such proposed amendment to all Lenders and Borrower so long as Agent has not received, by such time, written notice of objection thereto from Lenders comprising the Required Lenders. No such replacement will occur prior to the applicable Benchmark Transition Start Date. In connection with the implementation of a Benchmark Replacement, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document. Agent will promptly notify Borrower Representative and the Lenders of the implementation of any Benchmark Replacement and the effectiveness of any Conforming Changes.

(ii) Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Financing Document, except, in each case, as expressly required pursuant to this Section. Notwithstanding anything to the contrary herein or in any other Financing Document, at any time, (a) if the then-current Benchmark is a term rate (including Term SOFR) and either (i) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (ii) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor, and (b) if a tenor that was removed pursuant to clause (a) above either (i) is subsequently displayed on a screen or information service for a Benchmark or (ii) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor. Agent will promptly notify Borrower Representative of the removal or reinstatement of any tenor of a Benchmark pursuant to this Section.

(iii) Upon Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, any outstanding affected Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 [Reserved].

Section 2.5 [Reserved].

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy; Increased Costs; Inability to Determine Rates; Illegality.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation satisfactory to Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or 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 Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or 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 Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such 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.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or 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 Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) 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 Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) 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) two (2) executed originals of IRS Form W-8ECI (or successor form); (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 substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any 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) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Lender agrees that if any form or certification it previously delivered under this Section 2.8(c) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or 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 Borrowers or Agent to determine the withholding or deduction required to be made.

(d) If any Lender determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided*, *however*, that Borrowers, upon the written request of such Lender or Agent, agree to repay any amount paid over to Borrowers to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to a Lender under any Financing 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 Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or 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 Borrower Representative or Agent as may be necessary for Borrowers and 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 (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 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 Agent in connection with any Financing 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender, (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement, or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes covered by Section 2.8); or (iii) impose on any Lender any other condition, cost or expense affecting this Agreement or SOFR Loans made by such Lender, and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(i) If any Lender requests compensation under any of the clauses in this Section 2.8, or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 13.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(j) Subject to Section 2.2(o), if Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined pursuant to the definition thereof on or prior to the first day of any Interest Period, Agent will promptly so notify the Borrowers and each Lender. Upon notice thereof by Agent to Borrowers, any obligation of the Lenders to make SOFR Loans shall be suspended until Agent revokes such notice. Upon receipt of such notice, any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, Borrower shall also pay any additional amounts required pursuant to this Agreement.

(k) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund SOFR Loans, or to determine or charge interest rates based upon Term SOFR, then, upon notice thereof by such Lender to Borrowers (through Agent), any obligation of such Lender to make SOFR Loans shall be suspended, in each case until such Lender notifies Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, all SOFR Loans shall become Base Rate Loans. Upon any such conversion, Borrower shall also pay any additional amounts required pursuant to this Agreement.

(l) Each party's obligations under this Section 2.8 shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided*, *however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "Fraudulent Conveyance" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) with the written agreement of all Borrowers, renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of all Borrowers, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce upon (upon the occurrence and during the continuation of an Event of Default), waive and release any such Collateral; (v) upon the occurrence and during the continuation of an Event of Default, apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) upon the occurrence and during the continuation of an Event of Default, settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its Permitted Discretion, without affecting the validity or enforceability of the Obligations of any other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, the Obligations are unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full (other than contingent indemnification obligations for which no claim has been made) and all Revolving Loan Commitments terminated, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full and all Revolving Loan Commitments terminated, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full (other than contingent indemnification obligations for which no claim has been made) and all Revolving Loan Commitments terminated. As used in this Section 2.10(e), the term "Recovery Amount" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "Deficiency Amount" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "**Lockbox**") with a United States depository institution reasonably acceptable to Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts and proceeds of other Borrowing Base Collateral are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*; unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. During any Cash Dominion Period, all funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable and documented attorneys' fees and expenses of outside counsel, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising from Agent's gross negligence or willful misconduct.

(c) During the Cash Dominion Period, Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section 2.11 to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Default or Event of Default exists.

(d) To the extent that any collections of Accounts or proceeds of other Borrowing Base Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers.

(e) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Borrowing Base Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(f) During any Cash Dominion Period, Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Borrowing Base Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(g) If any Credit Party breaches its obligation to direct payments of the proceeds of the Borrowing Base Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for such Credit Party, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Borrowing Base Collateral to Borrowers by directing payment to the Lockbox Account.

(h) Nothing in this Section 2.11 shall be deemed to limit any of Agent's or Lenders' remedies following an Event of Default under this Agreement or any other Financing Document or under applicable Law.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) Business Days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have (i) paid all of the Obligations (other than contingent indemnification obligations for which no claim has been made) in cash, in full and in immediately available funds, and (ii) complied with Section 2.12(c), the other terms of this Agreement and the terms of any Fee Letter. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations (other than contingent indemnification obligations for which no claim has been made) have been discharged or paid, in full, in immediately available funds, including, without limitation, Obligations under Section 2.2 and the terms of any Fee Letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage. Upon the payment in full, in cash in immediately available funds, of all Obligations (other than unasserted contingent indemnification obligations) and the termination of the Revolving Loan Commitments, as Borrower may reasonably request, Agent shall, at Borrower's sole cost and expense, execute and deliver such documents evidencing the release and termination of the security interest in the Collateral granted under this Agreement and the other Financing Documents pursuant to and in accordance with the terms of any applicable payoff documentation.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Credit Party hereby represents and warrants to Agent and each Lender, that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization specified on Schedule 3.1, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such powers or Permits would not reasonably be expected to result in a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, except in the case of this clause (e), where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party are (a) within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority other than (i) recordings, filings and other perfection actions in connections with the Liens granted to Agent under this Agreement or any Security Document and (ii) those obtained or made prior to the Closing Date and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Financing Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The issued and outstanding equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens and those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other Equity Interests of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents in all material respects the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2021, nothing has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Credit Party's knowledge threatened in writing against, any Credit Party or, to such Credit Party's knowledge, any party to any Financing Document other than a Credit Party. There is no Litigation pending against any Credit Party in which an adverse decision could reasonably be expected to have a Material Adverse Effect.

Section 3.7 Ownership of Property. Each Credit Party and each of its Subsidiaries is the lawful sole owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person, subject only to Permitted Liens.

Section 3.8 No Default. No Event of Default, or to such Credit Party's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to result in a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Credit Party's knowledge, threatened in writing against any Credit Party, which could reasonably be expected to have a Material Adverse Effect. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound, which could reasonably be expected to have a Material Adverse Effect.

Section 3.10 Investment Company Act. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations.

(a) The Credit Parties and their Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, the Credit Parties and their Subsidiaries do not own or hold any Margin Stock.

(b) None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services directly or indirectly to or for the benefit of any Blocked Person or Sanctioned Country, or (B) deals in, or otherwise engages in any transaction directly or indirectly relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and local income and all other material tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all federal income and other material Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All material federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Credit Party and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 [Reserved].

Section 3.17 Material Contracts. Except for the agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party).

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Credit Party's knowledge, threatened in writing by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Credit Party, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Credit Party's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Credit Party, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all licenses under which any Credit Party is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party's interest in such license or agreement or other property. To such Credit Party's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Credit Party under the Financing Documents, each Borrower and each additional Credit Party, on a consolidated basis, is Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Financing Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Credit Parties (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Credit Party's best estimate of such Credit Party's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided, however*, that Credit Parties can give no assurance that such projections will be attained. Agent and each Lender acknowledges and agrees that all financial performance projections delivered to Agent represent Borrowers' best good faith estimate of future financial performance and are based on assumptions believed by Credit Parties to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results.

Section 3.22 Senior Indebtedness Status. The Obligations of each Credit Party under this Agreement and each of the other Financing Documents ranks and shall continue to rank at least senior in priority of payment to all Debt that is contractually subordinated to the Obligations of each such Person under this Agreement and is designated as "Senior Indebtedness" (or an equivalent term) under all instruments and documents, now or in the future, relating to all Debt that is contractually subordinated to the Obligations under this Agreement of each such Person.

Section 3.23 Subsidiaries. Credit Parties do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 [Reserved].

Section 3.25 Borrowing Base Collateral; Governmental Contracts; Governmental Account Debtors.

(a) As to each Account that is identified by Borrowers as an Eligible Account or an Eligible Costs in Excess of Billings, as applicable, in a Borrowing Base Certificate submitted to Agent, such Account is (i) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the Ordinary Course of Business of the applicable Borrower, (ii) owed to the applicable Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (iii) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Account or Eligible Costs in Excess of Billings, as applicable.

(b) As to each item of Equipment that is identified by the applicable Borrowers as Eligible Equipment or Eligible Unappraised Equipment in a Borrowing Base Certificate submitted to Agent, such Equipment is (a) in good repair and physical condition, (b) not excluded as ineligible by virtue of one or more of the excluding criteria (set forth in the definition of Eligible Equipment or Eligible Unappraised Equipment, as applicable), and (c) otherwise constitutes Eligible Equipment or Eligible Unappraised Equipment under such applicable definition.

(c) As to each item of Rolling Stock that is identified by the applicable Borrowers as Eligible Rolling Stock or Eligible Unappraised Rolling Stock in a Borrowing Base Certificate submitted to Agent, such Rolling Stock is (a) in good repair and physical condition, (b) not excluded as ineligible by virtue of one or more of the criteria (set forth in the definition of Eligible Rolling Stock or Eligible Unappraised Rolling Stock, as applicable), and (c) otherwise constitutes Eligible Rolling Stock or Eligible Unappraised Rolling Stock under the applicable definition.

(d) Except as set forth on Schedule 3.25, no event has occurred and, to the knowledge of Borrower, no condition exists that is reasonably likely to result in the debarment or suspension of any Credit Party from any contracting with a Governmental Authority, and no Credit Party has been subject to any such debarment or suspension prior to the date of this Agreement. There is no investigation by a Governmental Authority or inquiry pending or, to Borrowers' knowledge, threatened in writing against any Credit Party involving fraud, deception or willful misconduct in connection with any Governmental Contract of any Credit Party or any activities of any Credit Party that (i) is reasonably likely to result in debarment or suspension of any Credit Party from any contracting with a Governmental Authority and (ii) has had, or could reasonably be expected to have, a Material Adverse Effect.

(e) (i) Except as set forth on Schedule 3.25, no Credit Party has received written notification of a material breach on a Governmental Contract due to cost schedule, technical or quality problems that have resulted in one or more fault-based claims against such Credit Party (or a successor in interest) by any Governmental Authority in excess of $500,000; and (ii) except awarded Governmental Contracts being protested or otherwise challenged by a third party, all current Governmental Contracts have been legally awarded, are binding on the applicable Credit Party, and to Borrowers' knowledge, are binding on the other parties thereto and are in full force and effect.

(f) Except as set forth on Schedule 3.25, and except where such event could not reasonably be expected to have a Material Adverse Effect, (i) each Credit Party has complied with all statutory and regulatory requirements, including the Contract Disputes Act, the Procurement Integrity Act, the Federal Procurement and Administrative Services Act, the Federal Acquisition Regulations and related cost principles and the cost accounting standards, where and as relevant and applicable to each of the Governmental Contracts; (ii) to Borrowers' knowledge, no termination for default, cure notice or show cause notice has been issued and remains unresolved with respect to any Governmental Contract; and to the best of Borrowers' knowledge, no event, condition or omission has occurred or exists that would constitute grounds for such action; and (iii) other than retainage of a portion of the money due under any Governmental Contract in the ordinary course, no money due to any Credit Party pertaining to any Governmental Contract has been withheld or set-off as a result of any claim(s) made against any Credit Party.

(g) No Credit Party is a party to any litigation that could reasonably be expected to give rise to (i) liability under the False Claims Act or (ii) a claim for price adjustment under the Truth in Negotiations Act that would have a material adverse effect on any Eligible Account.

(h) As of the Closing Date, no Governmental Contract to which any Credit Party has been a party has been terminated by a Governmental Authority for default in the past eighteen (18) months.

Each Credit Party maintains systems of internal controls (including cost accounting systems, estimating systems, purchasing systems, proposal systems, billing systems and material management systems), where required, that are in compliance in all material respects with all requirements of all of the Governmental Contracts and of applicable government laws and regulations.

