

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

FORM 10-Q

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended June 30, 2022

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____.

Commission file number 001-39916

DREAM FINDERS HOMES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

85-2983036

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

14701 Philips Highway, Suite 300, Jacksonville, FL

(Address of principal executive offices)

32256

(Zip code)

(904) 644-7670

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.01 per share	DFH	NASDAQ Global Select Market

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

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

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

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

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

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

As of August 4, 2022, there were 32,378,939 shares of the registrant's Class A common stock, par value \$0.01 per share, issued and outstanding and 60,380,000 shares of the registrant's Class B common stock, par value \$0.01 per share, issued and outstanding.

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PART I. FINANCIAL INFORMATION

ITEM 1. DREAM FINDERS HOMES, INC CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**DREAM FINDERS HOMES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)
(Unaudited)**

	June 30, 2022	December 31, 2021
Assets		
Cash and cash equivalents	\$ 84,097	\$ 227,227
Restricted cash (VIE amounts of \$2,944 and \$4,275)	45,296	54,095
Accounts receivable (VIE amounts of \$1,711 and \$2,684)	30,280	33,482
Inventories:		
Construction in process and finished homes	1,254,199	961,779
Company owned land and lots	93,404	83,197
VIE owned land and lots	8,414	21,686
Total inventories	1,356,017	1,066,662
Lot deposits	288,426	241,406
Other assets (VIE amounts of \$2,727 and \$2,185)	78,946	43,962
Equity method investments	14,188	15,967
Property and equipment, net	6,511	6,789
Operating lease right-of-use assets	25,108	19,359
Deferred tax asset	4,905	4,232
Intangible assets, net of amortization	7,085	9,140
Goodwill	171,927	171,927
Total assets	\$ 2,112,786	\$ 1,894,248
Liabilities		
Accounts payable (VIE amounts of \$668 and \$1,309)	\$ 130,115	\$ 113,498
Accrued expenses (VIE amounts of \$6,213 and \$6,915)	126,823	139,508
Customer deposits	190,945	177,685
Construction lines of credit	875,000	760,000
Notes payable (VIE amounts of \$0 and \$1,979)	1,568	3,292
Operating lease liabilities	25,625	19,826
Contingent consideration	115,555	124,056
Total liabilities	\$ 1,465,631	\$ 1,337,865
<i>Commitments and contingencies (Note 5)</i>		
Mezzanine Equity		
Preferred mezzanine equity	155,621	155,220
Stockholders' Equity		
Class A common stock, \$0.01 per share, 289,000,000 authorized, 32,378,939 outstanding	323	323
Class B common stock, \$0.01 per share, 61,000,000 authorized, 60,380,000 outstanding	602	602
Additional paid-in capital	261,207	257,963
Retained earnings	217,346	118,194
Non-controlling interests	12,056	24,081
Total mezzanine and stockholders' equity	647,155	556,383
Total liabilities, mezzanine equity, and stockholders' equity	\$ 2,112,786	\$ 1,894,248

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

DREAM FINDERS HOMES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Revenues:				
Homebuilding	\$ 791,230	\$ 363,743	\$ 1,453,703	\$ 705,910
Other	1,904	1,533	3,497	2,926
Total revenues	793,134	365,276	1,457,200	708,836
Homebuilding cost of sales	635,422	303,589	1,174,290	594,626
Selling, general and administrative expense	66,015	30,137	127,725	59,452
Income from equity in earnings of unconsolidated entities	(3,334)	(1,125)	(6,294)	(2,857)
Contingent consideration revaluation	5,042	3,977	9,234	5,160
Other (income) expense, net	278	(7,856)	(691)	(7,153)
Interest expense	13	16	26	658
Income before taxes	89,698	36,538	152,910	58,950
Income tax expense	(23,327)	(4,479)	(40,205)	(9,295)
Net and comprehensive income	66,371	32,059	112,705	49,655
Net and comprehensive income attributable to non-controlling interests	(3,747)	(3,486)	(6,365)	(4,961)
Net and comprehensive income attributable to Dream Finders Homes, Inc.	\$ 62,624	\$ 28,573	\$ 106,340	\$ 44,694
Earnings per share⁽¹⁾				
Basic	\$ 0.64	\$ 0.31	\$ 1.07	\$ 0.49
Diluted	\$ 0.60	\$ 0.31	\$ 1.02	\$ 0.49
Weighted-average number of shares				
Basic	92,758,939	92,521,482	92,758,939	92,521,482
Diluted	104,566,243	92,670,727	103,531,560	92,641,222

(1) The Company calculated earnings per share (“EPS”) based on net income attributable to common stockholders for the period January 21, 2021 through June 30, 2021 over the weighted average diluted shares outstanding for the same period. EPS was calculated prospectively for the period subsequent to the Company’s initial public offering and corporate reorganization as described in Note 1, Nature of Business and Significant Accounting Policies, resulting in 92,521,482 shares of common stock outstanding as of the closing of the initial public offering. The total outstanding shares of common stock are made up of Class A common stock and Class B common stock, which participate equally in their ratable ownership share of the Company. Diluted shares were calculated by using the treasury stock method for stock grants and the if-converted method for the convertible preferred stock and the associated preferred dividends.

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

DREAM FINDERS HOMES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY
 Three and six months ended June 30, 2022
 (In thousands, except share amounts)
 (Unaudited)

	Redeemable Preferred Units Mezzanine		Redeemable Common Units Mezzanine		Common Units Members'		Common Stock - Class A		Common Stock - Class B		Additional Paid-in Capital	Retained Earnings	Total Non-Controlling Interests	Total Equity
	Units	Amount	Units	Amount	Units	Amount	Shares	Amount	Shares	Amount				
Balance at March 31, 2022	157,143	\$ 155,417	—	\$ —	—	\$ —	32,295,329	\$ 323	60,226,153	\$ 602	\$ 259,328	\$ 158,611	\$ 21,511	\$ 595,792
Equity-based compensation	—	—	—	—	—	—	83,610	—	153,847	—	1,879	—	—	1,879
Distributions	—	—	—	—	—	—	—	—	—	—	—	—	(13,202)	(13,202)
Preferred dividends declared	—	—	—	—	—	—	—	—	—	—	—	(3,685)	—	(3,685)
Net income	—	204	—	—	—	—	—	—	—	—	—	62,420	3,747	66,371
Balance at June 30, 2022	157,143	\$ 155,621	—	\$ —	—	\$ —	32,378,939	\$ 323	60,380,000	\$ 602	\$ 261,207	\$ 217,346	\$ 12,056	\$ 647,155

	Redeemable Preferred Units Mezzanine		Redeemable Common Units Mezzanine		Common Units Members'		Common Stock - Class A		Common Stock - Class B		Additional Paid-in Capital	Retained Earnings	Total Non-Controlling Interests	Total Equity
	Units	Amount	Units	Amount	Units	Amount	Shares	Amount	Shares	Amount				
Balance at December 31, 2021	157,143	\$ 155,220	—	\$ —	—	\$ —	32,295,329	\$ 323	60,226,153	\$ 602	\$ 257,963	\$ 118,194	\$ 24,081	\$ 556,383
Equity-based compensation	—	—	—	—	—	—	83,610	—	153,847	—	3,244	—	—	3,244
Distributions	—	—	—	—	—	—	—	—	—	—	—	—	(18,390)	(18,390)
Preferred dividends declared	—	—	—	—	—	—	—	—	—	—	—	(6,787)	—	(6,787)
Net income	—	401	—	—	—	—	—	—	—	—	—	105,939	6,365	112,705
Balance at June 30, 2022	157,143	\$ 155,621	—	\$ —	—	\$ —	32,378,939	\$ 323	60,380,000	\$ 602	\$ 261,207	\$ 217,346	\$ 12,056	\$ 647,155

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

DREAM FINDERS HOMES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY
Three and six months ended June 30, 2021
In thousands, except share amounts)
(Unaudited)

	Redeemable Preferred Units Mezzanine		Redeemable Common Units Mezzanine		Common Units Members'		Common Stock - Class A		Common Stock - Class B		Additional Paid-in Capital	Retained Earnings	Total Non-Controlling Interests	Total Equity
	Units	Amount	Units	Amount	Units	Amount	Shares	Amount	Shares	Amount				
Balance at March 31, 2021	7,143	\$ 6,515	—	\$ —	—	\$ —	32,295,329	323	60,226,153	602	253,838	17,226	\$ 21,696	\$ 300,200
Equity-based compensation	—	—	—	—	—	—	—	—	—	—	1,452	—	—	1,452
Contributions	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Contribution from non-controlling interests	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Distributions	—	—	—	—	—	—	—	—	—	—	—	—	(4,309)	(4,309)
Net income	—	188	—	—	—	—	—	—	—	—	—	28,385	3,486	32,059
Balance at June 30, 2021	7,143	\$ 6,703	—	—	—	—	32,295,329	\$ 323	60,226,153	\$ 602	\$ 255,290	\$ 45,611	\$ 20,874	\$ 329,403

	Redeemable Preferred Units/Stock Mezzanine		Redeemable Common Units Mezzanine		Common Units Members'		Common Stock - Class A		Common Stock - Class B		Additional Paid-in Capital	Retained Earnings	Total Non-Controlling Interests	Total Equity
	Units/Shares	Amount	Units	Amount	Units	Amount	Shares	Amount	Shares	Amount				
Balance at December 31, 2020	48,543	\$ 55,638	7,010	\$ 20,593	76,655	\$ 103,853	—	\$ —	—	\$ —	—	\$ —	\$ 31,939	\$ 212,023
Unit compensation	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Contributions	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Conversion units	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Redemptions	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Distributions	—	(3,617)	—	(1,275)	—	(18,384)	—	—	—	—	—	—	(3,476)	(26,753)
Net income (loss)	—	(157)	—	(91)	—	(996)	—	—	—	—	—	—	210	(1,034)
Balance at January 20, 2021 - prior to reorganization transactions and IPO	48,543	\$ 51,864	7,010	\$ 19,227	76,655	\$ 84,473	—	\$ —	—	\$ —	—	\$ —	\$ 28,673	\$ 184,237
Reorganization transaction	(15,400)	(19,958)	(7,010)	(19,227)	(76,655)	(84,473)	21,255,329	213	60,226,153	602	122,843	—	—	—
Issuance of common stock in IPO, net	—	—	—	—	—	—	11,040,000	110	—	—	129,887	—	—	129,997
Equity-based compensation	—	—	—	—	—	—	—	—	—	—	2,560	—	—	2,560
Contributions	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Conversion of units	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Redemptions	(26,000)	(25,531)	—	—	—	—	—	—	—	—	—	—	—	(25,531)
Distributions	—	—	—	—	—	—	—	—	—	—	—	—	(12,550)	(12,550)
Net income	—	328	—	—	—	—	—	—	—	—	—	45,611	4,751	50,689
Balance at June 30, 2021	7,143	\$ 6,703	—	—	—	—	32,295,329	\$ 323	60,226,153	\$ 602	\$ 255,290	\$ 45,611	\$ 20,874	\$ 329,403

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

DREAM FINDERS HOMES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2022	2021
Cash Flows from Operating Activities		
Net income	\$ 112,705	\$ 49,655
Adjustments to Reconcile Net Income to Net cash used in operating activities		
Depreciation and amortization	4,230	1,927
(Gain) loss on sale of property and equipment	(16)	17
Amortization of debt issuance costs	1,860	1,429
Extinguishment of unamortized debt issuance costs	282	—
Amortization of right-of-use operating lease	2,489	1,695
Stock compensation expense	3,244	2,560
Deferred tax expense	16,633	9,295
Income from equity method investments, net of distributions received	1,372	(2,857)
Remeasurement of contingent consideration	9,234	5,160
Changes in Operating Assets and Liabilities		
Accounts receivable	3,203	1,762
Inventories	(289,355)	(117,315)
Lot deposits	(47,021)	(41,001)
Other assets	(32,058)	(6,915)
Accounts payable and accrued expenses	(20,161)	(26,176)
Customer deposits	13,260	28,942
Operating lease ROU assets	(8,238)	(264)
Operating lease liabilities	5,799	(1,346)
Net cash used in operating activities	(222,538)	(93,432)
Cash Flows from Investing Activities		
Purchase of property and equipment	(1,923)	(1,278)
Proceeds from disposal of property and equipment	42	460
Investments in equity method investments	—	(600)
Returns of investment from equity method investments	407	549
Business combinations, net of cash acquired	—	(22,616)
Net cash used in investing activities	(1,474)	(23,485)
Cash Flows from Financing Activities		
Proceeds from construction lines of credit	230,000	1,001,317
Principal payments on construction lines of credit	(115,000)	(926,703)
Proceeds from notes payable	578	2,420
Principal payments on notes payable	(2,301)	(24,378)
Payment of debt issuance costs	(5,069)	(3,884)
Payment of equity issuance costs	—	(12,572)
Payments on financing leases	—	(77)
Payments on contingent consideration	(17,735)	(1,207)
Distributions to non-controlling interests	(18,390)	(16,026)
Proceeds from stock issuance	—	142,569
Distributions	—	(23,276)
Redemptions	—	(25,531)
Contribution from conversion of converted LLC units	—	123,658
Conversion of LLC units	—	(123,658)
Net cash provided by financing activities	72,083	112,652
Net increase (decrease) in cash, cash equivalents and restricted cash	(151,929)	(4,265)
Cash, cash equivalents and restricted cash at beginning of period	281,322	85,211
Cash, cash equivalents and restricted cash at end of period	\$ 129,393	\$ 80,946
Non-cash Financing Activities		
Financed land payments to seller	\$ —	\$ 8,916
Leased assets obtained in exchange for new operating lease liabilities	8,239	—
Equity issuance costs incurred	—	906
Accrued distributions	—	—
Non-cash Investing Activities		
Investment capital reallocation	—	(3,469)
Total non-cash financing and investing activities	\$ 8,239	\$ 6,353
Reconciliation of Cash, cash equivalents and Restricted cash		
Cash and cash equivalents	\$ 84,097	\$ 34,009
Restricted cash	45,296	46,937
Total Cash, cash equivalents and Restricted cash shown on the Consolidated Statements of Cash Flows	\$ 129,393	\$ 80,946

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

DREAM FINDERS HOMES, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Nature of Business and Significant Accounting Policies

Nature of Business

Dream Finders Homes, Inc. (the “Company”, “DFH, Inc.” or “we”) was incorporated in the State of Delaware on September 11, 2020. The Company was formed for the purpose of completing an initial public offering (“IPO”) of its common stock and related transactions in order to carry on the business of Dream Finders Holdings LLC, a Florida limited liability company (“DFH LLC”), as a publicly-traded entity. Pursuant to a corporate reorganization and completion of its IPO on January 25, 2021, the Company became a holding company for DFH LLC and its subsidiaries.