ARTICLE 4- AFFIRMATIVE COVENANTS

Each Credit Party agrees that:

Section 4.1 Financial Statements and Other Reports and Notices. Each Credit Party will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, cash flow and income statement (including year-to-date results) covering Credit Parties' and their Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP (subject to normal adjustments and the absence of footnote disclosures), consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form reasonably acceptable to Agent; provided that other than financials delivered with respect to the last month of a fiscal quarter, the financials delivered pursuant to this clause (a) do not need to be "closed books";

(b) as soon as available, but no later than one hundred twenty (120) days after the last day of Credit Party's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion;

(c) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Credit Parties' security holders or to any holders of Subordinated Debt;

(d) a prompt, but in no event later than when the next Compliance Certificate is required to be delivered, written report of any legal actions pending or threatened in writing against any Credit Party or any of its Consolidated Subsidiaries that would reasonably be expected to result in a Material Adverse Effect;

(e) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property;

(f) within thirty (30) days after the start of each fiscal year, projections for the forthcoming fiscal year, on a quarterly basis;

(g) promptly (and in any event within ten (10) days of any reasonable written request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Credit Parties, their business and the Collateral as Agent may from time to time reasonably request;

(h) together with each delivery of financial statements pursuant to clause (a) above, deliver to Agent a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing (i) in respect of any calendar month ending a fiscal quarter, compliance with the financial covenants set forth in Article 6, as applicable, and (ii) monthly cash and Cash Equivalents of the Credit Parties, taken as a whole, as of the date that is five (5) Business Days prior to the delivery of the applicable Compliance Certificate;

(i) within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer; provided, that, upon any sale, transfer or other disposition of Borrowing Base Collateral (other than to a Borrower) having a value greater than $250,000 in any transaction or series of related transactions, the Borrower Representative shall concurrently deliver to Agent an updated Borrowing Base Certificate giving pro forma effect to such disposition demonstrating that the Revolving Loan Outstandings will not exceed the Revolving Loan Limit on a pro forma basis after giving effect to such disposition, subordination, designation or release;

(j) simultaneously with the delivery of each set of financial statements referred to in Section 4.1(a) delivered as of the end of a fiscal quarter, a quarterly report of (i) an "EAC Report" or substantially similar update regarding estimated completion of all contracts in process and (ii) backlog by contract, in each case in such form as the Agent may reasonably request;

(k) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act; and

(l) promptly, but in any event within five (5) Business Days, after any Responsible Officer of any Credit Party obtains actual knowledge of the occurrence of any event or change that has resulted or would reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto.

Section 4.2 Payment and Performance of Obligations. Each Credit Party (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to result in a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all material amounts due and owing in respect of (i) all federal Taxes (including without limitation, payroll and withholdings tax liabilities) and (ii) all material foreign and state Taxes and other local Taxes (including without limitation, payroll and withholdings tax liabilities), in each case, on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, except to the extent subject to a Permitted Contest, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which would not reasonably be expected to result in a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Credit Party will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, unless, solely in the case of this clause (b), a failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Credit Party will keep, and will cause each Subsidiary to keep, all property used and necessary in its business (including, without limitation, all Equipment and Rolling Stock) in good working order and condition in all material respects, ordinary wear and tear and casualty event excepted.

(b) Each Credit Party will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided, however,* that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(c) On or prior to the date specified on Schedule 7.4, and at all times thereafter, each Credit Party will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Credit Parties shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Credit Parties' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within ten (10) Business Days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of material coverage by any Credit Party, and (v) at least thirty (30) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(d) In the event any Credit Party fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Credit Parties' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Credit Party's interests. The coverage purchased by Agent may not pay any claim made by such Credit Party or any claim that is made against such Credit Party in connection with the Collateral. Such Credit Party may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Credit Party has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Credit Parties will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Credit Party is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts.

(a) Each Credit Party will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (i) result in a Material Adverse Effect, or (ii) result in any Lien upon either (x) a material portion of the assets of any such Person in favor of any Governmental Authority, or (y) any Borrowing Base Collateral.

(b) Without limiting the generality of Section 4.5(a), with respect to any Governmental Contract for which Agent reasonably requests that a Credit Party comply with the provisions of the Federal Assignment of Claims Act, Agent shall prepare and deliver to such Credit Party, with a copy to the Borrower Representative, (A) a properly completed notice of assignment (in form and substance reasonably satisfactory to Agent) and a properly completed instrument of assignment (in form and substance reasonably satisfactory to Agent; such instrument together with the notice, the "Federal Assignment Documents") with respect to such Governmental Contract, in order that all moneys due or to become due under such Governmental Account shall be assigned to Agent, for the benefit of the Lenders. Promptly (and in any event within five (5) Business Days) after receipt thereof (to the extent sent by Agent upon the occurrence and during the continuance of an Event of Default), the applicable Credit Party shall execute and return to Agent such Federal Assignment Documents. Agent is authorized to file the Federal Assignment Documents with the appropriate Governmental Authority at any time thereafter and shall simultaneously provide a copy of such filing to Borrower Representative and the applicable Credit Party.

Section 4.6 Inspection of Property, Books and Records. Each Credit Party will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Credit Party or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, evaluate and make physical verifications and appraisals of the Equipment, Rolling Stock and other Collateral in any manner and through any medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Credit Parties and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. Notwithstanding the foregoing, unless a Default or Event of Default has occurred and is continuing, such collateral audits shall not occur more than two (2) times during such twelve-month period. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Credit Party or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of Revolving Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the refinancing on the Closing Date of Debt and cash collateralization of certain outstanding letters of credit, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or for any other purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System, including Regulation T, U, or X of the Federal Reserve Board.

Section 4.8 [Reserved].

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) (i) Credit Parties shall promptly (but in any event within five (5) Business Days) provide written notice to Agent after any Credit Party or Subsidiary receives or delivers any written notice of termination or default (or similar notice) in connection with any Material Contract, and (ii) Credit Parties shall provide, together with the next Compliance Certificate required to be delivered under this Agreement, written notice to Agent after any Credit Party or Subsidiary (1) executes and delivers any material amendment, consent, waiver or other modification to any Material Contract (other than change orders incurred in the Ordinary Course of Business) or (2) enters into any new Material Contract and shall, upon written request of Agent, promptly provide Agent a copy thereof.

(b) Credit Parties shall promptly (but in any event within five (5) Business Days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Borrower becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened (in writing) against any Credit Party, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others, (v) of all returns, recoveries, disputes and claims that involve more than $1,000,000, and (vi) any notices of default given or received with respect to any Permitted Servicing Joint Venture and, upon written request of the Agent, such additional material or documentation provided by or to the Credit Parties with respect to each such Permitted Servicing Joint Venture as may be reasonably requested. Credit Parties represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against any Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Credit Party, such Credit Party will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Credit Party shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Credit Parties will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Credit Party will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Credit Parties (other than any Permitted Servicing Joint Ventures) to be jointly and severally obligated with the other Credit Parties under all covenants and obligations under this Agreement, including the obligation to repay the Obligations. Without limiting the generality of the foregoing, (x) Credit Parties shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed supplement to the applicable Credit Party's Patent Security Agreement or Trademark Security Agreement in the form of the respective Exhibit thereto, and (y) at the request of Agent, following the disclosure by Credit Parties on any Compliance Certificate of the acquisition by any Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person, Credit Parties shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent, to the extent legally possible, in such Credit Party's rights under such license and shall use their commercially reasonable best efforts to obtain the written consent of the licensor which such license to the granting in favor of Agent of a Lien on such Credit Party's rights as licensee under such license.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Credit Parties will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Each Credit Party shall provide Agent with at least ten (10) Business Days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or, to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Credit Parties shall, within thirty (30) days thereof: (i) pledge, have pledged, or cause to be pledged to Agent pursuant to a pledge agreement in form an substance satisfactory to Agent, all of the outstanding Equity Interests of such new Subsidiary owned directly or indirectly by any Credit Party, along with undated stock or equivalent powers for such certificate, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien on all real and personal property (other than Excluded Property) of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to the Security Documents; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent (the requirements set forth in clauses (i) through (iv), the "**Joinder Requirements")**.

Section 4.12 Rolling Stock.

(a) Each Borrower shall at all times maintain records with respect to Rolling Stock reasonably satisfactory to Agent, keeping correct, detailed and accurate records describing the Rolling Stock and shall keep its Rolling Stock in good repair and physical condition.

(b) Prior to the date that any Rolling Stock is included in the Borrowing Base, the Borrowers shall have submitted applications to the relevant state agencies for lien notations in Agent's name with respect to such certificates of title of such Rolling Stock and delivered, promptly after its receipt of certificates of title noting Agent's interest, all such certificates of title to Agent; provided that, in those states where submitting an application to have a Lien noted on a certificate of title for any Rolling Stock is not sufficient to perfect such Lien under the applicable state law, then in addition, Agent shall have received evidence that Agent's Lien with respect to such Rolling Stock has been noted on the certificate of title, except as Agent may otherwise agree.

(c) Unless and until Agent may direct otherwise, the following items relating to Rolling Stock shall be located only at such locations that are reasonably acceptable to Agent: (i) any manufacturers' statements of origin or manufacturers' certificates of origin and other certificates, statements, bills of sale or other evidence of the transfer to or ownership of any Borrower of any of the Rolling Stock; and (ii) any certificates of title at any time issued under the laws of any State or other jurisdiction with respect to any of the Rolling Stock. In addition, and not in limitation of the rights of Agent hereunder, promptly upon Agent's written request, Agent may require delivery of the documents identified in the prior sentence to it or to such third party as Agent may specify.

(d) Each Borrower will keep the Rolling Stock of such Borrower only at locations reasonably acceptable to Agent, except for: (i) Rolling Stock out for repair; (ii) Rolling Stock in transit between locations, (iii) Rolling Stock in "over the road use," and (iv) the locations set forth in Schedule 9.2(b) and such other locations of which Borrowers shall notify Agent in writing from time to time; *provided* that, in accordance with Section 4.11(d) and the definition of "Eligible Rolling Stock", Agent has received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent in respect of each "material leased location" denoted as such on Schedule 9.2(b) or Agent has taken a Rent Reserve in lieu thereof.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for each of the Credit Parties (without requiring any of them to act as such) with full power of substitution to do the following: (a) after the occurrence and during the continuance of an Event of Default, endorse the name of such Credit Party upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to such Credit Party and constitute collections on such Credit Parties' Accounts; (b) after the occurrence and during the continuance of an Event of Default, so long as Agent has provided not less than three (3) Business Days' prior written notice to such Credit Party to perform the same and such Credit Party has failed to take such action, execute in the name of such Credit Party any schedules, assignments, instruments, documents, and statements that the Credit Parties are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action the Credit Parties are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to such Credit Party to perform the same and such Credit Party has failed to take such action, do such other and further acts and deeds in the name of such Credit Party that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of the Credit Parties that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) days after the date of this Agreement (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers shall at all times keep correct and accurate records (in all material respects) itemizing and describing the location, kind, type, age and condition of its Equipment, Borrowers' cost therefor and accumulated depreciation thereof, and retirements, sales, or other dispositions thereof, all of which records shall be available on demand to any of the officers, employees or agents of the Agent.

(d) Agent shall receive, at Borrowers' expense, updated appraisals with respect to the Equipment and Rolling Stock, in each case reporting the current Net Orderly Liquidation Value of such Equipment and Rolling Stock and prepared by an appraisal firm satisfactory to Agent; *provided*, that, so long as no Event of Default has occurred and is continuing, such appraisals shall not occur more than (i) one (1) time during such twelve-month period with respect to Rolling Stock and (ii) one (1) time during such twelve-month period with respect to Collateral (other than Rolling Stock); and *provided* further that Agent may require such updated appraisals more frequently, at Borrowers' expense, if any Event of Default has occurred and is continuing under the Financing Documents.

Section 4.15 Schedule Updates. The Credit Parties shall, in the event of any information in the Schedule 3.19, Schedule 5.14, Schedule 9.2(b) or Schedule 9.2(d) becoming outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next Compliance Certificate required to be delivered under this Agreement after such event a proposed update to such Schedule correcting all outdated, inaccurate, incomplete or misleading information.

Section 4.16 Permitted Servicing Joint Ventures.

(a) The Borrower Representative shall submit a Servicing Joint Venture Proposal Package with respect to a proposed Joint Venture to the Agent at least ten (10) Business Days prior to the time at which the formation and governing documents of such Joint Venture would become binding upon a Credit Party. If the Borrower Representative submits a Servicing Joint Venture Proposal Package for an Investment that does not satisfy the criteria set forth in the definition of "Permitted Servicing Joint Venture", the Agent may, in its sole discretion, determine to approve such Investment as a "Permitted Servicing Joint Venture", notwithstanding the failure of such Investment to satisfy the criteria set forth in the definition of "Permitted Servicing Joint Venture". The Agent shall respond to the Borrower Representative's request for such approval within five (5) Business Days after receipt of the Servicing Joint Venture Proposal Package; provided that the Agent's failure to respond within such five (5) Business Day period shall be deemed to be a rejection of such Servicing Joint Venture Proposal Package.

(b) Within five (5) Business Days following the execution of definitive documentation relating to such Permitted Servicing Joint Venture, the Borrower Representative shall deliver to the Agent sufficient copies of all such definitive documentation for distribution to the Lenders (any such documentation that meets the definition of a Material Contract, shall be considered a Material Contract).

ARTICLE 5- NEGATIVE COVENANTS

Each Credit Party agrees that:

Section 5.1 Debt; Contingent Obligations.

(a) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt.

(b) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

(c) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Debt prior to its scheduled date for payment (except (i) with respect to the Obligations permitted under this Agreement, (ii) for Capital Lease obligations and (iii) for Subordinated Debt solely to the extent permitted by Section 5.5).

Section 5.2 Liens. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt and Capital Leases permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired; or

(b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Credit Party or any Subsidiary; (ii) pay any Debt owed to any Credit Party or any Subsidiary; (iii) make loans or advances to any Credit Party or any Subsidiary; or (iv) transfer any of its property or assets to any Credit Party or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the applicable Subordination Agreement;

(b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the applicable Subordination Agreement;

(c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto; or

(d) amend or otherwise modify the terms of any such Debt referred to in clauses (a) through (c) above, if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt if in any way adverse to Agent or Lenders, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment or redemption provisions of such Debt or any of the defined terms related thereto in a manner adverse to Agent or Lenders, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Credit Parties, any Subsidiaries, Agent or Lenders. Credit Parties shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) consolidate or merge or amalgamate with or into any other Person, other than (i) consolidations or mergers among Borrowers so long as a Borrower is the surviving entity, (ii) consolidations or mergers among a Guarantor (other than Holdings) and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors so long as in any consolidation or merger involving Holdings, Holdings is the surviving entity, (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, and (v) so long as no Event of Default has occurred and is continuing, dissolutions or liquidations of any non-Credit Party Subsidiary so long as any assets of such dissolved or liquidated Person are transferred to a Credit Party; or

(b) consummate any Asset Dispositions other than Permitted Asset Dispositions.

Section 5.7 Purchase of Assets, Investments. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) acquire or own or enter into any agreement to acquire or own any Investment or Acquisitions other than Investments and Acquisitions constituting Permitted Investments,

(b) except as permitted in clause (a), acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business; or

(c) engage or enter into any agreement to engage in any joint venture or partnership with any other Person (other than Permitted Servicing Joint Ventures).

Without limiting the foregoing, no Credit Party shall, nor will any Credit Party permit any Subsidiary to, purchase or carry Margin Stock.

Section 5.8 Transactions with Affiliates. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Credit Party, except for:

(a) transactions disclosed on Schedule 5.8 on the Closing Date;

(b) transactions that are disclosed to Agent in advance of being entered into and which contain terms that are not materially less favorable to the applicable Credit Party or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party;

(c) transactions that are expressly permitted by this Agreement to be conducted between Credit Parties;

(d) Permitted Distributions;

(e) Permitted Investments made pursuant to clause (h) of the definition thereof; and

(f) employment, indemnity and severance arrangements between any Credit Party or its Subsidiaries and their officers, directors and managers in the Ordinary Course of Business.

Section 5.9 Modification of Organizational Documents. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) would reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (c) would otherwise be reasonably expected to result in a Material Adverse Effect.

Section 5.11 Conduct of Business. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Credit Party will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 [Reserved].

Section 5.13 Limitation on Sale and Leaseback Transactions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Credit Party or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) Each Credit Party will, and will cause its Subsidiaries to, cause each Deposit Account and Securities Account (other than Excluded Accounts) to be subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable;

(b) Without limiting clause (a), no Credit Party will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent shall otherwise consent or such Deposit Account or Securities Account constitutes an Excluded Account, such Credit Party or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account;

(c) As of the Closing Date and each date that a Compliance Certificate is required to be delivered pursuant to Section 4.1 hereof, Credit Parties represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Credit Party. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to Excluded Accounts; and

(d) At all times that any Obligations remain outstanding, Credit Parties shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account; *provided, however,* that the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any requirement of Law with respect to such accounts).

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Credit Parties that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Credit Parties and their principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any contracts or agreements or otherwise engage in transactions directly or indirectly with or related to any Blocked Person or any Person listed on the OFAC Lists or any Sanctioned Country. Each Credit Party shall promptly notify Agent if such Credit Party has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) enters into a settlement agreement with a U.S. government agency, (c) pleads nolo contendere to, (d) is indicted on, or (e) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering, Anti-Terrorism Laws or export control laws. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with or related to any Blocked Person or Sanctioned Country, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person or Sanctioned Country, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Agreements Regarding Receivables. No Credit Party may backdate, postdate or redate any of its invoices. No Credit Party may make any sales on extended dating or credit terms beyond that customary in such Credit Party's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Credit Party's learning thereof, in the event any Eligible Account or Eligible Costs in Excess of Billings becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Credit Party, and such Credit Party will settle or adjust such material disputes and claims at no expense to Agent; *provided, however,* no Credit Party may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the Ordinary Course of Business or (ii) which discount, credit or allowance exceeds an amount equal to $1,000,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account and/or Eligible Costs in Excess of Billings. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts, Eligible Equipment, Eligible Unappraised Equipment, Eligible Rolling Stock, Eligible Unappraised Rolling Stock or Eligible Costs in Excess of Billings provided in Section 1.1.

Section 5.17 Permitted Activities of Holdings. Holdings shall not engage in any material business activity other than, in each case, (i) its ownership of the Equity Interests of its Subsidiaries and activities incidental thereto, (ii) the entry into, and the performance of its obligations with respect to, the Financing Documents or documentation relating to other Debt permitted to be incurred hereunder and other agreements contemplated hereby and thereby (except that Holdings not shall be a primary obligor (as distinguished from a guarantor) of indebtedness for borrowed money, (iii) the payment of Permitted Distributions, the issuance of its own Equity Interests, the making of contributions to the capital of its Subsidiaries and the incurrence of the Obligations, (iv) maintaining deposit accounts in connection with the conduct of its business, and paying Taxes and other customary obligations in the Ordinary Course of Business, and (v) complying with applicable Law and activities incidental to the foregoing.

Section 5.18 Permitted Servicing Joint Ventures.

(a) No Credit Party shall make any Asset Disposition to or Investment in any Permitted Servicing Joint Ventures other than (i) Investments of cash and cash equivalents permitted to be made pursuant to clause (i) of the definition of "Permitted Investments" and (ii) non-cash Investments consisting of entry into Permitted Servicing Joint Ventures permitted to be made pursuant to clause (j) of the definition of "Permitted Investments".

(b) Credit Parties shall (i) cause each Permitted Servicing Joint Venture for which it has sole authority regarding cash distributions to distribute any cash and cash equivalents not less frequently than monthly and (ii) use reasonable best efforts to cause each other Permitted Servicing Joint Ventures to distribute any cash and cash equivalents not less frequently than monthly. Credit Parties shall not permit, at any time, the average daily balance of the total amount of cash and cash equivalents held by all Permitted Servicing Joint Ventures to which a Credit Party has sole authority regarding cash distributions to exceed $5,000,000.00 (or the equivalent thereof in any foreign currency) for 30 consecutive days in the aggregate.

(c) No Credit Party will, or will permit any Subsidiary, to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any Person other than a Credit Party.

(d) No Credit Party will permit any Permitted Servicing Joint Venture to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any Credit Party.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Leverage Ratio. Credit Parties will not permit the Leverage Ratio for any Defined Period, as tested quarterly commencing with the quarter ending June 30, 2023, to be greater than 1.75 to 1.00.

Section 6.2 Evidence of Compliance. Credit Parties shall furnish to Agent, as required by Section 4.1 hereof, a Compliance Certificate as evidence of (a) the monthly cash and Cash Equivalents of Credit Parties and their Subsidiaries, (b) Credit Parties' quarterly compliance with the covenants in Section 6.1 and (c) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such month as Agent shall reasonably require) evidencing the propriety of the calculations set forth on the Compliance Certificate. A breach of a financial covenant contained in this Article 6 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit G prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders in their sole discretion:

(a) the receipt by Agent of executed counterparts of this Agreement and the other Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) since December 31, 2021, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any seller of any assets or business to be purchased by any Credit Party contemporaneous with the Closing Date, or any event or condition which could reasonably be expected to result in such a material adverse change;

(d) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date; and

(e) evidence that (i) (x) Liquidity of the Credit Parties *minus* (y) the aggregate amount of Overdue Trade Payables, is at least $25,000,000 and (ii) Revolving Loan Availability is not less than $15,000,000, in each case, after giving pro forma effect to the use of proceeds of the Revolving Loans advanced hereunder on the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan is subject to the satisfaction of the following additional conditions:

(a) in the case of each borrowing of Revolving Loans, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) of an updated Borrowing Base Certificate;

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(d) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

(e) for Loans made after the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; *provided, however,* in each case, such materiality qualifier shall not be applicable to any representations and warranties that are already qualified or modified by materiality in the text thereof;

(f) the fact that no Material Adverse Effect shall have occurred and be continuing with respect to any Credit Party since the date of this Agreement; and

(g) the fact that, immediately before and after such advance, the Leverage Ratio shall not exceed 1.75 to 1.00 on a pro forma basis (it being understood, for the avoidance of doubt, that for purposes of such pro forma calculation, EBITDA shall be calculated as of the most recently-ended Defined Period for which the financial statements required by Section 4.1(a) have been delivered to Agent).

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct in all material respects as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date); *provided, however,* in each case, such materiality qualifier shall not be applicable to any representations and warranties that are already qualified or modified by materiality in the text thereof.

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its Permitted Discretion), Agent shall have the right to perform, all at Credit Parties' expense, the searches described in clauses (a), (b), and (c) below against each Credit Party, the results of which are to be consistent with Credit Parties' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Credit Parties shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent.

ARTICLE 8 - [RESERVED]

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations and without limiting any other grant of a Lien and security interest in any Security Document, each Credit Party hereby assigns, grants and pledges to Agent, for the benefit of itself and Lenders, and, subject only to Permitted Liens, a continuing first priority Lien on and security interest in, upon, and to the property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account for which Deposit Account Control Agreements are required pursuant to this Agreement, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property, (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper and (viii) in the case of any Rolling Stock or other Equipment evidenced by a certificate of title, compliance with any certificate of title statute of any state with respect to vehicles owned by a Borrower that are subject to such a statute. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Credit Party and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Credit Parties regarding any Collateral or any of the Credit Parties' assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2(b) indicates in each case which Credit Party(ies) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Credit Party(ies), indicates the nature of such location (e.g., leased business location operated by Credit Party(ies), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Credit Party as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Credit Party to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the granting of the security interest or the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Credit Party and any other Person relating to any such collateral, including any license to which a Credit Party is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Credit Party or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Credit Party has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property evidencing an obligation in excess of One Hundred Thousand Dollars ($100,000) individually or in excess of Two Hundred Fifty Thousand Dollars in the aggregate for all such obligations (other than equity interests in any Subsidiaries of such Credit Party disclosed on Schedule 3.4) and Credit Parties shall give notice to Agent promptly (but in any event not later than the delivery by Credit Parties of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Credit Party of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property evidencing an obligation in excess of One Hundred Thousand Dollars ($100,000) individually or in excess of Two Hundred Fifty Thousand Dollars in the aggregate for all such obligations. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Credit Party has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of any Credit Party is maintained).

(e) Credit Parties shall not, and shall not permit any Subsidiary to, take any of the following actions or make any of the following changes unless Credit Parties have given at least thirty (30) days prior written notice to Agent of Credit Parties' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Credit Party as it appears in official filings in the jurisdiction of its organization, (ii) without Agent's prior written consent, change the jurisdiction of incorporation or formation of any Credit Party or Subsidiary or allow any Credit Party or Subsidiary to designate any jurisdiction as an additional jurisdiction of incorporation for such Credit Party or Subsidiary, or change the type of entity that it is; *provided* that in no event shall a Credit Party organized under the laws of the United States or any state thereof be reorganized under the laws of a jurisdiction other than the United States or any State thereof, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Subject to Section 5.16, Credit Parties shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Event of Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Credit Parties with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Credit Parties and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Credit Parties shall deliver to Agent all tangible Chattel Paper and all Instruments and documents evidencing an obligation in excess of Two Hundred Fifty Thousand Dollars ($250,000) individually or in excess of Five Hundred Thousand Dollars ($500,000) in the aggregate for all such obligations owned by any Credit Party and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Credit Parties shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper evidencing an obligation in excess of Two Hundred Fifty Thousand Dollars ($250,000) individually or in excess of Five Hundred Thousand Dollars ($500,000) in the aggregate for all such obligations owned by any Credit Party and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Credit Parties also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments (other than those with a value of less than Five Hundred Thousand Dollars ($500,000) in the aggregate). Credit Parties will mark conspicuously all such Chattel Paper and all such Instruments and documents (other than those with a value of less than Five Hundred Thousand Dollars ($500,000) in the aggregate) with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Credit Parties shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Credit Parties.

(ii) Credit Parties shall deliver to Agent all letters of credit with a face amount in excess of Five Hundred Thousand Dollars ($500,000) in the aggregate for all letters of credit on which any Credit Party is the beneficiary and which give rise to letter of credit rights owned by such Credit Party which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Credit Parties shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Credit Parties shall promptly advise Agent upon any Credit Party becoming aware that it has any interests in any commercial tort claim that is for at least, or could reasonably be expected to result in a payment in excess of, Five Hundred Thousand Dollars ($500,000) in the aggregate for all commercial tort claims and that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Credit Parties shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim or claims.

(iv) Unless Agent shall otherwise consent, Credit Parties shall use commercially reasonable efforts to obtain a landlord's agreement, mortgagee agreement, or bailee agreement, as applicable, from the lessor of each leased property, the mortgagee of owned property or the warehouseman, consignee, bailee at any business location, in each case, located in the United States and (a) which is a such Credit Party's chief executive office or (b) where any portion of the Collateral (other than Collateral constituting equipment or Rolling Stock being utilized on a construction project in the Ordinary Course of Business) with a value in excess of $500,000, is located, in each case, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. In no event shall any Credit Party maintain tangible Collateral (other than Inventory with contract manufacturers and Inventory in transit in the Ordinary Course of Business) with a value in excess of $100,000 outside of the United States without Agent's prior consent.