In connection with the IPO, and pursuant to the terms of the Agreement and Plan of Merger by and among DFH, Inc., DFH LLC and DFH Merger Sub LLC, a Delaware limited liability company and a direct, wholly-owned subsidiary of DFH, Inc., DFH Merger Sub LLC merged with and into DFH LLC with DFH LLC as the surviving entity (the “Merger”). As a result of the Merger, all of the outstanding non-voting common units and Series A Preferred Units of DFH LLC converted into 21,255,329 shares of Class A common stock of DFH, Inc., all of the outstanding common units of DFH LLC converted into 60,226,153 shares of Class B common stock of DFH, Inc. and all of the outstanding Series B Preferred Units and Series C Preferred Units of DFH LLC remained outstanding. We refer to this and certain other related events and transactions, as the “Corporate Reorganization”. Following the Corporate Reorganization, the Company owns all of the voting membership interest of DFH LLC.

The Company successfully completed its IPO of 11,040,000 shares of Class A common stock (which included full exercise of the over-allotment option) at an IPO price of \$13.00 per share. Shares of the Company’s Class A common stock began trading on the NASDAQ Global Select Market under the ticker symbol “DFH” on January 21, 2021, and the IPO closed on January 25, 2021. On January 27, 2021, the Company redeemed all of the outstanding Series C Preferred Units for \$26.0 million, including accrued unpaid preferred distributions.

Basis of Presentation and Consolidation

The accompanying unaudited, condensed consolidated financial statements include the accounts of DFH, Inc., its wholly-owned subsidiaries and its investments that qualify for consolidation treatment (see Note 7). The accompanying statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”) for interim financial information and with instructions to Form 10-Q and Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for a complete set of financial statements. As such, the accompanying statements should be read in conjunction with the financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021. The accompanying statements include all adjustments that are of a normal recurring nature and necessary for the fair presentation of our results for the interim periods presented, which are not necessarily indicative of results to be expected for the full year. All intercompany accounts and transactions have been eliminated in consolidation. There are no other components of comprehensive income not already reflected in net and comprehensive income on our Condensed Consolidated Statements of Comprehensive Income.

As a result of the Corporate Reorganization, for accounting purposes, our historical results included herein present the combined assets, liabilities and results of operations of DFH, Inc. and DFH LLC and its direct and indirect subsidiaries for the period January 1 to January 21, 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 the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates.

Contingent Consideration

In connection with applicable acquisitions, the Company records the fair value of contingent consideration as a liability on the acquisition date, based on estimated pre-tax net income of the acquiree for future periods prescribed by the underlying agreement. The initial measurement of contingent consideration is based on projected cash flows such as revenues, gross margin, overhead expenses and pre-tax income and is discounted to present value using the discounted cash flow method. The remaining estimated earn-out payments are subsequently remeasured to fair value at each reporting date based on the estimated future earnings of the acquired entities and the re-assessment of risk-adjusted discount rates that reflect current market conditions. Maximum potential exposure for contingent consideration is not estimable based on the contractual terms of the contingent consideration agreements, which allow for a percentage payout based on a potentially unlimited range of pre-tax net income.

As of June 30, 2022, and December 31, 2021, the Company remeasured contingent consideration related to the acquisition of Village Park Homes, LLC and adjusted the liability to \$3.4 million and \$7.6 million, respectively. The Company recorded contingent consideration adjustments resulting in \$2.4 million and \$0.1 million of expense for the three months ended June 30, 2022 and 2021, and \$2.8 million and \$0.5 million of expense for the six months ended June 30, 2022, and 2021, respectively.

As of June 30, 2022, and December 31, 2021, the Company remeasured contingent consideration related to the acquisition of H&H Constructors of Fayetteville, LLC (“H&H”) and adjusted the liability to \$17.8 million and \$19.8 million, respectively. The Company recorded contingent consideration adjustments resulting in \$0.7 million and \$3.9 million of expense for the three months ended June 30, 2022 and 2021, and \$2.5 million and \$4.7 million of expense for the six months ended June 30, 2022, and 2021, respectively.

The Company measured contingent consideration related to the acquisition of MHI on October 1, 2021 (see Note 2), and recorded a liability in the opening balance sheet of \$94.6 million. As of June 30, 2022 and December 31, 2021, the Company remeasured contingent consideration related to the MHI acquisition and adjusted the liability to \$4.4 million and \$96.7 million, respectively. The Company recorded contingent consideration adjustments resulting in \$1.9 million and \$3.9 million of expense for the three and six months ended June 30, 2022, respectively.

The contingent consideration re-measurement adjustments are included in contingent consideration revaluation on the Condensed Consolidated Statements of Comprehensive Income. The payment of the H&H and MHI earn-outs are also subject to certain minimum earnings thresholds, which must be met by H&H and MHI, respectively, before an earn-out payment occurs.

During the three months ended June 30, 2022 and 2021, the Company made total contingent consideration payments of \$7.7 million and \$1.2 million, respectively. See Note 10, Fair Value Disclosures, for additional discussion on fair value measurement inputs related to contingent consideration.

Change in Accounting Principle – Cash and cash equivalents

On December 31, 2021, the Company elected to change its accounting policy for the presentation of cash proceeds that are in transit from or held within title company escrow accounts for the benefit of the Company, typically for less than five days. Under the new principle, these proceeds are included in cash and cash equivalents, whereas previously, they were considered accounts receivable and included in other assets. The Company believes this reclassification to be preferable because it is a more accurate reflection of its liquidity at period end and the predominant method used in the industry. This change in accounting principle has been applied retrospectively. This reclassification had no impact on the Condensed Consolidated Statements of Comprehensive Income or Condensed Consolidated Statements of Equity.

The impact of the retrospective presentation change on the Condensed Consolidated Statement of Cash Flows for the six month period ended June 30, 2021, is shown below (in thousands):

	As previously reported	As adjusted	Effect of change
Net cash used in operating activities	\$ (121,287)	\$ (93,432)	\$ 27,855

Reclassifications

Certain other reclassifications have been made in the 2021 condensed consolidated financial statements to conform to the classifications used in 2022.

Recent Accounting Pronouncements

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform, which provides practical expedients and exceptions for applying GAAP when modifying contracts and hedging relationships that use LIBOR as a reference rate. In addition, these amendments are not applicable to contract modifications made, and hedging relationships entered into or evaluated after December 31, 2022. We do not anticipate a material increase in interest rates from our creditors as a result of the shift away from LIBOR as a reference rate. In June 2022, we amended and restated our revolving credit facility, with no material impact as a result of the shift away from LIBOR (see Note 3). We will continue to evaluate the impact of the shift and relevant guidance on our financial statements and disclosures, as applicable.

2. Business Acquisitions

Century Homes

On January 31, 2021, the Company completed the acquisition of Century Homes Florida, LLC (“Century Homes”) from Tavistock Development Company for a total purchase price of \$35.6 million. The acquisition was accounted for as a business combination under FASB Topic 805, Business Combinations (“Topic 805”). We recorded an allocation of the purchase price to Century Homes’ tangible assets acquired and liabilities assumed based on their estimated fair values as of January 31, 2021. There were no identifiable intangible assets. Goodwill was recorded as the residual amount by which the purchase price exceeded the provisional fair value of the net assets acquired and is expected to be fully deductible for tax purposes. Goodwill consists primarily of expected synergies of combining operations, the acquired workforce, and growth opportunities, none of which qualify as separately identifiable intangible assets. As of January 31, 2022, the Company has completed its allocation of the purchase price and no measurement period adjustments were identified.

The final purchase price allocation as of January 31, 2022 was as follows (in thousands):

Cash acquired	\$	3,993
Other assets		754
Goodwill		1,795
Inventories		34,324
Property and equipment, net		549
Liabilities		(5,831)
Total purchase price	\$	<u>35,584</u>

MHI

On October 1, 2021, we completed the acquisition of certain assets, rights and properties, and assumed certain liabilities of privately held Texas homebuilder McGuyer Homebuilders, Inc. and related affiliates (“MHI”), including: (i) single-family residential homebuilding; (ii) owning model homes; (iii) acquisition, ownership and licensing of intellectual property (including architectural plans); (iv) purchasing and reselling homebuilding supplies; (v) development, construction and sale of condominium units in Austin, Texas; (vi) mortgage origination through a mortgage company; and (vii) title insurance, escrow and closing services through a title company. The acquisition allows the Company to expand its existing footprint in the Texas market.

Total cash paid at closing of approximately \$471.0 million included \$463.0 million in purchase price based on the preliminary value of purchased net assets and a 10.0% deposit on a separate land bank facility. On December 3, 2021, the Company paid an additional \$25.2 million in cash for customary post-closing adjustments based on the final value of the net assets acquired as of September 30, 2021. Additionally, the Company agreed to the future payment of additional consideration of up to 25.0% of pre-tax net income for up to five periods, the last of which ends 48 months after the closing, subject to certain minimum pre-tax income thresholds and certain overhead expenses, estimated at approximately \$94.6 million as of the acquisition date.

The total purchase price was as follows (in thousands):

Cash consideration	\$	488,178
Contingent consideration based on future earnings		94,573
Total consideration	\$	<u>582,751</u>

The Company used \$20.0 million of cash on hand and proceeds from the sale of the Convertible Preferred Stock (see Note 6) and from unsecured debt incurred under the Credit Agreement, to fund the MHI acquisition. On October 1, 2021, the Company borrowed approximately \$300.0 million under the Credit Agreement and paid off MHI's vertical lines of credit in connection with the closing of the acquisition (see Note 3).

The acquisition was accounted for as a business combination under Topic 805. We recorded an allocation of the purchase price to MHI's tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values as of October 1, 2021. The amounts for intangible assets were based on third-party valuations performed. Goodwill was recorded as the residual amount by which the purchase price exceeded the provisional fair value of the net assets acquired and is expected to be fully deductible for tax purposes. Goodwill consists primarily of expected synergies of combining operations, the acquired workforce, and growth opportunities, none of which qualify as separately identifiable intangible assets. As of June 30, 2022, the Company has substantially completed its purchase price allocation. The principal open items relate to the valuation of certain contingencies as management is awaiting additional information to complete its assessment. Estimates have been recorded as of the acquisition date and updates to these estimates may increase or decrease goodwill.

Pursuant to Topic 805, the financial statements will not be retrospectively adjusted for any provisional amount changes that occur in subsequent periods. Rather, we will recognize any provisional adjustments during the reporting period in which the adjustments are determined. We will also be required to record, in the same period's financial statements, the effect on earnings, if any, as a result of any change to the provisional amounts, calculated as if the accounting had been completed at the acquisition date. We expect to finalize the purchase price allocation as soon as practicable, but no later than one year from the acquisition date.

The purchase price allocation as of June 30, 2022, was as follows (in thousands):

Cash acquired	\$	297
Inventories		473,037
Lot deposits		40,452
Other assets		14,722
Property and equipment, net		3,163
Equity method investments		6,192
Intangible assets, net of amortization		8,840
Goodwill		141,071
Operating lease right-of-use assets		1,508
Accounts payable		(41,466)
Accrued expenses		(25,801)
Customer deposits		(37,756)
Operating lease liabilities		(1,508)
Total purchase price	\$	<u>582,751</u>

On January 31, 2022, the Company made a cash payment of \$34.9 million for model homes from MHI Models, Ltd., a Texas limited partnership ("the MHI Model Homes"). The post-close consideration payment completed the asset purchase transaction, which was considered to be economically separate from the acquisition of MHI and related purchase price allocation above.

On March 24, 2022, the Company sold 93 completed model homes for \$55.4 million, including the MHI Model Homes. The Company simultaneously entered into 93 individual lease agreements. The Company is responsible for paying the operating expenses associated with the homes while under lease. The Company considered the terms of the sale and leaseback arrangement and based on applicable GAAP guidance, concluded the transaction qualifies for sale treatment and that the leases should be classified as operating leases.

3. Construction Lines of Credit

On January 25, 2021, the Company entered into a \$450.0 million syndicated senior credit facility with Bank of America, N.A. (the "Credit Agreement"), and subsequently repaid \$340.0 million in outstanding debt and terminated all then-existing construction lines of credit. Through subsequent amendments in September 2021 ("the Amendments"), additional lenders were added as well as provisions for any existing lender, at the Company's request, to increase its revolving commitment under the Credit Agreement, add new revolving loan tranches under the Credit Agreement or add new term loan tranches under the Credit Agreement, not to exceed an aggregate of \$1.1 billion, which would include the exercise of the accordion feature (collectively, the "Existing Credit Agreement").

On June 2, 2022, the Company entered into an Amended and Restated Credit Agreement (the "Amended and Restated Credit Agreement") to amend and restate its Existing Credit Agreement. The Amended and Restated Credit Agreement is substantially similar to the Existing Credit Agreement except that the Amended and Restated Credit Agreement, among other things, (i) provides for an increase in the aggregate commitments under the facility from \$817.5 million to \$1.1 billion; (ii) allows the facility to expand to a borrowing base of up to \$1.6 billion through its accordion feature; (iii) extends the maturity date from January 25, 2024 to June 2, 2025; and (iv) transitions the applicable interest rate from a Eurodollar based rate to a Secured Overnight Financing Rate ("SOFR") based rate, as described below.