(v) Credit Parties shall cause all material equipment and other material tangible personal property (other than Inventory) to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Credit Parties shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) With respect to any item (or items) of Equipment (including Rolling Stock) which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable written request of the Agent, Borrower shall (A) provide information with respect to any such Equipment, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Agent copies of all such applications or other documents filed during the then current calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby. Without limiting the foregoing, with respect to any Rolling Stock, it shall comply in all material respects with, and take all actions required by, the Collateral Servicing Agreement, subject to the terms and conditions thereof.

(vii) Each Credit Party hereby authorizes Agent to file without the signature of such Credit Party one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Credit Party as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Credit Party now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Credit Party any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Credit Party also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(viii) After the Closing Date, Credit Parties shall promptly notify Agent in writing upon creation or acquisition by any Credit Party of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the Federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Credit Parties shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(ix) Credit Parties shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "Event of Default":

(a) (i) any Credit Party shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document and (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.9, Section 4.11, Section 4.15, Article 5, Article 6 or Section 7.4 of this Agreement;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans) or in respect of any Swap Contract, or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) or in respect of any Swap Contract, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or the counterparty under any such Swap Contract, to cause, Debt or other liabilities having an aggregate principal amount in excess of $250,000 (or any amount, solely with respect to Swap Contracts) to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law (or any analogous procedure or step is taken in any other jurisdiction) now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Credit Party seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Credit Party under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $250,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $250,000;

(h) one or more judgments or orders for the payment of money (to the extent not paid or covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $5,000,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) (i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert; or (ii) any of the Financing Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Financing Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) if (i) any Credit Party shall be debarred or suspended from contracting with a Governmental Authority, (ii) a notice of debarment or notice of suspension shall have been issued to the any Credit Party by any Governmental Authority, to the extent such notice is delivered by a Governmental Authority that is a counterparty to contracts representing 5% or more of the aggregate Accounts owing to the Credit Parties, respectively, at such time, or (iii) a notice of termination for default or the actual termination for default of any Governmental Contract shall have been issued to or received by any Credit Party;

(l) if any Credit Party is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Credit Party's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(m) the occurrence of a Material Adverse Effect; or

(n) The occurrence of a Change in Control.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party and Credit Parties will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Credit Party or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party and Credit Parties will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and directly collect the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Credit Parties' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Credit Parties' original books and records, to obtain access to Credit Parties' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Credit Parties shall not resist or interfere with such action (if Credit Parties' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Credit Parties hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Credit Parties at Credit Parties' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Agent;

(iv) the right to notify postal authorities to change the address for delivery of Credit Parties' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Credit Party; and/or

(v) the right to enforce Credit Parties' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including reasonable and documented attorneys' fees of outside counsel, to Credit Parties, and (ii) the right, in the name of Agent or any designee of Agent or Credit Parties, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Credit Parties' compliance with applicable Laws. Credit Parties shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Credit Parties' affairs, all of which contacts Credit Parties hereby irrevocably authorize.

(b) Each Credit Party agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Credit Parties. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Credit Parties, which right is hereby waived and released. Each Credit Party covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Credit Parties will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Credit Parties shall be credited with the proceeds of the sale. Credit Parties shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Credit Party hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the Revolving Loan Commitment, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Credit Party and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Credit Party might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, subject to any right of any third parties and/or any agreement between any Borrower and any third party to the extent not granted or entered into in contravention of the terms of this Agreement, Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, upon the occurrence and during the continuance of an Event of Default, without charge, Credit Parties' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Credit Parties' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit, subject to any rights of third party licensors or licensees, as applicable.

Section 10.4 Protective Advances. If any Credit Party fails to pay or perform any covenant or obligation under this Agreement or any other Financing Document, Agent may pay or perform such covenant or obligation, and all amounts so paid by Agent are Protective Advances and immediately due and payable, constituting principal and bearing interest at the then highest applicable rate for the Loans hereunder, and secured by the Collateral. No such payments or performance by Agent shall be construed as an agreement to make similar payments or performance in the future or constitute Agent's waiver of any Event of Default. Without limiting the foregoing, each Lender and Borrower hereby authorizes Agent, without the necessity of any notice or further consent from any Lender, from time to time prior to a Default, to make any Protective Advance with respect to any Collateral or the Financing Documents which may be necessary to protect the priority, validity or enforceability of any lien on, and security interest in, any Collateral and the instruments evidencing or securing the obligations of Borrower under the Financing Documents. Credit Parties agree to pay on demand all Protective Advances. The Lenders must reimburse Agent for any Protective Advances (in accordance with their Pro Rata Shares) to the extent not reimbursed by Credit Parties.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are two percent (2.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however,* that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Credit Party at any time or from time to time, with reasonably prompt subsequent notice to such Credit Party (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Credit Party or any of its Subsidiaries (regardless of whether such balances are then due to such Credit Party or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Credit Party or any of its Subsidiaries, against and on account of any of the Obligations (other than inchoate indemnification obligations for which no claim has yet been made); except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Credit Party agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Credit Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Credit Party of all or any part of the Obligations, and, as between Credit Parties on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: ***first***, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; ***second***, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; ***third***, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); ***fourth***, to the principal amount of the Obligations outstanding; and ***fifth*** to any other indebtedness or obligations of Credit Parties owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Credit Parties or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Credit Party waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever Lenders may lawfully do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Credit Party acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Credit Party for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Credit Party, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Credit Party and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Credit Party, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Credit Parties to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Credit Party agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Credit Parties and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Credit Parties' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Credit Parties' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Credit Parties' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Credit Party defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Credit Party, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Credit Party does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that any Credit Party makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Credit Parties) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished. Each Lender further agrees to severally indemnify Agent for, within 10 days after demand therefor, any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17(a)(iii) relating to the maintenance of a Participant Register that are payable or paid by Agent in connection with any Financing 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. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to the Lender from any other source against any amount due to Agent under this Section 11.6.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon 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 Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9. Upon reasonable request of Credit Parties in connection with any Permitted Asset Disposition, Agent shall execute and deliver all documents (including customary "no interest" letters), in each case in form and substance reasonably satisfactory to Agent, to evidence the release of the Collateral disposed of pursuant to such Permitted Asset Disposition.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower Representative referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Credit Parties. Following any such assignment, Agent shall give notice to the Lenders and Credit Parties. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Credit Parties. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrower Representative and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Credit Parties to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Credit Parties and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however,* that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Credit party.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Credit Party.

(b) [Reserved].

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Credit Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Credit Party or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Credit Party agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Credit Parties in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Credit Parties' expense. Agent is further authorized by Credit Parties and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Credit Parties, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Credit Party hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Credit Parties, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided,* that any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent; *provided*, *however*, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Credit Party to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Credit Party of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided*, *however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Credit Parties and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 13.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Credit Parties, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Credit Parties, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Credit Parties and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Credit Parties 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 Obligations (each, a "**Participant Register**"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Credit Parties and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; *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 Financing Document) to any Person (including Credit Parties) 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. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however,* 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.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service")**. At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Credit Party or Agent, sell to one or more Persons (other than any Credit Party or any Credit Party's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Credit Parties and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Credit Party shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Credit Party agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however,* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) through (h), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "Lender" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 13.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist.

So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstandings in excess of Zero Dollars ($0); *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(e) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Buy-Out Upon Refinancing. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

Section 11.20 Erroneous Payments.

(a) Each Lender, and any other party hereto hereby severally agrees that if (i) the Agent notifies (which such notice shall be conclusive absent manifest error) such Lender (or the Lender which is an Affiliate of a Lender) or any other Person that has received funds from the Agent or any of its Affiliates, either for its own account or on behalf of a Lender (each such recipient, a "**Payment Recipient**") that the Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 11.20(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "**Erroneous Payment**"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; *provided* that nothing in this Section shall require the Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and upon demand from the Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "**Erroneous Payment Return Deficiency**"), then at the sole discretion of the Agent and upon the Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Revolving Loan Commitment Amount) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Loans**") to the Agent or, at the option of the Agent, the Agent's applicable lending affiliate (such assignee, the "**Agent Assignee**") in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Loans (but not its Revolving Loan Commitment Amount) of the Erroneous Payment Impacted Loans, the "**Erroneous Payment Deficiency Assignment**") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, the Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 11.17 and (3) the Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Financing Document, or otherwise payable or distributable by the Agent to such Payment Recipient from any source, against any amount due to the Agent under this Section 11.20 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other Credit Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 11.20 shall survive the resignation or replacement of the Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Revolving Loan Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Financing Document.

(g) The provisions of this Section 11.20 to the contrary notwithstanding, (i) nothing in this Section 11.20 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that Agent has received payment from the Payment Recipient in immediately available funds the Erroneous Payment Return Deficiency, whether directly from the Payment Recipient, as a result of the exercise by Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of the Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

ARTICLE 12 - GUARANTY

Section 12.1 Guaranty. Each Guarantor hereby (a) unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all of the Obligations, including payment in full of the principal, accrued but unpaid interest and all other amounts due and owing to the Agent and Lenders under the Loans and (b) indemnifies each Lender immediately on demand against any cost, loss or liability suffered by such Lender if any obligations guaranteed by it are or become unenforceable, invalid, voided, avoid or illegal, the amount of which such cost, loss or liability shall be equal to the amount which such Lender would otherwise be entitled to recover. Each payment made by any Guarantor pursuant to this Article 12 shall be made in lawful money of the United States in immediately available funds. Each Guarantor hereby acknowledges and agrees that it is an Affiliate of a Borrower or other interested party and will derive significant economic benefit from the Loans.

Section 12.2 Payment of Amounts Owed. The Guarantee hereunder is an absolute, unconditional and continuing guarantee of the full and punctual payment and performance of all of the Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Agent or any Lender first attempt to collect any of the Obligations from any Borrower or resort to any collateral security or other means of obtaining payment. In the event of any default by Borrowers in the payment of the Obligations, after the expiration of any applicable cure or grace period, each Guarantor agrees, on demand by Agent (which demand may be made concurrently with notice to Borrowers that the Borrowers are in default of their obligations), to pay the Obligations, regardless of any defense, right of set-off or recoupment or claims which any Borrower or Guarantor may have against Agent or Lenders or the holder of the Notes. All of the remedies set forth in this Agreement, in any other Financing Document or at law or equity shall be equally available to Agent and Lenders, and the choice by Agent or Lenders of one such alternative over another shall not be subject to question or challenge by any Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, recoupment or failure to mitigate damages in any action, proceeding, or counteraction by Agent or Lenders to recover or seeking any other remedy under this Guarantee, nor shall such choice preclude Agent or Lenders from subsequently electing to exercise a different remedy.

Section 12.3 Certain Waivers by Guarantor. To the fullest extent permitted by law, each Guarantor does hereby:

(a) waive notice of acceptance of this Agreement by Agent and Lenders and any and all notices and demands of every kind which may be required to be given by any statute, rule or law;agree to refrain from asserting, until after repayment in full of the Obligations, any defense, right of set-off, right of recoupment or other claim which such Guarantor may have against any Borrower;

(c) waive any defense, right of set-off, right of recoupment or other claim which such Guarantor may have against Agent, Lenders or the holder of the Notes;

(d) waive any and all rights such Guarantor may have under any anti-deficiency statute or other similar protections;

(e) waive all rights at law or in equity to seek subrogation, contribution, indemnification or any other form of reimbursement or repayment from any Borrower, any other Guarantor or any other person or entity now or hereafter primarily or secondarily liable for any of the Obligations until the Obligations have been paid in full;

(f) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge such Guarantor with liability;

(g) waive the benefit of all appraisements, valuation, marshalling, forbearance, stay, extension, redemption, homestead, exemption and moratorium laws now or hereafter in effect;

(h) waive any defense based on the incapacity, lack of authority, death or disability of any other person or entity or the failure of Agent or Lenders to file or enforce a claim against the estate of any other person or entity in any administrative, bankruptcy or other proceeding;

(i) waive any defense based on an election of remedies by Agent or Lenders, whether or not such election may affect in any way the recourse, subrogation or other rights of such Guarantor against any Borrower, any other Guarantor or any other person in connection with the Obligations;

(j) waive any defense based on the failure of the Agent or Lenders to (i) provide notice to such Guarantor of a sale or other disposition of any of the security for any of the Obligations, or (ii) conduct such a sale or disposition in a commercially reasonable manner;

(k) waive any defense based on the negligence of Agent or Lenders in administering this Agreement or the other Financing Documents (including, but not limited to, the failure to perfect any security interest in any Collateral), or taking or failing to take any action in connection therewith, *provided, however,* that such waiver shall not apply to the gross negligence or willful misconduct of the Agent or Lenders, as determined by the final, non-appealable decision of a court having proper jurisdiction;

(l) waive the defense of expiration of any statute of limitations affecting the liability of such Guarantor hereunder or the enforcement hereof;

(m) waive any right to file any Claim (as defined below) as part of, and any right to request consolidation of any action or proceeding relating to a Claim with, any action or proceeding filed or maintained by Agent or Lenders to collect any Obligations of such Guarantor to Agent or Lenders hereunder or to exercise any rights or remedies available to Agent or Lenders under the Financing Documents, at law, in equity or otherwise;

(n) agree that neither Agent nor Lenders shall have any obligation to obtain, perfect or retain a security interest in any property to secure any of the Obligations (including any mortgage or security interest contemplated by the Financing Documents), or to protect or insure any such property;

(o) waive any obligation Agent or Lenders may have to disclose to such Guarantor any facts the Agent or Lenders now or hereafter may know or have reasonably available to it regarding the Borrowers or Borrowers' financial condition, whether or not the Agent or Lenders have a reasonable opportunity to communicate such facts or have reason to believe that any such facts are unknown to such Guarantor or materially increase the risk to such Guarantor beyond the risk such Guarantor intends to assume hereunder;

(p) agree that neither Agent nor Lenders shall be liable in any way for any decrease in the value or marketability of any property securing any of the Obligations which may result from any action or omission of the Agent or Lenders in enforcing any part of this Agreement;

(q) waive any defense based on any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Financing Documents;

(r) waive any defense based on any change in the composition of Borrowers, and

(s) waive any defense based on any representations and warranties made by such Guarantor herein or by any Borrower herein or in any of the Financing Documents.

For purposes of this section, the term "Claim" shall mean any claim, action or cause of action, defense, counterclaim, set-off or right of recoupment of any kind or nature against the Agent or Lenders, its officers, directors, employees, agents, members, actuaries, accountants, trustees or attorneys, or any affiliate of the Agent or Lenders in connection with the making, closing, administration, collection or enforcement by the Agent or Lenders of the Obligations.

Section 12.4 Guarantor's Obligations Not Affected by Modifications of Financing Documents. Each Guarantor further agrees that such Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor for the time for payment of interest or principal or by any forbearance or delay in collecting interest or principal hereunder, or by any waiver by Agent or Lenders under this Agreement or any other Financing Documents, or by Agent's or Lenders' failure or election not to pursue any other remedies it may have against any Borrower or Guarantor, or by any change or modification in the Notes, this Agreement or any other Financing Document, or by the acceptance by Agent or Lenders of any additional security or any increase, substitution or change therein, or by the release by Agent or Lenders of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Obligations even though Agent or Lenders might lawfully have elected to apply such payments to any part or all of the Obligations, it being the intent hereof that, subject to Agent's or Lenders' compliance with the terms of this Article 12 and the Financing Documents, each Guarantor shall remain liable for the payment of the Obligations, until the Obligations have been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Each Guarantor further understands and agrees that Agent or Lenders may at any time enter into agreements with Borrowers to amend, modify and/or increase the principal amount of, interest rate applicable to or other economic and non-economic terms of this Agreement or the other Financing Documents, and may waive or release any provision or provisions of this Agreement or the other Financing Documents, and, with reference to such instruments, may make and enter into any such agreement or agreements as Agent, Lenders and Borrowers may deem proper and desirable, without in any manner impairing this Guarantee or any of Agent's or Lenders' rights hereunder or each Guarantor's obligations hereunder, and each Guarantor's obligations hereunder shall apply to the this Agreement and other Financing Documents as so amended, modified, extended, renewed or increased.

Section 12.5 Reinstatement; Deficiency. This guaranty shall continue to be effective or be reinstated (as the case may be) if at any time payment of all or any part of any sum payable pursuant to this Agreement or any other Financing Document is rescinded or otherwise required to be returned by Agent or Lenders upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of any Borrower, or upon or as a result of the appointment of a receiver, intervenor, custodian or conservator of or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, all as though such payment to Agent or Lenders had not been made, regardless of whether Agent or Lenders contested the order requiring the return of such payment. In the event of the foreclosure of the Financing Documents and of a deficiency, each Guarantor hereby promises and agrees forthwith to pay the amount of such deficiency notwithstanding the fact that recovery of said deficiency against Borrowers would not be allowed by applicable law; however, the foregoing shall not be deemed to require that Agent or Lenders institute foreclosure proceedings or otherwise resort to or exhaust any other collateral or security prior to or concurrently with enforcing this guaranty.

Section 12.6 Subordination of Borrowers' Obligations to Guarantors; Claims in Bankruptcy.

(a) Any indebtedness of any Borrower to any Guarantor (including, but not limited to, any right of such Guarantor to a return of any capital contributed to a Borrower), whether now or hereafter existing, is hereby subordinated to the payment of the Obligations. Each Guarantor agrees that, until the Obligations have been paid in full, such Guarantor will not seek, accept, or retain for its own account, any payment from any Borrower on account of such subordinated debt. Any payments to any Guarantor on account of such subordinated debt shall be collected and received by such Guarantor in trust for Agent and Lenders and shall be immediately paid over to Agent, for the benefit of Agent and Lenders, on account of the Obligations without impairing or releasing the obligations of such Guarantor hereunder.

(b) Each Guarantor shall promptly file in any bankruptcy or other proceeding in which the filing of claims is required by law, all claims and proofs of claims that such Guarantor may have against any Borrower or any other Guarantor and does hereby assign to Agent or its nominee (and will, upon request of Agent, reconfirm in writing the assignment to Agent or its nominee of) all rights of such Guarantor under such claims. If such Guarantor does not file any such claim, Agent, as attorney-in-fact for such Guarantor, is hereby irrevocably authorized to do so in the name of such Guarantor, or in Agent's discretion, to assign the claim to a designee and cause proof of claim to be filed in the name of Agent's designee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Agent, for the benefit of Agent and Lenders, the full amount thereof and, to the full extent necessary for that purpose, each Guarantor hereby assigns to the Lenders all of such Guarantor's rights to any such payments or distributions to which such Guarantor would otherwise be entitled, such assignment being a present and irrevocable assignment of all such rights.

Section 12.7 Maximum Liability. The provisions of this Article 12 are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Article 12 would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Article 12, then, notwithstanding any other provision of this Article 12 to the contrary, the amount of such liability shall, without any further action by the Guarantors or the Agent or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "**Maximum Liability**"). This Section 12.7 with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of the Agent and the Lenders to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person shall have any right or claim under this Section 12.7 with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this guaranty or affecting the rights and remedies of the Agent or the Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

Section 12.8 Guarantor's Investigation. Each Guarantor acknowledges receipt of a copy of each of this Agreement and the other Financing Documents. Each Guarantor has made an independent investigation of the other Credit Parties and of the financial condition of the other Credit Parties. Neither Agent nor any Lender has made and neither Agent nor any Lender does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Credit Party nor has Agent or any Lender made any representations or warranties as to the amount or nature of the Obligations of any Credit Party to which this Article 12 applies as specifically herein set forth, nor has Agent or any Lender or any officer, agent or employee of Agent or any Lender or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.

Section 12.9 Termination. The provisions of this Article 12 shall remain in effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations for which no claim has been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid and satisfied in full.

Section 12.10 Representative. Each Guarantor hereby designates Borrower Representative and its representatives and agents on its behalf for the purpose of giving and receiving all notices and other consents hereunder or under any other Financing Document and taking all other actions on behalf of such Guarantor under the Financing Documents. Borrower Representative hereby accepts such appointment.

Section 12.11 Guarantor Acknowledgement. Without limiting the generality of the foregoing, each Guarantor, by its acceptance of this Guaranty, hereby confirms that, except for Holdings, it is a Subsidiary of a Borrower and each Guarantor further confirms that it will materially benefit from the Loans made hereunder and the parties hereto intend that this Guaranty not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law (as defined below), the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or foreign law to the extent applicable to this Guaranty. In furtherance of that intention, the liabilities of each Guarantor under this Guaranty (the "**Liabilities**") shall be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Person with respect to the Liabilities, result in the Liabilities of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance. For purposes hereof, "**Bankruptcy Law**" means the United States Bankruptcy Code, or any similar federal, state or foreign law for the relief of debtors. This paragraph with respect to the maximum liability of each Guarantor is intended solely to preserve the rights of the holders, to the maximum extent not subject to avoidance under applicable law, and neither a Guarantor nor any other Person shall have any right or claim under this paragraph with respect to such maximum liability, except to the extent necessary so that the obligations of a Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations guaranteed hereunder may at any time and from time to time exceed the maximum liability of such Guarantor without impairing this Guaranty or affecting the rights and remedies of the holders hereunder; provided that nothing in this sentence shall be construed to increase such Guarantor's obligations hereunder beyond its maximum liability.

ARTICLE 13 - MISCELLANEOUS

Section 13.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 13.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 13.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, e-mail or similar writing) and shall be given to such party at its address or e-mail address set forth below or on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 13.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by electronic means, in accordance with the provisions of Section 13.3(b) and (c), or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 13.3(a).

If to any Credit Party:

Shimmick Construction Company, Inc., as Borrower Representative
530 Technology Drive, Suite No. 300
Irvine, CA 92618
Attn: Greg Dukellis, EVP and Chief Legal Officer
Email: gdukellis@shimmick.com

and

Shimmick Construction Company, Inc., as Borrower Representative
7601 E. Technology Way, Suite 100
Denver, CO 80237
Attn: Devin Nordhagen, EVP and Chief Financial Officer
Email: devin.nordhagen@shimmick.com

With a copy to:

King & Spalding LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
Attn: Brian E. Ashin, Esq. and Alan M. Noskow, Esq.
Email: bashin@kslaw.com and anoskow@kslaw.com

If to Agent or to MCF (or any of its Affiliates or Approved Funds) as a Lender:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814
Attn: Account Manager for Shimmick transaction
Email: notices@midcapfinancial.com

With a copy to:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814
Attn: Legal
Email: legalnotices@midcapfinancial.com

If to any Lender other than MidCap:

at the address set forth on the signature pages to this Agreement or provided as a notice address for such in connection with any assignment hereunder.

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however,* that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 13.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 13.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 13.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 13.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 13.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee 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 or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 13.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 13.9 WAIVER OF JURY TRIAL.

(a) EACH CREDIT PARTY, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH CREDIT PARTY, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH CREDIT PARTY, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(b) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that (i) actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Los Angeles County, California; (ii) such referee shall hear and determine all of the issues in any action or proceeding (whether of fact or of law), including issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8, including without limitation, entering restraining orders, entering temporary restraining orders, issuing temporary and permanent injunctions and appointing receivers, and shall report a statement of decision, provided that, if during the course of any Dispute any party desires to seek such a "provisional remedy" but a referee has not been appointed, or is otherwise unavailable to hear the request for such provisional remedy, then such party may apply to the Los Angeles County Superior Court for such provisional relief; and (iii) pursuant to California Code of Civil Procedure Section 644, judgment may be entered upon the decision of such referee in the same manner as if such action or proceeding had been tried directly by a court. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference. Each Borrower, Agent and the Lenders further represents and warrants and represents that it has reviewed this consent and agreement with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent and enters into this Agreement having had the opportunity to consult with legal counsel. This consent and agreement is irrevocable, meaning that it may not be modified either orally or in writing, and this consent and agreement shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement or any other agreement or document entered into between the parties in connection with this Agreement. In the event of litigation, this Agreement may be filed as evidence of either or both parties' consent and agreement to have any and all actions and proceedings heard and determined by a referee under California Code of Civil Procedure Section 638. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that this provision shall have no application to any non-judicial foreclosure of all or any portion of the Collateral constituting real property (whether pursuant to the provisions of the Financing Documents or applicable law).

(c) Notwithstanding anything to the contrary contained in this Agreement, each Borrower, Agent and the Lenders understand, acknowledge and agree that (i) the provisions of Section 12.9(b) of this Agreement above shall have no application to any non-judicial foreclosure and/or private (i.e., non-judicial) sale under the California Commercial Code as to all or any portion of Collateral constituting real property whether pursuant to the provisions of the Financing Documents or applicable law; provided, however, in the event Borrower contests the same, then the provisions of Section 12.9(b) above shall apply to any actions or proceedings arising therefrom (but not the non-judicial foreclosure proceeding, which may remain pending), and (ii) the provisions of Section 12.9(b) above shall not be deemed to be a waiver by, or a limitation upon, the rights of Agent or the Lenders to proceed with a non-judicial foreclosure or private sale under said Commercial Code as a permitted remedy hereunder or under applicable law.

Section 13.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with a reasonable amount of time to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 13.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "**Electronic Signature**" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 13.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 13.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 13.14 Expenses; Indemnity.

(a) Except with respect to Indemnified Taxes, Other Taxes and Excluded Taxes, which shall be governed exclusively by Section 2.8, Credit Parties hereby agree to promptly pay (i) all reasonable and documented out-of-pocket costs and expenses of Agent (including, without limitation, the reasonable and documented fees, costs and expenses of outside counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable and documented out-of-pocket costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable and documented out-of-pocket costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document, other than disputes solely among Lenders and/or Agent (other than any claims against such person in its capacity or in fulfilling its role as Agent, arranger or any similar role hereunder) to the extent such disputes do not arise from any act or omission of any Credit Party or of any Affiliate of a Credit Party, and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. Upon the occurrence and during the continuation of any Event of Default, if Agent or any Lender uses in-house counsel for any of these purposes, Credit Parties further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Credit Party hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the documented out-of-pocket fees and disbursements of outside counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable and documented out-of-pocket expenses of investigation by third party engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, actually incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Financing Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by a Credit Party, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Credit Party or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Credit Parties shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, each Credit Party shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities actually incurred by or asserted against the Indemnitees or any of them. This Section 13.14(b) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, claims etc. arising from any non-Tax claim.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Credit Parties under this Section 13.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE CREDIT PARTIES OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.