Under the Amended and Restated Credit Agreement, loans bear interest at the Company's option of (1) a "Base Rate", which means, for any day, a fluctuating rate per annum equal to credit spreads of 1.5% to 2.6%, which are determined based on the Company's debt to capitalization ratio, plus the highest of (a) the Federal Funds Rate plus 0.5%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," (c) Term SOFR plus 1.0% and (d) 1.0%, or (2) a "Term SOFR/Letter of Credit Rate", which means for any day a fluctuating rate per annum equal to credit spreads of 2.5% to 3.6%, which are determined based on the Company's debt to capitalization ratio, plus the adjusted term SOFR rate (based on one, three or six-month interest periods).

On June 30, 2022, the Company received an additional commitment of \$50.0 million under the terms of the accordion feature.

As of June 30, 2022 and December 31, 2021, the outstanding balance under the Amended and Restated Credit Agreement was \$875.0 million and \$760.0 million, respectively, and the effective interest rate was 4.1% and 3.8%, respectively. Under the Amended and Restated Credit Agreement, the funds available are unsecured and availability under the borrowing base is calculated based on finished lots, construction in process, and finished homes inventory on the Condensed Consolidated Balance Sheets.

The Company had capitalized debt issuance costs related to the line of credit and notes payable, net of amortization, of \$0.0 million and \$5.5 million as of June 30, 2022 and December 31, 2021, respectively, which were included in other assets on the Condensed Consolidated Balance Sheets. The Company amortized \$1.1 million and \$0.6 million of debt issuance costs for the three months ended June 30, 2022 and 2021, and \$1.9 million and \$1.4 million of debt issuance costs for the six months ended June 30, 2022 and 2021, respectively.

The Credit Agreement contains restrictive covenants and financial covenants. The Company was in compliance with all debt covenants as of June 30, 2022 and December 31, 2021. The Company expects to remain in compliance with all debt covenants over the next twelve months.

4. Inventories

Inventories consist of finished lots, construction in process (“CIP”) and finished homes, including capitalized interest. In addition, lot option fees related to off-balance sheet arrangements and due diligence costs related to land development are also capitalized into inventories – finished lots and land. Finished lots are purchased with the intent of building and selling a home, and are generally purchased just-in-time for construction. CIP represents the homebuilding activity associated with homes to be sold and speculative homes. CIP includes the cost of the finished lot and all of the direct costs incurred to build the home. The cost of the home is expensed on a specific identification basis.

Interest is capitalized and included within each inventory category above. Capitalized interest activity is summarized in the table below for the three and six months ended June 30, 2022 and 2021 (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Capitalized interest at the beginning of the period	\$ 49,392	\$ 18,842	\$ 33,266	\$ 21,091
Interest incurred	25,447	7,329	50,433	13,997
Interest expensed	(13)	(16)	(26)	(658)
Interest charged to homebuilding cost of sales	(12,790)	(7,365)	(21,637)	(15,640)
Capitalized interest at the end of the period	\$ 62,036	\$ 18,791	\$ 62,036	\$ 18,791

5. Commitments and Contingencies

The Company is currently involved in the appeals phase of civil litigation related to defective products provided by Weyerhaeuser NR Company (“Weyerhaeuser”) (NYSE: WY), one of our lumber suppliers. Our Colorado division builds a number of floor plans that include basements using specialized fir lumber. On July 18, 2017, Weyerhaeuser issued a press release indicating a recall and potential solution for TJI Joists with Flak Jacket Protection manufactured after December 1, 2016. The press release indicated the TJI Joists used a Flak Jacket coating that included a formaldehyde-based resin that could be harmful to consumers and produced an odor in certain newly constructed homes. We had 38 homes impacted by the potentially harmful and odorous Flak Jacket coating and incurred significant costs directly related to Weyerhaeuser’s defective TJI Joists. Accordingly, we sought remediation and damages from Weyerhaeuser. The press release by Weyerhaeuser had a pronounced impact on our sales and cancellation rates in Colorado. We filed suit on December 27, 2017—Dream Finders Homes LLC and DFH Mandarin, LLC v. Weyerhaeuser NR Company, No. 17CV34801 (District Court, City and County of Denver, State of Colorado)—and included claims against Weyerhaeuser for manufacturer’s liability based on negligence, negligent misrepresentation causing financial loss in a business transaction and fraudulent concealment. Weyerhaeuser asserted a counterclaim asserting an equitable claim for unjust enrichment. After completion of a jury trial on November 18, 2019, the District Court issued a verdict in our favor on our claims, awarding Dream Finders Homes LLC \$3.0 million in damages and DFH Mandarin, LLC \$11.7 million in damages. On February 21, 2020, the District Court dismissed Weyerhaeuser’s counterclaim. Weyerhaeuser appealed the Colorado District Court’s jury verdict and on December 2, 2021, the Colorado Court of Appeals reversed the judgment entered against Weyerhaeuser for negligence, negligent misrepresentation and fraudulent concealment. As a result, Dream Finders Homes LLC and DFH Mandarin, LLC filed a petition for writ of certiorari to the Colorado Supreme Court on January 13, 2022 to appeal the Colorado Court of Appeals ruling —Dream Finders Homes LLC and DFH Mandarin, LLC v. Weyerhaeuser NR Company, Case No. 2022SC24 (Colorado Supreme Court)—and that appeal is currently pending. We are awaiting the Colorado Supreme Court’s decision on whether it will grant our petition for writ of certiorari. We have incurred all costs to date related to the Weyerhaeuser matter and have recognized no gain on the damages awarded to us by the District Court.

On October 9, 2019, Silver Meadows Townhome Owners Association, Inc. filed a lawsuit in Boulder County Colorado District Court against DFH Mandarin, LLC (“Mandarin”) and Dream Finders Homes, LLC (collectively with Mandarin, “DFH”), both wholly-owned subsidiaries of the Company, as well as other named defendants. The lawsuit alleges certain construction and development defects. Mandarin successfully compelled arbitration. On March 2, 2022 during arbitration proceedings, the parties settled the matter for \$12.0 million subject to the execution of a mutually acceptable settlement agreement, including a denial of any admission of liability on behalf of DFH. DFH’s insurance carrier agreed to pay the policy limit of \$4.0 million toward the settlement. In April 2022, the parties executed a mutually acceptable settlement agreement and DFH paid the settlement amount, net of the insurance proceeds received. In April 2022, DFH also commenced the formal legal process to seek contribution toward DFH’s portion of the settlement amount from responsible

subcontractors and vendors who performed work on the project. As of June 30, 2022, DFH has settled with one subcontractor for contribution toward DFH's reimbursement of amounts paid toward the settlement and continues its proceedings to collect additional contributions from responsible subcontractors and vendors.

6. Equity

Pursuant to the Corporate Reorganization effective January 25, 2021, the Company is authorized to issue 350,000,000 shares of common stock, par value of \$0.01 per share, consisting of 289,000,000 shares of Class A common stock and 61,000,000 shares of Class B common stock. In addition, the Board of Directors of the Company (the "Board of Directors") has the authority to issue one or more series of preferred stock, par value \$0.01 per share, without stockholder approval. As a result of the Corporate Reorganization, all of the outstanding non-voting common units and Series A Preferred Units of DFH LLC converted into 21,255,329 shares of the Company's Class A common stock and all of the outstanding common units of DFH LLC converted into 60,226,153 shares of the Company's Class B common stock.

On September 29, 2021, the Company filed a Certificate of Designations with the State of Delaware establishing 150,000 shares of Series A Convertible Preferred Stock with an initial liquidation preference of \$1,000 per share and a par value \$0.01 per share (the "Convertible Preferred Stock") and sold 150,000 shares of the Convertible Preferred Stock for an aggregate purchase price of \$150.0 million. The Company used the proceeds from the sale of the Convertible Preferred Stock to fund a portion of the MHI acquisition (see Note 2).

All of the Company's outstanding preferred shares are classified in mezzanine equity as they can be redeemed in a deemed liquidation of the Company outside of the Company's control.

7. Variable Interest Entities

The Company holds investments in certain limited partnerships and similar entities that conduct land acquisition, land development and/or other homebuilding activities in various markets where our homebuilding operations are located, which are considered variable interests. The Company also has an interest in Jet Home Loans LLC ("Jet Home Loans" or "Jet LLC"), where the primary activities include underwriting, originating and selling home mortgages. The Company's investments in these joint ventures create a variable interest in a variable interest entity ("VIE"), depending on the contractual terms of the arrangement. Additionally, the Company, in the ordinary course of business, enters into option contracts with third parties and unconsolidated entities for the ability to acquire rights to land for the construction of homes. Under these contracts, the Company typically makes a specified earnest money deposit in consideration for the right to purchase land in the future, usually at a predetermined price.

The VIEs are funded by initial capital contributions from the Company, as well as its other partners and generally do not have significant debt. In some cases, an unrelated third party is the general partner or managing member and in others, the general partner or managing member is a related party. The primary risk of loss associated with the Company's involvement in these VIEs is limited to the Company's initial capital contributions due to bankruptcy or insolvency of the VIE; however, management has deemed the likelihood of this as remote. The maximum exposure to loss related to the VIEs is disclosed below for both consolidated and unconsolidated VIEs, which equals the Company's capital investment in each entity.

Management analyzes the Company's investments first under the variable interest model to determine if they are VIEs and, if so, whether the Company is the primary beneficiary. Management determines whether the Company is the primary beneficiary of a VIE at the time it becomes involved with a VIE and reconsiders that conclusion if changes to the Company's involvement arise. To make this determination, management considers factors such as whether the Company could direct finance, determine or limit the scope of the entity, sell or transfer property, direct development or direct other operating decisions. Management consolidates the entity if the Company is the primary beneficiary or if a standalone primary beneficiary does not exist and the Company and its related parties collectively meet the definition of a primary beneficiary. If the joint venture does not qualify as a VIE under the variable interest model, management then evaluates the entity under the voting interest model to assess if consolidation is appropriate.

Joint ventures for which the Company is not identified as the primary beneficiary are typically accounted for as equity method investments based on the voting interest model. The Company and its unconsolidated joint venture partners make initial and/or ongoing capital contributions to these unconsolidated joint ventures, typically on a pro rata basis, according to each party's respective equity interests. The option to make capital contributions is governed by each such unconsolidated joint venture's respective operating agreement and related governing documents. Partners in these unconsolidated joint ventures are unrelated homebuilders, land developers or other real estate entities.

For distributions received from these unconsolidated joint ventures, the Company has elected to use the cumulative earnings approach for the Condensed Consolidated Statements of Cash Flows. Under the cumulative earnings approach, distributions up to the amount of cumulative equity in earnings recognized are treated as returns on investment within operating cash flows and those in excess of that amount are treated as returns of investment within investing cash flows.

The assets of a VIE can only be used to satisfy the obligations of that specific VIE, even for assets that are consolidated. The Company and its partners do not have an obligation to make capital contributions to the VIEs and there are no liquidity arrangements or other agreements that could require the Company to provide financial support to the VIEs. Furthermore, the creditors of the VIEs have no recourse to the Company's general credit.

Consolidated VIEs

For VIEs that the Company does consolidate, management has the power to direct the activities that most significantly impact the VIE's economic performance. The Company typically serves as the party with homebuilding expertise in the VIE. The Company does not guarantee the debts of the VIEs, and creditors of the VIEs have no recourse against the Company. There were no new consolidated VIEs during the six months ended June 30, 2022 or 2021.

The table below displays the carrying amounts of the assets and liabilities related to the consolidated VIEs (in thousands):

	As of June 30, 2022	As of December 31, 2021
Consolidated		
Assets	\$ 15,796	\$ 30,830
Liabilities	\$ 6,881	\$ 10,203

Unconsolidated VIEs

For VIEs that the Company does not consolidate, the power to direct the activities that most significantly impact the VIE's economic performance is held by a third party. These entities are accounted for as equity method investments. The Company's maximum exposure to loss is limited to its investment in the entities because the Company is not obligated to provide any additional capital to or guarantee any of the unconsolidated VIEs' debt.

The table below shows the Company's investment in the unconsolidated VIEs (in thousands):

	As of June 30, 2022	As of December 31, 2021
Unconsolidated		
Jet Home Loans	\$ 6,331	\$ 6,133
Other unconsolidated VIEs	7,857	9,834
Total investment in unconsolidated VIEs	<u>\$ 14,188</u>	<u>\$ 15,967</u>

Lot Option Contracts

None of the creditors of any of the land bank entities with which we enter into lot option contracts have recourse to our general credit. We generally do not have any specific performance obligations to purchase a certain number or any of the lots or guarantee any of the land bankers' financial or other liabilities. We are not involved in the design or creation of the land bank entities from which we purchase lots under lot option contracts. The land bankers' equity holders have the power to direct 100.0% of the operating activities of the land bank entity. We have no voting rights in any of the land bank entities. The sole purpose of the land bank entity's activities is to generate positive cash flow returns for such entity's equity holders. Further, we do not share any of the profit or loss generated by the project's development. The profits and losses are passed directly to the land bankers' equity holders.

The deposit placed by us pursuant to the lot option contracts is deemed to be a variable interest in the respective land bank entities. Certain of those land bank entities are deemed to be VIEs. Therefore, the land bank entities with which we enter into lot option contracts are evaluated for possible consolidation by the Company.

We believe the activities that most significantly impact a land bank entity’s economic performance are the operating activities of the land bank entity. In the case of development projects, unless and until a land bank entity delivers finished lots for sale, the land bank entity’s equity investors bear the risk of land ownership and do not earn any revenues. The operating development activities are managed by the land bank entity’s equity investors.