Section 13.15 [Reserved].

Section 13.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 13.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Credit Parties and Agent and each Lender and their respective successors and permitted assigns.

Section 13.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies the Credit Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies the Credit Parties, which information includes the name and address of the Credit Parties and such other information that will allow Agent or such Lender, as applicable, to identify the Credit Parties in accordance with the USA PATRIOT Act.

Section 13.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

BORROWERS:

SHIMMICK CONSTRUCTION COMPANY, INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

RUST CONSTRUCTORS INC.

By: /s/ Phillip Staggs
Name: Phillip Staggs
Title: Chief Executive Officer

THE LEASING CORPORATION

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

GUARANTORS:

SCCI NATIONAL HOLDINGS, INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Payment Account Designation

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: 121-000-248
Account Name: MidCap Funding IV Trust-Collections
Account #: 2000036282803
Attention: Shimmick transaction

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Shimmick transaction
Facsimile: 301-941-1450

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

EXHIBITS

SCHEDULES

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Financial Trust	$30,000,000	100%
TOTALS	$30,000,000	100%

EXHIBIT A TO CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO CREDIT AGREEMENT (FORM OF COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

Date: _____, 202__

This Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Credit, Security and Guaranty Agreement dated as of _____, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) no Default or an Event of Default has occurred and is continuing, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) except as noted on Schedule 2 attached hereto, Schedule 9.2(b) to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business and required to be disclosed pursuant to Article 9 of the Credit Agreement; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantors conduct business;

(e) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or any Guarantors to make required payments of withholding or other tax obligations of any Borrower or any Guarantors during the accounting period to which the attached statements pertain or any subsequent period that are required to be made in accordance with Section 4.2;

(f) except as noted on Schedule 4 attached hereto, or as the Borrower Representative may have notified Agent on any Schedule 4 to any previous Compliance Certificate, Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;

(g) except as noted on Schedule 5 attached hereto, or as the Borrower Representative may have notified Agent on any Schedule 5 to any previous Compliance Certificate, Schedule 3.19 to the Credit Agreement is true and correct in all material respects;

(h) except as noted on Schedule 6 attached hereto, or as the Borrower Representative may have notified Agent on any Schedule 6 to any previous Compliance Certificate, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Instruments, Documents or Investment Property that is required to be disclosed pursuant to Section 9.2 of the Credit Agreement;

(i) except as noted on Schedule 7 attached hereto, or as the Borrower Representative may have notified Agent on any Schedule 6 to any previous Compliance Certificate, no Borrower or Guarantor is aware of any commercial tort claim that that is required to be disclosed pursuant to Section 9.2 of the Credit Agreement;

(j) the aggregate amount of cash and Cash Equivalents held by Credit Parties (on a consolidated basis) as of [_____] is $[_____];

(k) (i) the aggregate amount of Investments made by the Credit Parties in Permitted Servicing Joint Ventures is $[_____] and (ii) the aggregate amount of distributions and dividends made in cash by the Permitted Servicing Joint Ventures to the Credit Parties is $[_____], in each case, since the date of delivery of the previous Compliance Certificate; and

(l) [the Leverage Ratio as of the date hereof is [_____] to 1.00, as demonstrated by the calculations thereof in the attached EBITDA and Total Debt worksheets. Such calculations and the certifications contained therein are true, correct and complete.]

The foregoing certifications and computations are made as of _____, 202__ (end of month) and as of _____, 202__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name:
Title:

EBITDA Worksheet (Attachment to Compliance Certificate)

EBITDA for the applicable Defined Period is calculated as follows:

	Net income (or loss) for the Defined Period of Holdings and its Consolidated Subsidiaries, but excluding: the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers	$ _____
Plus:	Any provision for (or *minus* any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period	$ _____
Plus:	Interest expense, net of interest income, deducted in the determination of net income for the Defined Period	$ _____
Plus:	Amortization and depreciation deducted in the determination of net income for the Defined Period	$ _____
Plus:	to the extent deducted from net income, any non-cash costs or expenses incurred by Holdings or any of its Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement	$ _____
Plus:	the amount of fees, costs and expenses incurred by the Credit Parties in connection with the initial closing of this Agreement and the other Financing Documents executed in connection herewith, to the extent incurred within 60 days after the Closing Date	$ _____
Plus:	the amount of any contingent liabilities together with any documented out of pocket costs and expenses incurred (including attorneys' fees), in each case incurred in connection with or otherwise relating to the acquisition of Holdings by its current owners in an amount not to exceed $9,500,000.00 in the aggregate during the term of this Agreement;	$ _____
Plus:	the amount of attorneys' fees and related costs and expenses incurred by the Credit Parties in connection with the Golden Gate Bridge Physical Suicide Deterrent System project, in an amount not to exceed $6,000,000 in any Defined Period ending prior to the twenty-four (24) month anniversary of the Closing Date	$ _____
Plus:	the amount of any loss recognition resulting from purchase price accounting adjustments made in connection with or otherwise relating to the acquisition of Holdings by its current owners	$ _____
Plus:	unusual or non-recurring fees, costs and expenses, in each case to the extent approved by Agent in writing;	$ _____

Plus:	any other adjustments which may be agreed to by Agent in its sole discretion, in writing	$ _____
EBITDA for the Defined Period:		$ _____

Total Debt Worksheet (Attachment to Compliance Certificate)

Total Debt as of the last day of the applicable Defined Period is calculated as follows:

all obligations of such Person for borrowed money,		$ _____
Plus:	all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments	$ _____
Plus:	all Capital Leases of such Person	$ _____
Plus:	all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument	$ _____
Plus:	all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person	$ _____

EXHIBIT C TO CREDIT AGREEMENT (FORM OF BORROWING BASE CERTIFICATE)

[See attached]

MidCap Funding IV Trust

Borrowing Base Report

BBR Date:
Name: **SCCI Holding**

	Total
Accounts Receivable	
Unbilled A/R	
M&E	
Gross Availability	
Less: Reserves	
A/P Reserve	
Other Reserves	
Net Availability	

Computation of Loan

13. Facility Limit	**$30,000,000.00**
14. Available to Borrow (not to exceed limit)	
15. Loan Balance on Prior Borrowing Base Certificate	
16. **(Less)**: Cash Collections since last Borrowing Base Certificate	
17. **Increase/(Decrease)**: Adjustments	
18. Loan Advances	
19. Ending Loan Balance	
20. Letter of Credit Outstandings	
22. Remaining Availability (Lines 15-20-21-22)	

TTM 4Q EBITDA
Maximum Debt at 1.75x Leverage
Less: Capital Leases
Maximum Outstanding Under Revolver

Pursuant to, and in accordance with, the terms and provisions of the Financing Documents ("Documents"), between Midcap Funding IV Trust ("Secured Party") and SCCI Holding ("Borrower"), Borrower is executing and delivering to Secured Party this Borrowing Base Report accompanied by supporting data (collectively referred to as "Report"). Borrower warrants and represents to Secured Party that this Report is true, correct, and based on information contained in Borrower's own financial accounting records.

Borrower, by the execution of this Report:

(a) Hereby ratifies, confirms, and affirms all of the terms, and further certifies that the Borrower is in compliance with the Loan Documents as of _____:(b) Hereby certifies that the Borrower has paid all State and Federal payroll witholding taxes immediately due and payable through _____. Capitalized Terms used herein and not otherwise defined shall have the meaning ascribed to them in the Loan and Security Agreement between Secured Party and Borrower dated 3/27/23.

Name: Devin Nordhagen
Title: CFO

SCCI Holding
A/R Availability
As of

	Non-Bonded A/R	Bonded A/R	Retainage A/R	Unbilled A/R	M&E	Shimmick
Gross Collateral						
Current						
31-60 Past Due Date of Invoice						
61-90 Past Due Date of Invoice						
> 90 Past Due Date of Invoice						
Outstanding Retainage						
Total Collateral						
Less: Ineligibles						
Bonded A/R						
Retainage A/R						
Unbilled Greater Than 30 Days						
Credits in Past Due						
Affiliate Accounts Receivable						
Net Billings in Excess of Revenue						
Services not Performed/Violation of Law						
Account subject to Lien other than Permitted Lien						
Account evidenced by Chattel Paper						
Concentration Limit @ 20% / 30% for one						
Government Payor (Federal, State, or Local)						
Bankrupt Account						
Foreign A/R						
Account Debtor fails to meet Agent requirements						
Titled Vehicles Not Perfected						
Total Ineligibles						
Eligible Collateral						
Less: Liquidation Expense						
Net Eligible Collateral						
Advance Rate	85.0%	85.0%	85.0%	75.0%	85.0%	85%
Availability Before Dilution Reserve						
40% Cap on Unbilled						
Availability After Unbilled Cap						
Dilution Reserve (5.36%)						
Reserve for 85% of Non-bonded and Non-job A/R > 90 Days Past Due Date of Invoice						
Net Availability						
Historical Dilution Percentage						

SCCI Holding
A/R Availability
As of

	Shimmick
Accounts Receivable	
Current	
31-60 Past Due Date of Invoice	
61-90 Past Due Date of Invoice	
> 90 Past Due Date of Invoice	
Outstanding Retainage	
Total A/R	
Less: Ineligible A/R	
Bonded A/R	
Retainage A/R	
Non-bonded and Non-job A/R > 90 Days Past Due Date of Invoice	
Credits in Past Due	
Affiliate Accounts Receivable	
Net Billings in Excess of Revenue	
Services not Performed/Violation of Law	
Account subject to Lien other than Permitted Lien	
Account evidenced by Chattel Paper	
Concentration Limit @ 20% / 30% for one	
Government Payor (Federal, State, or Local)	
Bankrupt Account	
Foreign A/R	
Account Debtor fails to meet Agent requirements	
Total Ineligible A/R	
Net Eligible A/R	
Advance Rate	85%
A/R Availability Before Dilution Reserve	
Dilution Reserve (5.36%)	
Net A/R Availability	
Historical Dilution Percentage	

SCCI Holding
Unbilled A/R Availability
As of

	Shimmick
Total Unbilled A/R	
Less: Ineligible Unbilled	
Bonded Unbilled	
Affiliate Unbilled	
Unbilled >30 Days	
Total Ineligible Unbilled A/R	
Net Eligible Unbilled A/R	
Advance Rate	75%
Unbilled A/R Availability	

M&E Availability
As of

Class	ABV	Original Units	Original GOLV	"Adds" Units	"Adds" "Original Cost"	"Less" Sales	"Less" Units	"Current" Units	"Current" OLV
Drilling Equipment	DE								
Excavator	E								
Pick-Up Trucks	PU								
Crawler Crane	CC								
Hauling	H								
Tower Crane	TC								
Conveyor	CC								
Loader	L								
Telehandler	TLH								
SUV	SUV								
Other	Other								
Total Unencumbered M&E									
Less: Ineligible M&E									
Leased Assets									
Titled Vehicles/Other Not Perfected							-		
Total Ineligible M&E									
Eligible GLV M&E									
Less: Liquidation Expenses									
Eligible Net Orderly Liquidation Value									
Advance Rate									85%
Available M&E									

EXHIBIT D TO CREDIT AGREEMENT (FORM OF NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Credit, Security and Guaranty Agreement dated as of _____, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 202__ borrow $_____ of Loans on _____, 202__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this __ day of _____, 202__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

EXHIBIT E TO CREDIT AGREEMENT (RESERVED)

Exhibit F-1 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit, Security and Guaranty Agreement dated as of March 27, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, 20[ ]

Exhibit F-2 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit, Security and Guaranty Agreement dated as of March 27, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[ ]

Exhibit F-3 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit, Security and Guaranty Agreement dated as of March 27, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[ ]

Exhibit F-4 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit, Security and Guaranty Agreement dated as of March 27, 2023 among the Borrower Representative, each direct and indirect Subsidiary of Holdings party thereto as a Borrower and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Holdings and the other Guarantors party from time to time thereto, MidCap Funding IV Trust, individually as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____, 20[ ]

Exhibit G to Credit Agreement (Closing Checklist)

[*See Attached*.]

SCCI NATIONAL HOLDINGS, INC.