We possess no more than limited protective legal rights through the lot option contracts in the specific finished lots we are purchasing, and we possess no participative rights in the land bank entities. Accordingly, we do not have the power to direct the activities of a land bank entity that most significantly impact its economic performance. For the aforementioned reasons, the Company concluded that it is not the primary beneficiary of the land bank entities with which it enters into lot option contracts, and therefore the Company does not consolidate any of these VIEs. These option contracts generally allow us, at our option, to forfeit our right to purchase the lots for any reason. Our sole legal obligation and economic loss as a result of such forfeitures is limited to the amount of the deposits paid pursuant to such option contracts including accrued interest, any related fees paid to the land bank partner, management of the development to completion and any cost overruns related to the project. The Company’s risk of loss related to finished lot option and land bank option contract deposits and related fees and interest was \$355.2 million and \$274.9 million as of June 30, 2022 and December 31, 2021, respectively. Any potential cost overruns relative to the project cannot be quantified as the Company has not experienced any significant cost overruns historically.

8. Income Taxes

The Company’s effective tax rate for the six months ended June 30, 2022 and 2021 was 27.4% and 17.0%, respectively. The effective tax rate increase of 10.4% is due to the exclusion of the Energy-Efficient Home Credit (Section 45L) in the current year, as this tax credit has not yet been extended through December 31, 2022; non-deductible executive compensation, and the Florida corporate tax rate increase from 3.5% in 2021 to 5.5% in 2022. In addition, in the second quarter of 2021, the Company’s Paycheck Protection Program loan was forgiven and the related income of \$7.2 million was not taxable.

9. Segment Reporting

The Company primarily operates in the homebuilding business and is organized and reported by division. There are eight reportable segments: (i) Jacksonville, (ii) Colorado, (iii) Orlando, (iv) Washington DC (“DC Metro”), (v) The Carolinas, (vi) Texas, (vii) Jet LLC, the Company’s mortgage operations, and (viii) Other. The Company includes the Century Homes operations within the Orlando segment and the MHI operations comprise the Texas segment. The remaining operating segments are combined into the “Other” category, along with the corporate component, which is not considered an operating segment.

The following tables summarize revenues and net and comprehensive income by segment for the three and six months ended June 30, 2022 and 2021 as well as total assets and goodwill by segment as of June 30, 2022 and December 31, 2021 (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Revenues:				
Jacksonville	\$ 180,853	\$ 93,937	\$ 315,684	\$ 190,518
Colorado	39,431	24,797	77,584	40,007
Orlando	60,468	60,182	107,311	124,618
DC Metro	12,363	23,898	24,243	37,846
The Carolinas	118,180	94,829	201,763	193,332
Texas	305,068	—	580,492	—
Jet Home Loans	6,695	5,826	13,653	12,845
Other ⁽¹⁾	76,771	67,633	150,123	122,515
Total segment revenues	799,829	371,102	1,470,853	721,681
Reconciling items from equity method investments	(6,695)	(5,826)	(13,653)	(12,845)
Consolidated revenues	\$ 793,134	\$ 365,276	\$ 1,457,200	\$ 708,836

Net and comprehensive income:	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Jacksonville	\$ 27,548	\$ 11,277	\$ 45,007	\$ 19,486
Colorado	4,638	2,385	9,159	2,840
Orlando	3,972	5,111	6,886	10,439
DC Metro	383	1,609	1,055	1,999
The Carolinas	6,871	1,074	9,051	5,224
Texas	23,183	—	40,607	—
Jet Home Loans	2,037	2,216	4,326	5,048
Other ⁽¹⁾	(804)	9,558	(300)	7,593
Total segment net and comprehensive income	67,828	33,230	115,791	52,629
Reconciling items from equity method investments	(1,457)	(1,171)	(3,086)	(2,974)
Consolidated net and comprehensive income	\$ 66,371	\$ 32,059	\$ 112,705	\$ 49,655

	Assets:		Goodwill:	
	As of June 30,	As of December 31,	As of June 30,	As of December 31,
	2022	2021	2022	2021
Jacksonville	\$ 283,657	\$ 207,502	\$ —	\$ —
Colorado	152,101	116,121	—	—
Orlando	206,892	131,882	1,795	1,795
DC Metro	89,611	62,051	—	—
The Carolinas	284,166	247,250	16,853	16,853
Texas	770,383	743,306	141,071	141,071
Jet Home Loans	68,966	77,074	—	—
Other ⁽¹⁾	319,465	379,859	12,208	12,208
Total segments	2,175,241	1,965,045	171,927	171,927
Reconciling items from equity method investments	(62,455)	(70,798)	—	—
Consolidated	\$ 2,112,786	\$ 1,894,248	\$ 171,927	\$ 171,927

(1) Other includes the Company's title operations, homebuilding operations in non-reportable segments, operations of the corporate component, and corporate assets such as cash and cash equivalents, cash held in trust, prepaid insurance, operating and financing leases, as well as property and equipment.

10. Fair Value Disclosures

Fair value represents the amount that would be received for selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair values are determined using a fair value hierarchy based on the inputs used to measure fair value. Level 1 inputs are unadjusted quoted prices in active markets for identical assets and liabilities. Level 2 inputs are inputs other than quoted market prices that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable and significant to the fair value.

The following table presents a summary of the change in fair value measurement of contingent consideration, which is based on Level 3 inputs and is the only asset or liability measured at fair value on a recurring basis (in thousands):

Beginning balance, December 31, 2021	\$	124,056
Fair value adjustments related to prior year acquisitions		9,234
Contingent consideration payments		(17,735)
Ending balance, June 30, 2022	\$	<u>115,555</u>

Fair value measurements may also be utilized on a nonrecurring basis, such as for the impairment of long-lived assets and inventory. The fair value of financial instruments, including cash and cash equivalents, accounts receivable, accounts payable, notes payable and customer deposits, approximate their carrying amounts due to the short-term nature of these instruments. The fair value of the construction lines of credit approximate their carrying amounts since they are subject to short-term fixed interest rates that reflect current market rates.

11. Related Party Transactions

The Company enters into or participates in related party transactions and the majority of these transactions are entered into to secure finished lots for the construction of new homes.

Consolidated Joint Ventures

The Company has joint venture arrangements to acquire land, develop finished lots and build homes. Certain stockholders, directors and members of management of the Company, have invested in these joint ventures and some are limited partners in these joint ventures. DFH Investors LLC (which owned 15,400 Series A Preferred Units, representing 11.7% of the membership interest in DFH LLC, prior to the Corporate Reorganization) is the managing member of certain of these joint ventures. The joint ventures are consolidated for accounting purposes (see Note 7).

DF Residential I, LP

DF Residential I, LP ("Fund I") is a real estate investment vehicle, organized to acquire and develop finished lots. Dream Finders Homes LLC has entered into six joint ventures and ten land bank projects with Fund I since its formation in January 2017. DF Capital Management, LLC ("DF Capital") is the investment manager in Fund I. The Company owns a 49.0% membership interest in DF Capital. DF Capital is controlled by unaffiliated parties. Certain directors and executive officers have made investments in Fund I as limited partners. In addition, certain members of management have made investments in Fund I. The general partner of Fund I is DF Management GP, LLC ("DF Management"). Dream Finders Homes LLC is one of four members of DF Management with a 25.8% membership interest. Certain members of DFH Investors LLC, including one of the Company's directors, have a 65.3% membership interest.

The total committed capital in Fund I, which was fully committed in 2019, is \$36.7 million. Collectively, the Company's directors, executive officers and members of management invested \$8.7 million or 23.8% of the total committed capital in Fund I. Additionally, Dream Finders Homes LLC and DFH Investors LLC, collectively invested \$1.4 million or 3.8% of the total committed capital of Fund I.

DF Residential II, LP

DF Residential II, LP ("Fund II") initiated its first close on March 11, 2021. DF Management GP II, LLC, a Florida limited liability company, serves as the general partner of Fund II (the "General Partner"). Fund II raised total capital commitments of \$322.1 million and was fully committed as of January 2022. DF Capital is the investment manager of Fund II.

The Company indirectly owns 72.0% of the membership interests in the General Partner and receives 72.0% of the economic interests. The General Partner is controlled by unaffiliated parties. The Company's investment commitment in Fund II is \$3.0 million or 0.9% of the total committed capital of Fund II.

On March 11, 2021, the Company entered into land bank financing arrangements and a Memorandum of Right of First Offer with Fund II, under which Fund II has an exclusive right of first offer on any land bank financing projects up to \$20.0 million that meet its investment criteria and are undertaken by the Company during Fund II's investment period.

Certain directors, executive officers and members of management have made investment commitments as limited partners in Fund II in an aggregate amount of \$133.9 million or 41.6% of the total committed capital of Fund II as of June 30, 2022, inclusive of a \$100.0 million commitment from Rockpoint Group, LLC discussed below. As of December 31, 2021, these investment commitments were \$33.9 million or 10.5% of the total committed capital of Fund II.

Land Bank Transactions with DF Capital

DF Capital subsequently raised additional commitments from limited partners through funds other than Fund I and Fund II, which provided land bank financing for specific projects. One of the Company's officers, invested \$0.2 million in one of these funds managed by DF Capital as a limited partner in 2019. The Company continues to purchase lots controlled by these funds.

As of June 30, 2022, the Company had \$68.1 million in outstanding lot deposits in relation to DF Capital projects.

Land Bank Transactions with LB Parker Owners, LLC

On August 10, 2021, the Company entered into a land banking transaction with LB Parker Owners, LLC, a Delaware limited liability company, which is beneficially owned by Rockpoint Group, LLC ("Rockpoint") in connection with the Company's acquisition and development of certain residential real property located in Parker, Colorado known as "Looking Glass" pursuant to which LB Parker Owners, LLC provided \$3.3 million for the acquisition of the real property. William H. Walton III is the founding principal of Rockpoint and also a member of the Company's Board of Directors, its Audit Committee, and its Compensation Committee.

On July 29, 2022, the Company exercised its option with LB Parker Owners, LLC as it pertains to the Looking Glass real property through assignment to a third party land bank. As of that date, LB Parker Owners, LLC has no further interest in the property. DFH retains interest through an option with the new, unrelated third party land bank.

Rockpoint Group, LLC

On February 15, 2022, DFH entered into a Memorandum of Right of First Offer with Rockpoint, under which Rockpoint has an exclusive right of first offer on certain land bank financing projects that meet certain criteria and are undertaken by the Company during Fund II's investment period. On the same date, Rockpoint provided funding relating to its \$100.0 million commitment to Fund II.

Jet Home Loans

Jet LLC performs mortgage origination activities for the Company, including underwriting and originating home mortgages for Company customers and non-Company customers. The Company owns 49.9% of Jet LLC, but is not the primary beneficiary. Jet LLC is accounted for under the equity method and is a related party of the Company.

12. Earnings per Share

The following weighted-average shares and share equivalents were used to calculate basic and diluted earnings per share for the three and six months ended June 30, 2022 and 2021 (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Numerator				
Net and comprehensive income attributable to Dream Finders Homes, Inc.	\$ 62,624	\$ 28,573	\$ 106,340	\$ 44,694
Less: Preferred dividends ⁽¹⁾	3,616	188	7,195	1,003
Add: Loss prior to reorganization attributable to DFH LLC members ⁽²⁾	—	—	—	(1,244)
Net and comprehensive income attributable to common stockholders	\$ 59,008	\$ 28,385	\$ 99,145	\$ 44,935
Denominator				
Weighted-average number of common shares outstanding - basic	92,758,939	92,521,482	92,758,939	92,521,482
Add: Common stock equivalent shares	11,807,304	149,245	10,772,621	119,740
Weighted-average number of shares outstanding - diluted	104,566,243	92,670,727	103,531,560	92,641,222

- (1) For the diluted earnings per share calculation, \$3.4 million and \$6.8 million in preferred dividends associated with convertible preferred stock that are assumed to be converted have been added back to the numerator, for the three and six months ended June 30, 2022, respectively.
- (2) The Corporate Reorganization created the current capital structure of DFH, Inc. Therefore, the basic and diluted earnings per share for the six months ended June 30, 2021 only include earnings subsequent to January 21, 2021, the date of the Corporate Reorganization.

Basic earnings per share is calculated by dividing net income attributable to DFH, Inc. for the period subsequent to the Corporate Reorganization, by the weighted-average number of shares of Class A common stock and Class B common stock outstanding for the period. The total outstanding shares of common stock are made up of Class A common stock and Class B common stock, which participate equally in their ratable ownership share of the Company. Diluted earnings per share has been calculated in a manner consistent with that of basic earnings per share while giving effect to shares of potentially dilutive restricted stock grants outstanding during the period and the convertible preferred stock.

13. Subsequent Events

The Company has evaluated subsequent events through the date the financial statements were issued and no additional matters were identified requiring recognition or disclosure in the financial statements except for events described in Note 11.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Unless otherwise indicated or the context requires, "DFH," "Dream Finders," the "Company," "we," "our" and "us" refer collectively to Dream Finders Homes, Inc. and its subsidiaries. On January 25, 2021, we completed an initial public offering (the "IPO") of 11,040,000 shares of our Class A common stock. As a result of the reorganization transactions in connection with the IPO, for accounting purposes, our historical results included herein present the combined assets, liabilities and results of operations of Dream Finders Homes, Inc. since the date of its formation and Dream Finders Holdings LLC, a Florida limited liability company ("DFH LLC") and its direct and indirect subsidiaries prior to the IPO.

Business Overview

We design, build and sell homes in high-growth markets, including Charlotte, Raleigh, Jacksonville, Orlando, Denver, the Washington D.C. metropolitan area, Austin, Dallas and Houston. We employ an asset-light lot acquisition strategy with a focus on the design, construction and sale of single-family entry-level, first-time move-up and second-time move-up homes. To fully serve our homebuyer customers and capture ancillary business opportunities, we also offer title insurance and mortgage banking solutions through our mortgage banking joint venture, Jet Home Loans, LLC ("Jet LLC"), which comprises our Jet Home Loans segment.

Our asset-light lot acquisition strategy enables us to generally purchase land in a "just-in-time" manner with reduced up-front capital commitments, which in turn has increased our inventory turnover rate, enhanced our returns on equity and contributed to our growth.