$30,000,000 REVOLVING LOAN

CLOSING CHECKLIST

Key:

B Borrower – Rust Constructors, Inc., Shimmick Construction Company, Inc. and The Leasing Corporation
BC Borrower's Counsel – King & Spalding LLP
G Guarantor – SCCI National Holdings, Inc.
L Lenders – MidCap Financial Trust and Others
LC MCF's Counsel – Hogan Lovells US LLP

Closing Item

I. LOAN AND SECURITY DOCUMENTS

A. Information Certificate
B. Credit, Security and Guaranty Agreement
- Exhibits
- Schedules

C. Pledge Agreement
D. IP Security Agreement
E. UCC-1 Financing Statements
F. Threshold Agreement
G. Solvency Certificate
H. Officer's Closing Certificate
I. Legal Opinion(s) (NY, DE, CA and NV)

II. ORGANIZATIONAL DOCUMENTS

Closing Item

A. Pro Forma Organizational Chart
B. Pro Forma Cap Table
C. Pro Forma Cash Management Diagram
D. Secretary's Certificate for each Credit Party, with Exhibits:
    - Formation Document/Articles
    - Governing Agreement/Bylaws
    - Incumbency Certificate
    - Authorizing Resolutions
    - Good Standing Certificate

III. FINANCIAL, LIEN AND OTHER MISC. DILIGENCE

A. UCC, Judgment, Tax Lien and Litigation Searches for Credit Parties
B. USPTO Searches
C. Financial Statements and other financial diligence
D. Patriot Act Certification and KYC

IV. LOAN AND LEASE DILIGENCE AND OTHER MATERIAL CONTRACTS

A. Material Leases
B. Material Contracts
C. Insurance Certificates / Endorsements

V. FUNDING DOCUMENTS AND DELIVERABLES

A. Payoff Letter and Related Terminations (BMO Harris)
B. Closing Date Borrowing Base Certificate

Schedule 3.1

Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

[***]

Schedule 3.4
Capitalization

[***]

Schedule 3.6
Litigation

[***]

Schedule 3.17
Material Contracts

[***]

Schedule 3.18
Environmental Compliance

[***]

Schedule 3.19
Intellectual Property

[***]

Schedule 3.25
Governmental Contract Matters

[***]

Schedule 4.9
Litigation, Governmental Proceedings and Other Notice Events

[***]

Schedule 5.1
Debt; Contingent Obligations

[***]

Schedule 5.2
Liens

[***]

Schedule 5.7
Permitted Investments

[***]

Schedule 5.8
Affiliate Transactions

[***]

Schedule 5.11
Business Description

[***]

Schedule 5.14
Deposit Accounts and Securities Accounts

[***]

Schedule 7.4 – Post Closing Requirements

[***]

Schedule 9.1 – Collateral

[***]

Schedule 9.2(b)
Location of Collateral

[***]

Schedule 9.2(d)
Chattel Paper, Letters of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

[***]

Exhibit 10.7

Execution Version

AMENDMENT NO. 1 TO CREDIT, SECURITY AND GUARANTY AGREEMENT

This AMENDMENT NO. 1 TO CREDIT, SECURITY AND GUARANTY AGREEMENT (this "**Agreement**") is made as of this 30th day of June 2023 (the "**First Amendment Effective Date**"), by and among **SHIMMICK CONSTRUCTION COMPANY, INC.**, a California corporation ("**Shimmick**"), **RUST CONSTRUCTORS INC.**, a Delaware corporation, **THE LEASING CORPORATION**, a Nevada corporation, (collectively, the "**Borrowers**" and each individually, a "**Borrower**"), **SCCI NATIONAL HOLDINGS, INC.**, a Delaware corporation ("**Holdings**"), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as Agent, and the financial institutions or other entities parties hereto, each as a Lender.

RECITALS

A. Agent, Lenders, Borrowers and Holdings have entered into that certain Credit, Security and Guaranty Agreement, dated as of March 27, 2023 (the "**Original Credit Agreement**" and as amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers and Holdings (a) have entered into three Transfer Agreements, each dated as of June 19, 2023 and by and among Shimmick and Transportation Operations & Maintenance Solutions, LLC ("**TOMS**"), pursuant to which Shimmick transferred certain assets and liabilities relating to toll-road operations and management services to TOMS and (b) intend to enter into that certain Amended and Restated Membership Interest Purchase Agreement (the "**MIPA**"), by and among Shimmick, as seller, OEP Neology Cayman LP, as buyer, and TOMS, pursuant to which OEP Neology Cayman LP will purchase 100% of the outstanding equity interests of TOMS in accordance with the terms and conditions of the MIPA (the foregoing clauses (a) and (b), collectively, the "**Project Disney Transaction**").

C. Borrowers and Holdings have requested, and Agent and all Lenders have agreed, to consent to the Project Disney Transaction and amend certain provisions of the Original Credit Agreement, all in accordance with the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, Borrowers and Holdings hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. The Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement and capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Limited Consent**. Subject to the terms and conditions set forth herein, (a) notwithstanding Section 5.7 of the Credit Agreement, Agent and the Lenders party hereto hereby consent to the Project Disney Transaction and that the Project Disney Transaction shall not, in and of itself, constitute an "Event of Default" under the Credit Agreement and (b) notwithstanding Section 4.1(b) of the Credit Agreement, Agent and the Lenders party hereto hereby consent to an extension of the delivery date with respect to the Credit Parties' audited financial statements for each of the fiscal years ended December 31, 2021 and December 31, 2022 to July 15, 2023 (or such later date as Agent may agree in its sole discretion). The consent set forth in this Section 2 is effective solely for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (i) be a consent to any amendment, waiver or modification of any other term or condition of the Credit Agreement or of any other Financing Document; (ii) be a consent to any amendment, waiver or modification of the Redemption Agreement; (iii) prejudice any right that Agent or Lenders have or may have in the future under or in connection with the Credit Agreement or any other Financing Document; (iv) constitute a consent to or waiver of any past, present or future Default or Event of Default or other violation of any provisions of the Credit Agreement or any other Financing Documents, (v) create any obligation to forbear from taking any enforcement action, or to make any further extensions of credit or (vi) establish a custom or course of dealing among any of the Credit Parties, on the one hand, or Agent or any Lender, on the other hand.

3. **Amendments to Original Credit Agreement**. Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 below, the Original Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Original Credit Agreement is hereby amened to add the following definition of "First Amendment Effective Date" in the appropriate alphabetical order therein:

""**First Amendment Effective Date**" means June 30, 2023."

(b) The definition of "**Revolving Loan Commitment Amount**" in Section 1.1 of the Original Credit Agreement is hereby amended by deleting the last sentence of such defined term in its entirety and replacing it with the following:

"For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders (i) on the Closing Date and at all times other than as described in clauses (ii) and (iii) below shall be $30,000,000, (ii) from the First Amendment Effective Date through and including August 30, 2023, $35,250,000, and (iii) if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $75,000,000."

4. **Representations and Warranties; Reaffirmation of Security Interest.** Each Credit Party hereby confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Credit Party as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Credit Party acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Credit Party, and are enforceable against such Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

5. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

(a) Each Credit Party shall have delivered to Agent this Agreement, dated as of even date herewith, each executed by an authorized officer of such Credit Party;

(b) all representations and warranties of Credit Party contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(c) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents; and

(d) Credit Parties shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request.

6. **Costs and Fees.** In consideration of Agent's agreement to enter into this Agreement, Borrowers agrees to pay Agent, for the benefit of all Revolving Lenders, an amendment fee in the amount of $250,000 (the "**Amendment Fee**"). Such fee shall be due and payable on the First Amendment Effective Date and, once paid, is non-refundable. If the Amendment Fee is not paid when due, Borrowers hereby authorize Agent to deduct all of such fees set forth in this Section 6 from the proceeds of one or more Revolving Loans made under the Credit Agreement.

7. **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Credit Party, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly). Each Credit Party acknowledges that the foregoing release is a material inducement to Agent's and each Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

9. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Credit Party hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Credit Party. Each Credit Party covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

10. **Miscellaneous**.

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party.

(b) Governing Law. THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(c) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (*Indemnification*), Section 13.8(b) (*Submission to Jurisdiction*), and Section 13.9 (*Waiver of Jury Trial*) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

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

(e) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(f) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(g) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

AGENT:

MIDCAP FUNDING IV TRUST,
as Agent

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

MIDCAP FINANCIAL TRUST,
as a Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amesllem
Name: Maurice Amsellem
Title: Authorized Signatory

[Signatures Continue on Following Page]

BORROWERS:

SHIMMICK CONSTRUCTION COMPANY, INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: CFO

RUST CONSTRUCTORS INC.

By: /s/ Phillip Staggs
Name: Phillip Staggs
Title: President

THE LEASING CORPORATION

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: CFO

GUARANTORS:

SCCI NATIONAL HOLDINGS, INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: CFO

Exhibit 10.8

AMENDMENT NO. 2 TO CREDIT, SECURITY AND GUARANTY AGREEMENT

This AMENDMENT NO. 2 TO CREDIT, SECURITY AND GUARANTY AGREEMENT (this "**Agreement**") is made as of this 22nd day of September, 2023 (the "**Second Amendment Effective Date**"), by and among **SHIMMICK CONSTRUCTION COMPANY, INC.**, a California corporation ("**Shimmick**"), **RUST CONSTRUCTORS INC.**, a Delaware corporation, **THE LEASING CORPORATION**, a Nevada corporation, (collectively, the "**Borrowers**" and each individually, a "**Borrower**"), **SHIMMICK CORPORATION** (f/k/a SCCI National Holdings, Inc.), a Delaware corporation ("**Holdings**"), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as Agent, and the financial institutions or other entities parties hereto, each as a Lender.

RECITALS

A. Agent, Lenders, Borrowers and Holdings have entered into that certain Credit, Security and Guaranty Agreement, dated as of March 27, 2023 (as amended by that certain Amendment No. 1 to Credit, Security and Guaranty Agreement, dated as of June 29, 2023, the "**Existing Credit Agreement**" and as amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers and Holdings have requested, and Agent and all Lenders have agreed, to amend certain provisions of the Existing Credit Agreement, all in accordance with the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, Borrowers and Holdings hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. The Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement and capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Existing Credit Agreement**. Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 4 below, the Existing Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Existing Credit Agreement is hereby amended by deleting the definition of "First Amendment Effective Date" therein.

(b) Section 1.1 of the Existing Credit Agreement is hereby amended to add the following definitions in the appropriate alphabetical order therein:

""**Qualifying IPO**" means the issuance and sale by Holdings of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether along or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Holdings' common stock is listed on a nationally recognized stock exchange in the United States."

""**Second Amendment Effective Date**" means September 22, 2023."

(c) The definition of "**Additional Tranche**" in Section 1.1. of the Existing Credit Agreement is hereby amended by deleting "$45,000,000" where it appears therein and replacing it with "$39,750,000".

(d) The definition of "**Cash Dominion Event**" in Section 1.1 of the Existing Credit Agreement is hereby amended in its entirety as follows:

""**Cash Dominion Event**" means the earliest to occur of (a) the occurrence and continuance of any Event of Default, (b) the date that Revolving Loan Availability is less than $7,000,000, (c) the date that Liquidity is less than $25,000,000 or (d) the Second Amendment Effective Date; *provided* that a Cash Dominion Event shall be deemed continuing until such time as (x) no Event of Default is continuing, (y) Revolving Loan Availability and Liquidity exceeds the required amount for fifteen (15) consecutive days and (z) the Revolving Loan Commitment Amount has been permanently reduced to $30,000,000 pursuant to the proviso to the definition of Revolving Loan Commitment Amount."

(e) The definition of "**Revolving Loan Commitment Amount**" in Section 1.1 of the Existing Credit Agreement is hereby amended by deleting the last sentence of such defined term in its entirety and replacing it with the following:

"For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders (i) on the Closing Date and at all times other than as described in clause (ii) and the proviso below shall be $35,250,000, and (ii) if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $75,000,000; *provided*, that (x) on January 1, 2024, if a Qualifying IPO has not occurred, the Revolving Loan Commitment Amount shall be automatically reduced to the lesser of (1) the Revolving Loan Commitment Amount as in effect on January 1, 2024 immediately prior to such reduction and (2) $30,000,000, or (y) prior to January 1, 2024, if a Qualifying IPO has occurred and Credit Parties have elected to permanently reduce the Revolving Loan Commitment in compliance with the provisions of Section 2.2(b)(iv) hereof, the Revolving Loan Commitment shall be permanently reduced to $30,000,000. In connection with any such Revolving Loan Commitment Amount reduction described in the foregoing proviso, each Lender's Revolving Loan Commitment shall be reduced by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such reduction."

(f) Section 2.1(b) of the Existing Credit Agreement is hereby amended by adding the following clause (iv) to the end thereof:

"(iv) Notwithstanding anything to the contrary in this Agreement, within ten (10) Business Days following the consummation of a Qualifying IPO, upon not less than two (2) Business Days' prior written notice from Borrower Representative to the Agent, Credit Parties may elect to permanently reduce the Revolving Loan Commitments to $30,000,000, so long as (x) Credit Parties shall have paid to Agent the fee required pursuant to Section 2.2(f) hereof with respect to the portion of the Revolving Loan Commitment so reduced, and (y) immediately after giving effect to such permanent reduction, the Revolving Loan Outstandings would not exceed the Revolving Loan Limit.

(g) Section 2.2(f) of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

"(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason (whether by voluntary termination or reduction (including pursuant to Section 2.1(b)(iv) hereof) by Borrowers, by reason of the occurrence of an Event of Default or the automatic termination of the Revolving Loan Commitments (including any automatic termination due to the occurrence of an Event of Default described in Section 10.1(f) or otherwise)) prior to the Maturity Date, Borrowers shall pay to Agent, on the date of such termination or reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the Revolving Loan Commitment so terminated or reduced *by* one half of one percent (0.50%), but excluding any termination or permanent reduction occurring on the Maturity Date. All fees payable pursuant to this paragraph shall be deemed fully earned when due and payable and, once paid, shall be non-refundable."