We are currently engaged in the design, construction and sale of new homes in the following markets:

- Jacksonville, FL
- Denver, CO
- Orlando, FL
- Washington D.C. metropolitan area ("DC Metro")
- Charlotte, NC, Fayetteville, NC, Raleigh, NC, Greensboro, NC, High Point, NC and Winston-Salem, NC ("The Carolinas")
- Texas
- Austin, TX (legacy operations excluding MHI operations comprising Texas above), Savannah, GA and Bluffton and Hilton Head, SC, and Active Adult and Custom Homes in Jacksonville, FL ("Other")

Since breaking ground on our first home on January 1, 2009 we have closed over 18,700 home sales through June 30, 2022 and have been profitable every year since inception. During the three months ended June 30, 2022, we received 1,426 net new orders, a decrease of 95, or 6%, as compared to the 1,521 net new orders received for the three months ended June 30, 2021. For the three months ended June 30, 2022, we closed 1,649 homes, an increase of 653, or 66%, as compared to the 996 homes closed for the three months ended June 30, 2021. During the six months ended June 30, 2022, we received 3,828 net new orders, an increase of 297, or 8%, as compared to the 3,531 net new orders received for the six months ended June 30, 2021. For the six months ended June 30, 2022, we closed 3,020 homes, an increase of 1,022, or 51%, as compared to the 1,998 homes closed for the six months ended June 30, 2021. As of June 30, 2022, our backlog of sold homes was 7,190 valued at \$3.3 billion. In addition, as of June 30, 2022, we owned and controlled 39,400 lots. Our owned and controlled lot supply is a critical input to the future revenue of our business. We sell homes under the Dream Finders Homes, DF Luxury, H&H Homes, Village Park Homes, Century Homes and Coventry Homes brands.

Recent Developments

On June 2, 2022, the Company entered into an Amended and Restated Credit Agreement (the "Amended and Restated Credit Agreement") to amend and restate its existing credit agreement. The Amended and Restated Credit Agreement is substantially similar to the existing credit agreement except that the Amended and Restated Credit Agreement, among other things, (i) provides for an increase in the aggregate commitments under the facility from \$818 million to \$1.1 billion; (ii) allows the facility to expand to a borrowing base of up to \$1.6 billion through its accordion feature; (iii) extends the maturity date from January 25, 2024 to June 2, 2025; and (iv) transitions the applicable interest rate from a Eurodollar based rate to a Secured Overnight Financing Rate ("SOFR") based rate. See Note 3 to our condensed consolidated financial statements for information on the changes to this revolving credit facility.

Key Results

Key financial results as of and for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021, were as follows:

- Revenues increased 117% to \$793 million from \$365 million.
- Net new orders decreased 6% to 1,426 from 1,521.
- Homes closed increased 66% to 1,649 from 996.
- Backlog of sold homes increased 74% to 7,190 from 4,137.
- Average sales price of homes closed increased 29% to \$463,447 from \$358,604.
- Gross margin as a percentage of homebuilding revenues increased to 19.7% from 16.5%.
- Adjusted gross margin (non-GAAP) as a percentage of homebuilding revenues increased to 25.7% from 23.5%.
- Net and comprehensive income increased 107% to \$66 million from \$32 million.
- Net and comprehensive income attributable to Dream Finders Homes, Inc. increased 119% to \$63 million from \$29 million.
- EBITDA (non-GAAP) as a percentage of total revenues increased to 13.2% from 11.6%.
- Active communities at June 30, 2022 increased to 203 from 117 at June 30, 2021.
- Return on participating equity was 44.0% for the trailing twelve months ended June 30, 2022, compared 44.3%.
- Basic earnings per share was \$0.64 and diluted earnings per share was \$0.60, compared to \$0.31 and \$0.31, respectively.

Key financial results as of and for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021, were as follows:

- Revenues increased 106% to \$1,457 million from \$709 million.
- Net new orders increased 8% to 3,828 from 3,531.
- Homes closed increased 51% to 3,020 from 1,998.
- Backlog of sold homes increased 74% to 7,190 from 4,137.
- Average sales price of homes closed increased 33% to \$463,318 from \$347,261.
- Gross margin as a percentage of homebuilding revenues increased to 19.2% from 15.8%.
- Adjusted gross margin (non-GAAP) as a percentage of homebuilding revenues increased to 25.1% from 22.6%.
- Net and comprehensive income increased 127% to \$113 million from \$50 million.
- Net and comprehensive income attributable to Dream Finders Homes, Inc. increased 138% to \$106 million from \$45 million.
- EBITDA (non-GAAP) as a percentage of total revenues increased to 12.3% from 10.5%.
- Active communities at June 30, 2022 increased to 203 from 117 at June 30, 2021.
- Return on participating equity was 44.0% for the trailing twelve months ended June 30, 2022, compared to 44.3%.
- Basic earnings per share was \$1.07 and diluted earnings per share was \$1.02 compared to \$0.31 and \$0.49, respectively.

For reconciliations of the non-GAAP financial measures, including adjusted gross margin, EBITDA and adjusted EBITDA, to the most directly comparable GAAP financial measures, see “—Non-GAAP Financial Measures.”

Results of Operations

Three Months Ended June 30, 2022 Compared to Three Months Ended June 30, 2021

The following table sets forth our results of operations for the periods indicated:

	For the Three Months Ended June 30, (unaudited)			
	2022	2021	Amount Change	% Change
Revenues:				
Homebuilding	\$ 791,230	\$ 363,743	\$ 427,487	118 %
Other	1,904	1,533	371	24 %
Total revenues	793,134	365,276	427,858	117 %
Homebuilding cost of sales	635,422	303,589	331,833	109 %
Selling, general and administrative expense	66,015	30,137	35,878	119 %
Income from equity in earnings of unconsolidated entities	(3,334)	(1,125)	(2,209)	196 %
Contingent consideration revaluation	5,042	3,977	1,065	27 %
Other (income) expense, net	278	(7,856)	8,134	-104 %
Interest expense	13	16	(3)	-19 %
Income before taxes	89,698	36,538	53,160	145 %
Income tax expense	(23,327)	(4,479)	(18,848)	421 %
Net and comprehensive income	66,371	32,059	34,312	107 %
Net and comprehensive income attributable to non-controlling interests	(3,747)	(3,486)	(261)	7 %
Net and comprehensive income attributable to Dream Finders Homes, Inc.	\$ 62,624	\$ 28,573	\$ 34,051	119 %
Earnings per share⁽¹⁾				
Basic	\$ 0.64	\$ 0.31	\$ 0.33	106 %
Diluted	\$ 0.60	\$ 0.31	\$ 0.29	94 %
Weighted-average number of shares				
Basic	92,758,939	92,521,482	237,457	0 %
Diluted	104,566,243	92,670,727	11,895,516	13 %
Consolidated Balance Sheets Data (at period end):				
Cash and cash equivalents	84,097	6,154	77,943	1267 %
Total assets	2,112,786	932,282	1,180,504	127 %
Long-term debt	876,568	369,049	507,519	138 %
Preferred mezzanine equity	155,621	6,703	148,918	2222 %
Common stock - Class A	323	323	—	100 %
Common stock - Class B	602	602	—	100 %
Additional paid-in capital	261,207	255,290	5,917	100 %
Retained earnings	217,346	45,611	171,735	100 %
Non-controlling interests	12,056	20,874	(8,818)	-42 %
Other Financial and Operating Data				
Active communities at end of period ⁽²⁾	203	117	86	74 %
Home closings	1,649	996	653	66 %
Average sales price of homes closed ⁽³⁾	\$ 463,447	\$ 358,604	\$ 105	29 %
Net new orders	1,426	1,521	(95)	-6 %
Cancellation rate	21.0 %	14.4 %	6.6 %	46 %
Backlog (at period end) - homes	7,190	4,137	3,053	74 %
Backlog (at period end, in thousands) - value	\$ 3,334,945	\$ 1,646,725	\$ 1,688,220	103 %
Gross margin (in thousands) ⁽⁴⁾	\$ 155,808	\$ 60,154	\$ 95,654	159 %
Gross margin % ⁽⁵⁾	19.7 %	16.5 %	3.2 %	19 %
Net profit margin %	7.9 %	7.8 %	0.1 %	1 %
Adjusted gross margin (in thousands) ⁽⁶⁾	\$ 203,731	\$ 85,452	\$ 118,279	138 %
Adjusted gross margin % ⁽⁵⁾	25.7 %	23.5 %	2.2 %	9 %
EBITDA (in thousands) ⁽⁶⁾	\$ 104,974	\$ 42,421	\$ 62,553	147 %
EBITDA margin % ⁽⁷⁾	13.2 %	11.6 %	1.6 %	14 %
Adjusted EBITDA (in thousands) ⁽⁶⁾	\$ 106,766	\$ 43,873	\$ 62,893	143 %
Adjusted EBITDA margin % ⁽⁷⁾	13.5 %	12.0 %	1.5 %	12 %

- (1) The Company calculated earnings per share (“EPS”) based on net income attributable to common stockholders for the period January 21, 2021 through June 30, 2021 over the weighted average diluted shares outstanding for the same period. EPS was calculated prospectively for the period subsequent to the Company’s initial public offering and corporate reorganization as described in Note 1 to our condensed consolidated financial statements, Nature of Business and Significant Accounting Policies, resulting in 92,521,482 shares of common stock outstanding as of the closing of the initial public offering. The total outstanding shares of common stock are made up of Class A common stock and Class B common stock, which participate equally in their ratable ownership share of the Company. Diluted shares were calculated by using the treasury stock method for stock grants and the if-converted method for the convertible preferred stock and the associated preferred dividends.
- (2) A community becomes active once the model is completed or the community has its fifth sale. A community becomes inactive when it has fewer than five units remaining to sell.
- (3) Average sales price of homes closed is calculated based on homebuilding revenues, excluding the impact of deposit forfeitures, percentage of completion revenues and land sales, over homes closed.
- (4) Gross margin is homebuilding revenues less homebuilding cost of sales.
- (5) Calculated as a percentage of homebuilding revenues.
- (6) Adjusted gross margin, EBITDA and adjusted EBITDA are non-GAAP financial measures. For definitions of these non-GAAP financial measures and a reconciliation to our most directly comparable financial measures calculated and presented in accordance with GAAP, see “—Non-GAAP Financial Measures.”
- (7) Calculated as a percentage of total revenues.

Revenues. Revenues for the three months ended June 30, 2022 were \$793 million, an increase of \$428 million, or 117%, from \$365 million for the three months ended June 30, 2021. The increase in revenues was primarily attributable to an increase in home closings of 653 homes, or 66%, during the three months ended June 30, 2022 as compared to the three months ended June 30, 2021. Our October 2021 acquisition of the homebuilding business of McGuyer Homebuilders, Inc. (“MHI”), a Texas company, contributed 527 home closings and \$305 million in homebuilding revenues for the three months ended June 30, 2022. The average sales price of homes closed for the three months ended June 30, 2022 was \$463,447, an increase of \$104,843 or 29%, over an average sales price of homes closed of \$358,604 for the three months ended June 30, 2021. The increase was due to a higher average sales price of homes closed within the MHI segment, as well as overall price appreciation ahead of cost inflation.

Homebuilding Cost of Sales and Gross Margin. Homebuilding cost of sales for the three months ended June 30, 2022 was \$635 million, an increase of \$332 million, or 109%, from \$304 million for the three months ended June 30, 2021. The increase in homebuilding cost of sales was primarily due to the increase in home closings for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021. Homebuilding gross margin for the three months ended June 30, 2022 was \$156 million, an increase of \$96 million, or 159%, from \$60 million for the three months ended June 30, 2021. Homebuilding gross margin as a percentage of homebuilding revenues was 19.7% for the three months ended June 30, 2022, an increase of 320 basis points, or 19%, from 16.5% for the three months ended June 30, 2021. The increase in gross margin was due to price appreciation ahead of cost inflation.

Adjusted Gross Margin. Adjusted gross margin for the three months ended June 30, 2022 was \$204 million, an increase of \$118 million, or 138%, from \$85 million for the three months ended June 30, 2021. Adjusted gross margin as a percentage of homebuilding revenues for the three months ended June 30, 2022 was 25.7%, an increase of 220 basis points, or 9%, as compared to 23.5% for the three months ended June 30, 2021. The increase in adjusted gross margin is attributable to overall price appreciation ahead of cost inflation. Adjusted gross margin is a non-GAAP financial measure. For the definition of adjusted gross margin and a reconciliation to our most directly comparable financial measure calculated and presented in accordance with GAAP, see “—Non-GAAP Financial Measures.”

Selling, General and Administrative Expense. Selling, general and administrative expense for the three months ended June 30, 2022 was \$66 million, an increase of \$36 million, or 119%, from \$30 million for the three months ended June 30, 2021. The increase in selling, general and administrative expense was primarily due to higher closing volume and the inclusion of \$27 million in expenses from MHI for the second quarter of 2022. Selling, general and administrative expenses as a percentage of homebuilding revenues was 8% in the second quarter 2022, remaining consistent when compared to 8% in the year-ago quarter.

Income from Equity in Earnings and Unconsolidated Entities. Income from equity in earnings of unconsolidated entities for the three months ended June 30, 2022 was \$3 million, an increase of \$2 million, or 196%, as compared to \$1 million for the three months ended June 30, 2021. The increase in income from equity in earnings of unconsolidated entities was largely attributable to income from mortgage and title JV’s acquired in conjunction with the MHI acquisition for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021.

Contingent Consideration Revaluation. Contingent consideration expense for the three months ended June 30, 2022 was \$5 million, an increase of \$1 million or 27%, as compared to \$4 million for the three months ended June 30, 2021. The increase in contingent consideration expense is primarily due to fair value adjustments of future expected earn-out payments from the acquisitions of VPH and MHI. The MHI contingent consideration adjustment was not included in the previous period ended June 30, 2021.

Other (Income) Expense, Net. Other expense for the three months ended June 30, 2022 was \$0 million, as compared to \$8 million in other income, a decrease of \$8 million or 104% for the three months ended June 30, 2021. The decrease in other income, net is primarily due to the forgiveness of the Company's Paycheck Protection Program ("PPP") loan included in the previous period ended June 30, 2021.

Net and Comprehensive Income. Net and comprehensive income for the three months ended June 30, 2022 was \$66 million, an increase of \$34 million, or 107%, from \$32 million for the three months ended June 30, 2021. The increase in net and comprehensive income was primarily attributable to an increase in gross margin on homes closed of \$96 million, or 159%, during the three months ended June 30, 2022 as compared to the three months ended June 30, 2021.

Net and Comprehensive Income Attributable to Dream Finders Homes, Inc. Net and comprehensive income attributable to Dream Finders for the three months ended June 30, 2022 was \$63 million, an increase of \$34 million, or 119%, from \$29 million for the three months ended June 30, 2021. The increase was primarily attributable to the increase in home closings and gross margin. We closed 1,649 homes for the three months ended June 30, 2022, an increase of 653 units, or 66%, from the 996 homes closed for the three months ended June 30, 2021. Gross margin for the three months ended June 30, 2022 was \$156 million, an increase of \$96 million, or 159%, from \$60 million for the three months ended June 30, 2021.

Six Months Ended June 30, 2022 Compared to Six Months Ended June 30, 2021

The following table sets forth our results of operations for the periods indicated:

	For the Six Months Ended June 30, (unaudited)			
	2022	2021	Amount Change	% Change
Revenues:				
Homebuilding	\$ 1,453,703	\$ 705,910	\$ 747,793	106 %
Other	3,497	2,926	571	20 %
Total revenues	1,457,200	708,836	748,364	106 %
Homebuilding cost of sales	1,174,290	594,626	579,664	97 %
Selling, general and administrative expense	127,725	59,452	68,273	115 %
Income from equity in earnings of unconsolidated entities	(6,294)	(2,857)	(3,437)	120 %
Contingent consideration revaluation	9,234	5,160	4,074	79 %
Other (income) expense, net	(691)	(7,153)	6,462	-90 %
Interest expense	26	658	(632)	-96 %
Income before taxes	152,910	58,950	93,960	159 %
Income tax expense	(40,205)	(9,295)	(30,910)	333 %
Net and comprehensive income	112,705	49,655	63,050	127 %
Net and comprehensive income attributable to non-controlling interests	(6,365)	(4,961)	(1,404)	28 %
Net and comprehensive income attributable to Dream Finders Homes, Inc.	\$ 106,340	\$ 44,694	\$ 61,646	138 %
Earnings per share⁽¹⁾				
Basic	\$ 1.07	\$ 0.49	\$ 0.58	118 %
Diluted	\$ 1.02	\$ 0.49	\$ 0.53	108 %
Weighted-average number of shares				
Basic	92,758,939	92,521,482	237,457	0 %
Diluted	103,531,560	92,641,222	10,890,338	12 %
Consolidated Balance Sheets Data (at period end):				
Cash and cash equivalents	84,097	6,154	77,943	1267 %
Total assets	2,112,786	932,282	1,180,504	127 %
Long-term debt	876,568	369,049	507,519	138 %
Preferred mezzanine equity	155,621	6,703	148,918	2222 %
Common stock - Class A	323	323	—	100 %
Common stock - Class B	602	602	—	100 %
Additional paid-in capital	261,207	255,290	5,917	100 %
Retained earnings	217,346	45,611	171,735	100 %
Non-controlling interests	12,056	20,874	(8,818)	-42 %
Other Financial and Operating Data				
Active communities at end of period ⁽²⁾	203	117	86	74 %
Home closings	3,020	1,998	1,022	51 %
Average sales price of homes closed ⁽³⁾	\$ 463,318	\$ 347,261	\$ 116,057	33 %
Net new orders	3,828	3,531	297	8 %
Cancellation rate	16.4 %	10.9 %	5.5 %	50 %
Backlog (at period end) - homes	7,190	4,137	3,053	74 %
Backlog (at period end, in thousands) - value	\$ 3,334,945	\$ 1,646,725	\$ 1,688,220	103 %
Gross margin (in thousands) ⁽⁴⁾	\$ 279,413	\$ 111,284	\$ 168,129	151 %
Gross margin % ⁽⁵⁾	19.2 %	15.8 %	3.4 %	22 %
Net profit margin %	7.3 %	6.3 %	1.0 %	16 %
Adjusted gross margin (in thousands) ⁽⁶⁾	\$ 365,287	\$ 159,683	\$ 205,604	129 %
Adjusted gross margin % ⁽⁵⁾	25.1 %	22.6 %	2.5 %	11 %
EBITDA (in thousands) ⁽⁶⁾	\$ 179,160	\$ 74,621	\$ 104,539	140 %
EBITDA margin % ⁽⁷⁾	12.3 %	10.5 %	1.8 %	17 %
Adjusted EBITDA (in thousands) ⁽⁶⁾	\$ 182,404	\$ 78,421	\$ 103,983	133 %
Adjusted EBITDA margin % ⁽⁷⁾	12.5 %	11.1 %	1.4 %	13 %

- (1) The Company calculated earnings per share (“EPS”) based on net income attributable to common stockholders for the period January 21, 2021 through June 30, 2021 over the weighted average diluted shares outstanding for the same period. EPS was calculated prospectively for the period subsequent to the Company’s initial public offering and corporate reorganization as described in Note 1 to our condensed consolidated financial statements, Nature of Business and Significant Accounting Policies, resulting in 92,521,482 shares of common stock outstanding as of the closing of the initial public offering. The total outstanding shares of common stock are made up of Class A common stock and Class B common stock, which participate equally in their ratable ownership share of the Company. Diluted shares were calculated by using the treasury stock method for stock grants and the if-converted method for the convertible preferred stock and the associated preferred dividends.
- (2) A community becomes active once the model is completed or the community has its fifth sale. A community becomes inactive when it has fewer than five units remaining to sell.
- (3) Average sales price of homes closed is calculated based on homebuilding revenues, excluding the impact of deposit forfeitures, percentage of completion revenues and land sales, over homes closed.
- (4) Gross margin is homebuilding revenues less homebuilding cost of sales.
- (5) Calculated as a percentage of homebuilding revenues.
- (6) Adjusted gross margin, EBITDA and adjusted EBITDA are non-GAAP financial measures. For definitions of these non-GAAP financial measures and a reconciliation to our most directly comparable financial measures calculated and presented in accordance with GAAP, see “—Non-GAAP Financial Measures.”
- (7) Calculated as a percentage of total revenues.

Revenues. Revenues for the six months ended June 30, 2022 were \$1,457 million, an increase of \$748 million, or 106%, from \$709 million for the six months ended June 30, 2021. The increase in revenues was primarily attributable to an increase in home closings of 1,022 homes, or 51%, during the six months ended June 30, 2022 as compared to the six months ended June 30, 2021. Our October 2021 acquisition of the homebuilding business of McGuyer Homebuilders, Inc. (“MHI”), a Texas company, contributed 1,010 home closings and \$580.5 million in homebuilding revenues for the six months ended June 30, 2022. The average sales price of homes closed for the six months ended June 30, 2022 was \$463,318, an increase of \$116,057 or 33%, over an average sales price of homes closed of \$347,261 for the six months ended June 30, 2021. The increase was due to a higher average sales price of homes closed within the MHI segment, as well as overall price appreciation ahead of cost inflation.

Homebuilding Cost of Sales and Gross Margin. Homebuilding cost of sales for the six months ended June 30, 2022 was \$1,174 million, an increase of \$580 million, or 97%, from \$595 million for the six months ended June 30, 2021. The increase in homebuilding cost of sales was primarily due to the increase in home closings for the six months ended June 30, 2022 as compared to the six months ended June 30, 2021. Homebuilding gross margin for the six months ended June 30, 2022 was \$279 million, an increase of \$168 million, or 151%, from \$111 million for the six months ended June 30, 2021. Homebuilding gross margin as a percentage of homebuilding revenues was 19.2% for the six months ended June 30, 2022, an increase of 340 basis points, or 22%, from 15.8% for the six months ended June 30, 2021. The increase in gross margin was due to overall price appreciation ahead of cost inflation.

Adjusted Gross Margin. Adjusted gross margin for the six months ended June 30, 2022 was \$365 million, an increase of \$206 million, or 129%, from \$160 million for the six months ended June 30, 2021. Adjusted gross margin as a percentage of homebuilding revenues for the six months ended June 30, 2022 was 25.1%, an increase of 250 basis points, or 11%, as compared to 22.6% for the six months ended June 30, 2021. The increase in adjusted gross margin is attributable to overall price appreciation ahead of cost inflation. Adjusted gross margin is a non-GAAP financial measure. For the definition of adjusted gross margin and a reconciliation to our most directly comparable financial measure calculated and presented in accordance with GAAP, see “—Non-GAAP Financial Measures.”

Selling, General and Administrative Expense. Selling, general and administrative expense for the six months ended June 30, 2022 was \$128 million, an increase of \$68 million, or 115%, from \$59 million for the six months ended June 30, 2021. The increase in selling, general and administrative expense was primarily due to higher closing volume and the inclusion of \$52 million in expenses from MHI for the first six months of 2022. Selling, general and administrative expenses as a percentage of homebuilding revenues was 9% for the six months ended June 30, 2022, as compared to 8% for the six months ended June 30, 2021.

Income from Equity in Earnings and Unconsolidated Entities. Income from equity in earnings of unconsolidated entities for the six months ended June 30, 2022 was \$6 million, an increase of \$3 million, or 120%, as compared to \$3 million for the six months ended June 30, 2021. The increase in income from equity in earnings of unconsolidated entities was largely attributable to income from mortgage/title JV’s acquired in conjunction with the MHI acquisition for the six months ended June 30, 2022 as compared to the six months ended June 30, 2021.

Contingent Consideration Revaluation. Contingent consideration expense for the six months ended June 30, 2022 was \$9 million, an increase of \$4 million or 79%, as compared to \$5 million for the six months ended June 30, 2021. The increase in contingent consideration expense is primarily due to the MHI contingent consideration adjustment, which was not included in the previous period ended June 30, 2021.

Other (Income) Expense, Net. Other income for the six months ended June 30, 2022 was \$1 million, as compared to \$7 million in other income, a decrease of \$6 million or 90% for the six months ended June 30, 2021. The decrease in other income, net is primarily due to the forgiveness of the Company's Paycheck Protection Program ("PPP") loan included in the previous period ended June 30, 2021.

Net and Comprehensive Income. Net and comprehensive income for the six months ended June 30, 2022 was \$113 million, an increase of \$63 million, or 127%, from \$50 million for the six months ended June 30, 2021. The increase in net and comprehensive income was primarily attributable to an increase in gross margin on homes closed of \$168 million, or 151%, during the six months ended June 30, 2022 as compared to the six months ended June 30, 2021.

Net and Comprehensive Income Attributable to Dream Finders Homes, Inc. Net and comprehensive income attributable to Dream Finders for the six months ended June 30, 2022 was \$106 million, an increase of \$62 million, or 138%, from \$45 million for the six months ended June 30, 2021. The increase was primarily attributable to the increase in home closings and gross margin. We closed 3,020 homes for the six months ended June 30, 2022, an increase of 1,022 units, or 51%, from the 1,998 homes closed for the six months ended June 30, 2021. Gross margin for the six months ended June 30, 2022 was \$279 million, an increase of \$168 million, or 151%, from \$111 million for the six months ended June 30, 2021.

Non-GAAP Financial Measures

Adjusted Gross Margin

Adjusted gross margin is a non-GAAP financial measure used by management as a supplemental measure in evaluating operating performance. We define adjusted gross margin as gross margin excluding the effects of capitalized interest, amortization included in homebuilding cost of sales (including adjustments resulting from the application of purchase accounting in connection with acquisitions) and commission expense. Our management believes this information is meaningful because it isolates the impact that capitalized interest, amortization (including purchase accounting adjustments) and commission expense have on gross margin. However, because adjusted gross margin information excludes capitalized interest, amortization (including purchase accounting adjustments) and commission expense, which have real economic effects and could impact our results of operations, the utility of adjusted gross margin information as a measure of our operating performance may be limited. We include commission expense in homebuilding cost of sales, not selling, general and administrative expense, and therefore commission expense is taken into account in gross margin. As a result, in order to provide a meaningful comparison to the public company homebuilders that include commission expense below the gross margin line in selling, general and administrative expense, we have excluded commission expense from adjusted gross margin. In addition, other companies may not calculate adjusted gross margin information in the same manner that we do. Accordingly, adjusted gross margin information should be considered only as a supplement to gross margin information as a measure of our performance.

The following table presents a reconciliation of adjusted gross margin to the GAAP financial measure of gross margin for each of the periods indicated (unaudited and in thousands, except percentages):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Gross margin ⁽¹⁾	\$ 155,808	\$ 60,154	\$ 279,413	\$ 111,284
Interest expense in homebuilding cost of sales	12,790	7,365	21,637	15,640
Amortization in homebuilding cost of sales ⁽³⁾	1,991	2,072	5,821	1,624
Commission expense	33,142	15,861	58,416	31,135
Adjusted gross margin	<u>\$ 203,731</u>	<u>\$ 85,452</u>	<u>\$ 365,287</u>	<u>\$ 159,683</u>
Gross margin % ⁽²⁾	19.7 %	16.5 %	19.2 %	15.8 %
Adjusted gross margin % ⁽²⁾	25.7 %	23.5 %	25.1 %	22.6 %

- (1) Gross margin is homebuilding revenues less homebuilding cost of sales.
- (2) Calculated as a percentage of homebuilding revenues.
- (3) Includes purchase accounting adjustments, as applicable.