(h) Annex A (Commitment Annex) to the Existing Credit Agreement is hereby amended by replacing it in its entirety with Annex A attached hereto

3. **Representations and Warranties; Reaffirmation of Security Interest.** Each Credit Party hereby confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Credit Party as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Credit Party acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Credit Party, and are enforceable against such Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

4. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

(a) Each Credit Party shall have delivered to Agent this Agreement, dated as of even date herewith, each executed by an authorized officer of such Credit Party;

(b) Agent shall have received duly authorized, executed and delivered secretary's certificates from each Credit Party certifying as to (i) the names and signatures of each officer of each such Credit Party authorized to execute and deliver this Agreement and all documents executed in connection therewith, (ii) the organizational documents of each such Credit Party attached to such certificate are complete and correct copies of such organizational documents as in effect on the date of such certification, (iii) the resolutions of each such Credit Party's board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance of this Agreement and the other documents executed in connection therewith, and (iv) certificates attesting to the good standing of each such Credit Party in its respective jurisdiction of organization;

(c) Agent shall have received an opinion of Credit Parties' counsel, addressed to Agent and Lenders, addressing the matters that Agent may reasonably request;

(d) all representations and warranties of Credit Party contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(e) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents; and

(f) Credit Parties shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request.

5. **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Credit Party, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly). Each Credit Party acknowledges that the foregoing release is a material inducement to Agent's and each Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

6. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

7. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Credit Party hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Credit Party. Each Credit Party covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

8. **Miscellaneous**.

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party.

(b) Governing Law. THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(c) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (*Indemnification*), Section 13.8(b) (*Submission to Jurisdiction*), and Section 13.9 (*Waiver of Jury Trial*) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

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

(e) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(f) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(g) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

AGENT:

MIDCAP FUNDING IV TRUST,
as Agent

By: Apollo Capital Management, L.P., its investment manager

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

MIDCAP FINANCIAL TRUST,
as a Lender

By: Apollo Capital Management, L.P., its investment manager

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

[Signatures Continue on Following Page]

BORROWERS:

SHIMMICK CONSTRUCTION COMPANY, INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

RUST CONSTRUCTORS INC.

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

THE LEASING CORPORATION

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

GUARANTORS:

SHIMMICK CORPORATION

By: /s/ Devin Nordhagen
Name: Devin Nordhagen
Title: Chief Financial Officer

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Funding IV Trust	$ 35,250,000	100%
TOTALS	$ 35,250,000	100%

**Portions of this exhibit have been redacted in accordance with Item 601(b)(10) of Regulation S-K. The information is not material and would cause competitive harm to the registrant if publicly disclosed. [***] indicates that information has been redacted. **

LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement ("Loan Agreement"), by and between Hudson Bridge Partners, LLC and/or its assigns (the "Lender") and Shimmick Construction Company, Inc., ("Borrower"), is effective this 13th day of September 2023.

1. DEFINITIONS. As used in this document, the words and phrases set forth below shall have the following meanings:

A. **"Borrower"** means Shimmick Construction Company, Inc.

B. **"Collateral"** means substantially all of Borrower's receivables and fixed assets including but not limited to; equipment, real estate and any other assets Lender deems necessary as security.

C. **"Debt"** means the loan from Lender to Borrower made, pursuant to this Loan and Security Agreement.

D. **"Lender"** means Hudson Bridge Partners, LLC and/or its assigns.

E. **"Loan"** means the up to $51,435,000 secured term loan or similar secured facility, executed by Borrower and delivered to Lender as evidence of the Debt.

F. **"Loan Maximum"** means $75,000,000 which is the maximum amount of debt, above the Loan, that is available for this transaction, subject to Borrower providing additional collateral coverage, commensurate to a $75,000,000 secured loan deployment. Generally, the collateral pool should be at least 1x the Loan Maximum.

2. CONSIDERATION.

Lender makes this Loan to Borrower pursuant to, and as consideration for Borrower's agreement to repay the Loan under the terms of this Agreement to Lender in the amount of up to $51,435,000, shall be in accordance with the terms and conditions stated in this Agreement.

3. SURVIVAL OF THIS LOAN AGREEMENT. This Loan Agreement shall survive the closing contemplated hereunder, and all obligations pursuant to this Agreement of each party hereto shall continue until the Loan has been repaid in full.

4. PURPOSE OF THE LOAN. The purpose of this loan shall be used to enhance Borrower's liquidity position, and general corporate and operational purposes.

5. TERMS OF THE LOAN

A. This Loan is in the amount of up to $51,435,000, at 13% interest per year, with a term of Thirty-Six (36) months. Subject to collateral coverage and collateral availability, the Loan can be increased to the Loan Maximum of $75,000,000.

B. Borrower agrees to pay Lender a closing fee of 1.5% from the proceeds of the Loan.

C. Payments of principal and interest shall be made in accordance with the payment schedule attached hereto.

D. Borrower may prepay any portion or all of this Loan, at any time after the first 12 months of servicing the Loan. If Borrower prepays the loan at any time before the above mentioned 12- month servicing period, Borrower will incur a prepayment penalty, equal to 2% of the gross loan amount.

6. SECURITY

A. Borrower hereby grants to Lender as security for this loan:

1. Senior lien position on substantially all of Borrower's receivables and hard assets, including but not limited to all of Borrower's equipment real estate and any other fixed assets Lender considers necessary, as security for this transaction.

7. LENDER'S COVENANTS

A. LOAN: Lender and/or its assigns shall, in accordance with the terms and conditions of the Loan Agreement, make this Loan to Borrower.

B. DISBURSEMENTS: Disbursements shall be made up to the loan maximum, upon request by Borrower, outlining the purposes for which the funds shall be used, so long as the request is in accordance with applicable federal and State law, regulation, and procedure, and the Loan Agreement.

8. BORROWER'S REPRESENTATIONS

A. BORROWER'S BUSINESS: Borrower certifies that, as of the date of execution of this Agreement, Borrower's business is in good standing, has no adverse going concern issues, no direct or indirect, undisclosed material adverse changes, impairments to its customer base(s) or pending lawsuits.

B. CERTIFICATIONS: Borrower hereby makes the following additional certifications, in form satisfactory to Lender, that, as of the date of execution of this Agreement:

1. Borrower is in good standing with respect to, or in full compliance with a plan to pay, any and all federal, state and local taxes;
2. Borrower is current on or is in full compliance with a plan to pay any, and all financial obligations in the ordinary course of business;
3. There are no liens, judgments, or encumbrances, other than those of record, or disclosed to Lender prior to execution of the Loan Agreement, or disclosed no later than at the execution of this Loan and Security Agreement;
4. Borrower's representations with respect to the financial and operational aspects of the business in the written documents previously provided to Lender remain accurate and not misleading.

9. BORROWER'S COVENANTS

A. INSURANCE: For the duration of the Loan (i.e. the period beginning with the closing and funding of the Loan and continuing until repayment in full), Borrower shall take out, pay for and keep in full force, insurance on the Collateral against such risks, in such amounts, with such insurance carrier, and with such loss payable clause as shall be satisfactory to Lender, and shall furnish Lender with the satisfactory evidence of such insurance.

B. NOTICE OF CHANGE: Borrower, its successors and assigns, shall, for the duration of the Loan, give timely notice to Lender and /or its assigns should there be the anticipation of a sale of all or a material portion of the assets utilized as security and collateral for this Loan (other than in the ordinary course), or any changed purpose**;** or discontinuance of operation of all or a portion of the collateral**;** or of material alteration or expansion of the collateral's purpose or function. All such actions taken without Lender's consent shall constitute a default, in which case Lender may exercise all options available at law as may be required to protect or recapture the funds.

C. REPORTS: Borrower shall submit financial and operational reports to Lender as Lender may reasonably request, and Lender shall have access to the records of the business during normal business hours or as arranged in advance. Borrower's failure to provide such information as requested and/or the provision of information that appears to be inaccurate or incomplete, shall constitute an event of default.

D. NO FINANCIAL CHANGE: Borrower shall, for the duration of the Loan (i.e. the period beginning with the closing and funding of the Loan and continuing until repayment in full), make no material change in the financial or operational aspects of the business, specifically including but not limited to the borrowing of additional money, the granting of additional liens significantly altering the plan for capital expenditures, salaries of partners or employees, or Borrower's product or service, without the prior written consent of Lender, except as otherwise provided for in this Loan Agreement or in connection with a repayment of the Loan in full.

E. OTHER LIENS AND ENCUMBRANCES: Except for the payoff of the outstanding senior indebtedness owing to MidCap Financial which is intended to occur at the closing and funding of the Loan, Borrower shall use no proceeds of this Loan to refinance any other debt or discharge any lien or other encumbrance, without prior written approval of Lender.

10. INTERPRETATION: This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States of America, where applicable.

11. MISCELLANEOUS PROVISIONS

A. REVISIONS AND AMENDMENTS: Revisions and amendments to this Loan Agreement shall be reduced to writing and shall be executed by all parties to the document. Borrower acknowledges that Lender may require an amendment(s) to this Agreement.

B. PARAGRAPH TITLES: The titles to the paragraphs of this Agreement are used solely for purposes of identification and are not to be construed as affecting the meaning of the language of the paragraphs.

C. NOTICE ADDRESSES: Borrower and Lender shall give one another notice pursuant to this Agreement at their respective corporate addresses and will keep the other informed of any change of address for notification purposes.

12. DEFAULT AND REMEDIES

A. DEFAULT: If any of the following events of default shall occur without being cured within 15 days from the date that written notice of such default is received by Borrower from Lender, the Debt shall immediately become due and payable if a cure of a default is not reached in 30 days from the initial default or breach.

B. The following events shall constitute events of default:

1) failure to comply with all applicable provisions of the Loan Agreement;

2) failure to perform any of Borrower's obligations under this Loan Agreement;

3) failure to perform as required by any document that secures this Loan.

C. REMEDIES: If Borrower fails to pay the Debt or cure any breach or default prior to the expiration of the 15-day notice period, Lender may invoke foreclosure of this Loan Agreement, or any other remedy allowed by this Loan Agreement, or any other document related to this Loan, or by law.

D. REMEDIES CUMULATIVE: All remedies provided in this agreement are distinct and cumulative to any other right or remedy under this agreement, or otherwise available by law, and may be exercised concurrently, independently, or successively.

E. FORBEARANCE NOT A WAIVER: Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

13. CLOSING AND FUNDING OF LOAN

A. CLOSING AND FUNDING. The closing and funding of the Loan shall occur not later than five business days following receipt by Lender from Borrower of a written notice of closing and payment instructions for Loan funding.

B. TERMINATION. In the event that Borrower does not deliver to Lender a written notice of closing and payment instructions for Loan funding within seventy-five (75) days following the date of this Loan Agreement, the sole right of each of the parties in such event shall be to terminate this Loan Agreement by delivering written notice of such termination to the other party, in which event any deposit, earnest money or other amounts previously paid by Borrower to Lender shall be retained by Lender and the parties shall have no further obligations or liabilities hereunder

IN WITNESS WHEREOF this Loan Agreement is executed as of the date first set forth above.

BORROWER

/s/ Mitch Goldsteen
Mitch Goldsteen
BOD Chairman
Shimmick Construction Company, Inc.

LENDER

/s/ Sunny Ikwue
Sunny Ikwue
Managing Partner
Hudson Bridge Partners, LLC

Repayment Schedule

[***]

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated July 14, 2023 (August 9, 2023 as to earnings per share information and Notes 1, 7, 10 and 14), relating to the financial statements of SCCI National Holdings, Inc. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ DELOITTE & TOUCHE LLP

Denver, Colorado
October 4, 2023

Exhibit 99.1

Consent to be Named as a Director Nominee

In connection with the filing by Shimmick Corporation of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Shimmick Corporation in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: October 3, 2023

/s/ Carolyn L. Trabuco
Carolyn L. Trabuco

Exhibit 99.2

Consent to be Named as a Director Nominee

In connection with the filing by Shimmick Corporation of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Shimmick Corporation in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: October 3, 2023

/s/ Geoffrey E. Heekin
Geoffrey E. Heekin

Exhibit 99.3

Consent to be Named as a Director Nominee

In connection with the filing by Shimmick Corporation of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Shimmick Corporation in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: October 3, 2023

/s/ J. Brendan Herron

J. Brendan Herron

Exhibit 107

Calculation of Filing Fee Tables

Form S-1
(Form Type)

Shimmick Corporation
(Exact Name of Registrant as Specified in Its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price(1)(2)	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial Effective Date	Filing Fee Previously Paid in Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to be Paid	Equity	Common stock, $0.01 par value per share	Rule 457(o)	—	—	$50,000,000	0.00014760	$7,380				
	Total Offering Amounts					$50,000,000		$7,380				
	Total Fees Previously Paid											
	Total Fee Offsets											
	Net Fee Due							$7,380				

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes shares of our common stock subject to the underwriters' option to purchase additional shares.