EBITDA and Adjusted EBITDA

EBITDA and adjusted EBITDA are not measures of net income as determined by GAAP. EBITDA and adjusted EBITDA are supplemental non-GAAP financial measures used by management and external users of our condensed consolidated financial statements, such as industry analysts, investors, lenders and rating agencies. We define EBITDA as net income before (i) interest income, (ii) capitalized interest expensed in homebuilding cost of sales, (iii) interest expense, (iv) income tax expense and (v) depreciation and amortization. We define adjusted EBITDA as EBITDA before stock-based compensation expense.

Management believes EBITDA and adjusted EBITDA are useful because they allow management to more effectively evaluate our operating performance and compare our results of operations from period to period without regard to our financing methods or capital structure or other items that impact the comparability of financial results from period to period. EBITDA and adjusted EBITDA should not be considered as alternatives to, or more meaningful than, net income or any other measure as determined in accordance with GAAP. Our computations of EBITDA and adjusted EBITDA may not be comparable to EBITDA or adjusted EBITDA of other companies. We present EBITDA and adjusted EBITDA because we believe they provide useful information regarding the factors and trends affecting our business.

The following table presents a reconciliation of EBITDA and adjusted EBITDA to the GAAP financial measure of net income for each of the periods indicated (unaudited and in thousands, except percentages):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Net and comprehensive income attributable to Dream Finders Homes, Inc.	\$ 62,624	\$ 28,573	\$ 106,340	\$ 44,694
Interest income	(32)	—	(73)	(4)
Interest expensed in cost of sales	12,790	7,365	21,637	15,640
Interest expense	13	16	26	658
Income tax expense	23,327	4,479	40,205	9,295
Depreciation and amortization	6,251	1,988	11,024	4,337
EBITDA	\$ 104,974	\$ 42,421	\$ 179,160	\$ 74,621
Stock-based compensation expense	1,792	1,452	3,244	3,800
Adjusted EBITDA	\$ 106,766	\$ 43,873	\$ 182,404	\$ 78,421
EBITDA margin % ⁽¹⁾	13.2 %	11.6 %	12.3 %	10.5 %
Adjusted EBITDA margin % ⁽¹⁾	13.5 %	12.0 %	12.5 %	11.1 %

- (1) Calculated as a percentage of total revenues.

Backlog, Sales and Closings

A new order (or new sale) is reported when a customer has received preliminary mortgage approval and the sales contract has been signed by the customer, approved by us and secured by a deposit, approximately 3-6% of the purchase price of the home. These deposits are typically not refundable, but each customer situation is evaluated individually.

Net new orders are new orders or sales (gross) for the purchase of homes during the period, less cancellations of existing purchase contracts during the period. Sales to investors that intend to lease the homes are recognized when the Company has received a non-refundable deposit. Our cancellation rate for a given period is calculated as the total number of new (gross) sales purchase contracts canceled during the period divided by the total number of new (gross) sales contracts entered into during the period. Our cancellation rate for the three months ended June 30, 2022 was 21.0%, an increase of 660 basis points when compared to the 14.4% cancellation rate for the three months ended June 30, 2021. Our cancellation rate for the six months ended June 30, 2022 was 16.4%, an increase of 550 basis points compared to the 10.9% cancellation rate for the six months ended June 30, 2021.

The following tables present information concerning our new home sales (net), starts and closings in each of our markets for the three and six months ended June 30, 2022 and 2021:

Segment	For the Three Months Ended June 30,						Period Over Period Percent Change		
	2022			2021			Sales	Starts	Closings
	Sales	Starts	Closings	Sales	Starts	Closings			
Jacksonville	285	529	377	307	379	265	-7 %	40 %	42 %
Colorado	55	119	69	27	108	47	104 %	10 %	47 %
Orlando	159	329	100	328	166	147	-52 %	98 %	-32 %
DC Metro	81	71	21	20	49	35	305 %	45 %	-40 %
The Carolinas	329	375	351	499	584	315	-34 %	-36 %	11 %
Texas ⁽¹⁾	318	525	527	—	—	—	—	—	—
Other ⁽²⁾	199	156	204	340	297	187	-41 %	-47 %	9 %
Grand Total	1,426	2,104	1,649	1,521	1,583	996	-6 %	33 %	66 %

Segment	For the Six Months Ended June 30,						Period Over Period Percent Change		
	2022			2021			Sales	Starts	Closings
	Sales	Starts	Closings	Sales	Starts	Closings			
Jacksonville	917	976	646	867	783	560	6 %	25 %	15 %
Colorado	141	215	139	166	182	81	-15 %	18 %	72 %
Orlando	288	563	206	609	338	308	-53 %	67 %	-33 %
DC Metro	144	129	36	72	81	59	100 %	59 %	-39 %
The Carolinas	482	663	603	1,146	997	658	-58 %	-34 %	-8 %
Texas ⁽¹⁾	1,135	1,242	1,010	—	—	—	—	—	—
Other ⁽²⁾	721	335	380	671	586	332	7 %	-43 %	14 %
Grand Total	3,828	4,123	3,020	3,531	2,967	1,998	8 %	39 %	51 %

(1) MHI was acquired on October 1, 2021.

(2) Austin, Savannah, Village Park Homes, Active Adult and Custom Homes. Austin refers to legacy DFH operations exclusive of MHI. See Note 9, Segment Reporting, to our condensed consolidated financial statements for further explanation of our reportable segments.

Our “backlog” consists of homes under a purchase contract that are signed by homebuyers who have met the preliminary criteria to obtain mortgage financing but such home sales to end buyers have not yet closed. Ending backlog represents the number of homes in backlog from the previous period plus the number of net new orders generated during the current period minus the number of homes closed during the current period. Our backlog at any given time will be affected by cancellations and the number of our active communities. Homes in backlog are generally closed within one to six months, although we may experience cancellations of purchase contracts at any time prior to such home closings. Certain sales to investors that intend to lease the homes may be delivered over a longer duration. It is important to note that net new orders, backlog and cancellation metrics are operational, rather than accounting data, and should be used only as a general gauge to evaluate performance. Backlog may be impacted by customer cancellations for various reasons that are beyond our control, and, in light of our minimal required deposit, there is little negative impact to the potential homebuyer from the cancellation of the purchase contract.

The following tables present information concerning our new orders, cancellation rate and ending backlog for the periods and as of dates set forth below:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Net New Orders	1,426	1,521	3,828	3,531
Cancellation Rate	21.0 %	14.4 %	16.4 %	10.9 %
	As of June 30,			
			2022	2021
Ending Backlog - Homes			7,190	4,137
Ending Backlog - Value (in thousands)			\$ 3,334,945	\$ 1,646,725

Land Acquisition Strategy and Development Process

We operate an asset-light and capital-efficient lot acquisition strategy and generally seek to avoid engaging in land development, which requires significant capital expenditures and can take several years to realize returns on the investment. Our strategy is intended to avoid the financial commitments and risks associated with direct land ownership and land development by allowing us to control a significant number of lots for a relatively low capital cost. We primarily employ two variations of our asset-light land financing strategy, finished lot option contracts and land bank option contracts, pursuant to which we secure the right to purchase finished lots at market prices by paying deposits based on the aggregate purchase price of the finished lots (typically 10% or less in the case of finished lot option contracts and 15% or less in the case of land bank option contracts) and, in the case of land bank option contracts, any related fees paid to the land bank partner.

As of June 30, 2022, our lot deposits in finished lot option and land bank option contracts were \$288 million. As of June 30, 2022, we controlled 37,983 lots under lot option and land bank option contracts.

Owned and Controlled Lots

The following table presents our owned finished lots purchased just in time for production and controlled lots by homebuilding segment as of June 30, 2022 and December 31, 2021:

Segment	As of June 30, 2022			As of December 31, 2021			
	Owned ⁽²⁾	Controlled	Total	Owned	Controlled	Total	% Change
Jacksonville	1,177	9,613	10,790	774	10,311	11,085	-3 %
Colorado	258	5,560	5,818	152	4,883	5,035	16 %
Orlando	858	4,908	5,766	537	5,487	6,024	-4 %
DC Metro	169	1,775	1,944	97	1,680	1,777	9 %
The Carolinas	1,320	5,844	7,164	1,452	5,196	6,648	8 %
Texas	1,624	5,701	7,325	1,569	6,304	7,873	-7 %
Other ⁽¹⁾	859	4,582	5,441	764	4,634	5,398	1 %
Grand Total	6,265	37,983	44,248	5,345	38,495	43,840	1 %

(1) Austin, Savannah, Village Park Homes, Active Adult and Custom Homes. Austin refers to legacy DFH operations exclusive of MHI. See Note 9, Segment Reporting, to our condensed consolidated financial statements for further explanation of our reportable segments.

(2) As of June 30, 2022, 5,277 of the 6,265 owned lots were completed or under construction. The remaining lots are ready for construction.

Owned Real Estate Inventory Status

The following table presents our owned real estate inventory status as of June 30, 2022 and December 31, 2021:

	As of June 30, 2022	As of December 31, 2021
	% of Owned Real Estate Inventory	% of Owned Real Estate Inventory
Construction in process and finished homes ⁽¹⁾	93 %	92 %
Company owned land and lots ⁽²⁾	7 %	8 %
Total	100 %	100 %

(1) Represents our owned homes that are completed or under construction, including sold, spec and model homes.

(2) Represents finished lots purchased just-in-time for production and capitalized costs related to land under development held by third-party land bank partners, including lot option fees, property taxes and due diligence. Land and lots from consolidated joint ventures are excluded.

Our Active Communities

We define an active community as a community where we have recorded five net new orders or a model home is currently open to customers. A community is no longer active when we have less than five home sites to sell to customers. Active community count is an important metric to forecast future net new orders for our business. As of June 30, 2022, we had 203 active communities, an increase of 86 communities, or 74%, as compared to 117 active communities as of June 30, 2021. Our active community count excludes communities under the Company's built-for-rent contracts, as all sales to investors occur at one point in time and these communities would have no home sites remaining to sell. As of June 30, 2022, the Company had 24 active communities for built-for-rent contracts and built-for-rent homes comprised approximately 26% of the homes in the Company's backlog.

Our Mortgage Banking Business

For the three months ended June 30, 2022, our mortgage banking joint venture, Jet LLC, originated and funded 622 home loans with an aggregate principal amount of approximately \$228 million as compared to 540 home loans with an aggregate principal amount of approximately \$173 million for the three months ended June 30, 2021. For the six months ended June 30, 2022, our mortgage banking joint venture, Jet LLC, originated and funded 1,149 home loans with an aggregate principal amount of approximately \$415 million as compared to 1,011 home loans with an aggregate principal amount of approximately \$319 million for the six months ended June 30, 2021. For the three months ended June 30, 2022 and 2021, respectively, Jet LLC had net income of approximately \$3 million and \$2 million. For the six months ended June 30, 2022 and 2021, respectively, Jet LLC had net income of approximately \$6 million and \$6 million. Our interest in Jet LLC is accounted for under the equity investment method and is not consolidated in our condensed consolidated financial statements, as we do not control and are not deemed the primary beneficiary of the variable interest entity ("VIE"). See Note 7, Variable Interest Entities and Investments in Other Entities, to our condensed consolidated financial statements for a description of our joint ventures, including those that were determined to be VIEs and the related accounting treatment.

Costs of Building Materials and Labor

Our cost of sales includes the acquisition and finance costs of homesites or lots, municipality fees, the costs associated with obtaining building permits, materials and labor to construct the home, interest rates for construction loans, internal and external realtor commissions and other miscellaneous closing costs. Homesite costs range from 20-25% of the average cost of a home. Building materials range from 40-50% of the average cost to build the home, labor ranges from 30-40% of the average cost to build the home, and interest, commissions and closing costs range from 4-10% of the average cost to build the home.

In general, the cost of building materials fluctuates with overall trends in the underlying prices of raw materials. The cost of certain of our building materials, such as lumber and oil-based products, fluctuates with market-based pricing curves. We often obtain volume discounts and/or rebates with certain suppliers of our building materials, which in turn reduces our cost of sales.

However, increases in the cost of building materials may reduce gross margin to the extent that market conditions prevent the recovery of increased costs through higher home sales prices. The price changes that most significantly influence our operations are price increases in commodities, including lumber. As a result, significant price increases of these materials may negatively impact our cost of sales and, in turn, our net income.

Seasonality

In all of our markets, we have historically experienced similar variability in our results of operations and capital requirements from quarter to quarter due to the seasonal nature of the homebuilding industry. We generally sell more homes in the first and second quarters and close more homes in our third and fourth quarters. As a result, our revenue may fluctuate on a quarterly basis and we may have higher capital requirements in our second, third and fourth quarters in order to maintain our inventory levels. As a result of seasonal activity, our quarterly results of operations and financial position at the end of a particular quarter, especially our first quarter, are not necessarily representative of the results we expect at year-end. We expect this seasonal pattern to continue in the long term.

Liquidity and Capital Resources

Overview

We generate cash from the sale of our inventory and we intend to re-deploy the net cash generated from the sale of inventory to acquire and control land and further grow our operations year over year. We believe that our sources of liquidity are sufficient to satisfy our current commitments. We also maintain our Amended and Restated Credit Agreement with a syndicate of lenders providing for a senior unsecured revolving credit facility, which currently has an aggregate commitment of up to \$1.1 billion and matures on June 2, 2025. As of June 30, 2022, we had \$84 million in cash and cash equivalents, excluding \$45 million of restricted cash. Additionally, the Company had \$250 million of availability under the Amended and Restated Credit Agreement for a total of \$334 million in total liquidity. Certain of our subsidiaries guaranteed the Company's obligations under the Amended and Restated credit agreement.

We continue to evaluate our capital structure and explore options to strengthen our Balance Sheet. We will remain opportunistic while assessing available capital in the debt and equity markets.

Our principal uses of capital are lot deposits and purchases, vertical home construction, operating expenses and the payment of routine liabilities.

Cash flows generated by our projects can differ materially from our results of operations, as these depend upon the stage in the life cycle of each project. The majority of our projects begin at the land acquisition stage when we enter into finished lot option contracts by placing a deposit with a land seller or developer. Our lot deposits are an asset on our balance sheets and these cash outflows are not recognized in our results of operations. Early stages in our communities require material cash outflows relating to finished rolling option lot purchases, entitlements and permitting, construction and furnishing of model homes, roads, utilities, general landscaping and other amenities, as well as ongoing association fees and property taxes. These costs are capitalized within our real estate inventory and are not recognized in our operating income until a home sale closes. As such, we incur significant cash outflows prior to the recognition of earnings. In later stages of the life cycle of a community, cash inflows could significantly exceed our results of operations, as the cash outflows associated with land purchase and home construction and other expenses were previously incurred.

We actively enter into finished lot option contracts by placing deposits with land sellers of typically 10% or less of the aggregate purchase price of the finished lots. When entering into these contracts, we also agree to purchase finished lots at predetermined time frames and quantities that match our expected selling pace in the community.

We also enter into land development arrangements with land sellers, land developers and land bankers. We typically provide a lot deposit of 10% or less, or 15% or less in the case of land bank option contracts, of the total investment required to develop lots that we will have the option to acquire in the future. In these transactions, we also incur lot option fees that have historically been 15% or less of the outstanding capital balance held by the land banker. The initial investment and lot option fees require our ability to allocate liquidity resources to projects that will not materialize into cash inflows or operating income in the near term. The above cash strategies allow us to maintain adequate lot supply in our existing markets and support ongoing growth and profitability. In spite of the current economic uncertainty, we continue to operate in an environment with consistent increase in the demand for new homes and constrained lot supply compared to population and job growth trends, we intend to continue to reinvest our earnings into our business and focus on expanding our operations. In addition, as the opportunity to purchase finished lots in desired locations becomes increasingly more limited and competitive, we are committed to allocating additional liquidity to land bank deposits on land development projects, as this strategy mitigates the risks associated with holding undeveloped land on our balance sheet, while allowing us to control adequate lot supply in our key markets to support forecasted growth. As of June 30, 2022, our lot deposits and investments related to finished lot option contracts and land bank option contracts were \$288 million.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	For the Six Months Ended June 30,	
	2022	2021
Net cash used in operating activities	\$ (222,538)	\$ (93,432)
Net cash used in investing activities	(1,474)	(23,485)
Net cash provided by financing activities	72,083	112,652

Net cash used in operating activities was \$223 million for the six months ended June 30, 2022, as compared to \$93 million of net cash used in operating activities for the six months ended June 30, 2021. The change in net cash used in operating activities was driven by an increase in inventories of \$289 million. The decrease in cash balance was partially offset by higher customer deposits of \$13 million and the increase in net income generated on home closings for the six months ended June 30, 2022.

Net cash used in investing activities was \$1 million for the six months ended June 30, 2022, as compared to \$23 million of cash used in investing activities for the six months ended June 30, 2021. The change in net cash used in investing activities was primarily attributable to the acquisition of Century Homes during the first quarter of 2021 compared to no acquisitions in the first quarter of 2022.

Net cash provided by financing activities was \$72 million for the six months ended June 30, 2022, as compared to \$113 million of cash provided by financing activities for the six months ended June 30, 2021. The change in net cash provided by financing activities was primarily attributable to the following activities in the first quarter of 2021, which did not recur in the first quarter of 2022: the Corporate Reorganization, which included IPO net proceeds of \$130 million, partially offset by the redemption of the Series C preferred units of DFH LLC of \$26 million.

Credit Facilities, Letters of Credit, Surety Bonds and Financial Guarantees

As of June 30, 2022, under our Amended and Restated Credit Agreement, we had a maximum availability of \$1.1 billion, an outstanding balance of \$875 million, and we could borrow an additional \$250 million. As of December 31, 2021, we had total outstanding borrowings of \$760 million under our credit agreement prior to its amendment and restatement and an additional \$8 million in letters of credit with the lenders such that we could borrow an additional \$49 million under the agreement. As of June 30, 2022, we were in compliance with the covenants set forth in our Amended and Restated Credit Agreement.

We enter into surety bonds and letter of credit arrangements with local municipalities, government agencies and land developers. These arrangements relate to certain performance-related obligations and serve as security for certain land option agreements. At June 30, 2022, we had outstanding letters of credit and surety bonds totaling \$1 million and \$77 million, respectively.

Series B Preferred Units

Following the Corporate Reorganization and upon completion of the IPO, MOF II DF Home LLC and MCC Investment Holdings LLC (both controlled by Medley Capital Corporation) continue to hold the Series B preferred units of DFH LLC. As such, they have certain rights and preferences with regard to DFH LLC that holders of our Class A common stock do not have.

At any time on or prior to September 30, 2022, DFH LLC has the right to redeem some or all of the outstanding Series B preferred units at a price equal to the sum of (i) the difference of (A) \$1,000 and (B) the amount of previous distributions having already been paid towards each such unit and (ii) unreturned capital contributions for such unit plus the Series B Preferred Return (the "Series B Redemption Price").

In the event of a liquidation or dissolution of DFH LLC, the holders of Series B preferred units shall have preference over our membership interest in DFH LLC. Further, in the event of (i) a sale of substantially all of DFH LLC's assets or (ii) a merger or reorganization resulting in the members of DFH LLC immediately prior to such transaction no longer beneficially owning at least 50% of the voting power of DFH LLC, the holders of the Series B preferred units may demand redemption of their Series B preferred units at a price equal to the Series B Redemption Price.

Series C Preferred Units

On January 27, 2021, we redeemed all 26,000 outstanding Series C preferred units of DFH LLC at a redemption price of \$26 million, including accrued unpaid preferred distributions.

Convertible Preferred Stock

On September 29, 2021, we sold 150,000 shares of newly-created Convertible Preferred Stock with an initial liquidation preference of \$1,000 per share and a par value of \$0.01 per share, for an aggregate purchase price of \$150 million. We used the proceeds from the sale of the Convertible Preferred Stock to fund the MHI acquisition and for general corporate purposes. Pursuant to the Certificate of Designations, the Convertible Preferred Stock ranks senior to the Class A and B common stock with respect to dividends and distributions on liquidation, winding-up and dissolution. Accordingly, upon liquidation, dissolution or winding up of the Company, each share of Convertible Preferred Stock is entitled to receive the initial liquidation preference of \$1,000 per share, subject to adjustment, plus all accrued and unpaid dividends thereon. Refer to Note 6 to the condensed consolidated financial statements herein and Note 9 to the consolidated financial statements within our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 for further details on the terms.

Off-Balance Sheet Arrangements

Asset-Light Lot Acquisition Strategy

We operate an asset-light and capital-efficient lot acquisition strategy and generally seek to avoid engaging in land development. We primarily employ two variations of our asset-light land financing strategy, finished lot option contracts and land bank option contracts, pursuant to which we secure the right to purchase finished lots at market prices from various land sellers and land bank partners by paying deposits based on the aggregate purchase price of the finished lots. The deposits required are typically 10% or less in the case of finished lot option contracts and 15% or less in the case of land bank option contracts.

As of June 30, 2022, we controlled 37,983 lots through finished lot option contracts and land bank option contracts. Our entire risk of loss pertaining to the aggregate purchase price of contractual commitments resulting from our non-performance under our finished lot option contracts and land bank option contracts is limited to approximately \$288 million in lot deposits as of June 30, 2022. In addition, we have capitalized costs of \$67 million relating to our off-balance sheet arrangements and land development due diligence.

Surety Bonds and Letters of Credit

We enter into letter of credit and surety bond arrangements with local municipalities, government agencies and land developers. These arrangements relate to certain performance-related obligations and serve as security for certain land option agreements. As of June 30, 2022, we had outstanding letters of credit and surety bonds totaling \$1 million and \$77 million, respectively. We believe we will fulfill our obligations under the related arrangements and do not anticipate any material losses under these letters of credit or surety bonds.

Contractual Obligations

As of June 30, 2022, there have been no material changes to our contractual obligations appearing in the “Contractual Obligations, Commitments and Contingencies” section of *Management’s Discussion and Analysis of Financial Condition and Results of Operations* included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Critical Accounting Policies

We prepare our condensed consolidated financial statements in accordance with GAAP. Our critical accounting policies are those that we believe have the most significant impact on the presentation of our financial position and results of operations and require the most difficult, subjective or complex judgments. In many cases, the accounting treatment of a transaction is specifically dictated by GAAP without the need for the application of judgment.

In certain circumstances, however, the preparation of condensed consolidated financial statements in conformity with GAAP requires us to make certain estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the condensed consolidated financial statements, as well as the reported amounts of revenues and expenses during the reporting period.

We believe that there have been no significant changes to our critical accounting policies during the six months ended June 30, 2022 as compared to those disclosed in *Management’s Discussion and Analysis of Financial Condition and Results of Operations* included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Cautionary Statement about Forward-Looking Statements

The information in this Quarterly Report on Form 10-Q includes “forward-looking statements.” Many statements included in this Quarterly Report on Form 10-Q are not statements of historical fact, including statements concerning our expectations, beliefs, plans, objectives, goals, strategies, future events or performance and underlying assumptions. These statements are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Actual results may differ materially from those expressed or implied by these statements. Forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified. Certain, but not necessarily all, of such forward-looking statements can be identified by the use of forward-looking terminology, such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “forecast,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “projection,” “should” or “will” or the negative thereof or other comparable terminology. These forward-looking statements include, but are not limited to, statements about:

- our market opportunity and the potential growth of that market;
- trends with respect to interest rates;
- the expected impact of the COVID-19 pandemic;
- our strategy, expected outcomes and growth prospects;
- trends in our operations, industry and markets;
- our future profitability, indebtedness, liquidity, access to capital and financial condition; and
- our integration of companies that we have acquired into our operations.

We have based these forward-looking statements on our current expectations and assumptions about future events based on information available to our management at the time the statements were made. While our management considers these expectations and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory and other risks, contingencies and uncertainties, most of which are difficult to predict and many of which are beyond our control. Therefore, we cannot assure you that actual results will not differ materially from those expressed or implied by our forward-looking statements.

We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control, incident to the operation of our business. These risks include, but are not limited to, the risks described under “*Risk Factors*” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and in our Quarterly Report on Form 10-Q for the three months ended March 31, 2022. Should one or more of such risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements.

All forward-looking statements, expressed or implied, included in this Quarterly Report on Form 10-Q are expressly qualified in their entirety by this cautionary statement. This cautionary statement should also be considered in connection with any subsequent written or oral forward-looking statements that we or persons acting on our behalf may issue.

Except as otherwise required by applicable law, we disclaim any duty to update any forward-looking statements, all of which are expressly qualified by the statements in this section, to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q.

COVID-19 Impact

There remains uncertainty regarding the extent and timing of the disruption to our business that may result from the COVID-19 pandemic and any future related governmental actions. There is also uncertainty as to the effects of the COVID-19 pandemic and related economic relief efforts on the U.S. economy, unemployment, consumer confidence, demand for our homes and the mortgage market, including lending standards, interest rates and secondary mortgage markets. We are unable to predict the extent to which this will impact our operational and financial performance, including the impact of future developments such as the duration and spread of the COVID-19 virus or variants thereof, corresponding governmental actions and the impact of such developments and actions on our employees, customers and trade partners and the supply chain in general.

Our primary focus remains on doing everything we can to ensure the safety and well-being of our employees, customers and trade partners. In all markets where we are permitted to operate, we are operating in accordance with the guidelines issued by the Centers for Disease Control and Prevention, as well as state and local guidelines.

For more information, see *Item 1A. Risk Factors* in Part I of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our operations are interest-rate sensitive. As overall housing demand is adversely affected by increases in interest rates, a significant increase in interest rates may negatively affect the ability of homebuyers to secure adequate financing. Higher interest rates could adversely affect our revenues, gross margins and net income. We do not enter into, nor do we intend to enter into in the future, derivative financial instruments for trading or speculative purposes to hedge against interest rate fluctuations.

Quantitative and Qualitative Disclosures About Interest Rate Risk

Market risk is the risk of loss arising from adverse changes in market prices and interest rates. Our market risk arises from interest rate risk inherent in our financial instruments and debt obligations. Interest rate risk results from the possibility that changes in interest rates will cause unfavorable changes in net income or in the value of interest rate sensitive assets, liabilities and commitments. Lower interest rates tend to increase demand for mortgage loans for home purchasers, while higher interest rates make it more difficult for potential borrowers to purchase residential properties and to qualify for mortgage loans. We have no market rate-sensitive instruments held for speculative or trading purposes.

The Amended and Restated Credit Agreement provides for loans to bear interest, at the Company's option, at (1) a "Base Rate", which means for any day a fluctuating rate per annum equal to credit spreads of 1.50% to 2.60%, which are determined based on the Company's debt to capitalization ratio, plus the highest of (a) the Federal Funds Rate plus 0.5%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," (c) Term SOFR plus 1.00% and (d) 1.00%, or (2) a "Term SOFR/Letter of Credit Rate", which means for any day a fluctuating rate per annum equal to credit spreads of 2.50% to 3.60%, which are determined based on the Company's debt to capitalization ratio, plus the adjusted term SOFR rate (based on one, three or six-month interest periods).

Interest on base rate advances borrowed under the Amended and Restated Credit Agreement is payable in arrears on a monthly basis. Interest on each Eurodollar rate advance borrowed under the Amended and Restated Credit Agreement is payable in arrears at the end of the interest period applicable to such advance, or, if less than such interest period, three months after the beginning of such interest period. The Company pays the lenders a commitment fee on the amount of the unused commitments on a quarterly basis at a rate per annum that will vary from 0.20% to 0.30% depending on the Company's net debt to net capitalization ratio.

Outstanding borrowings under the Amended and Restated Credit Agreement are subject to, among other things, a borrowing base. The borrowing base includes, among other things, (a) 90% of the net book value of presold housing units, (b) 85% of the net book value of model housing units, (c) 85% of the net book value of speculative housing units and (d) 70% of the net book value of finished lots, in each case subject to certain exceptions and limitations set forth in the Amended and Restated Credit Agreement.

Our mortgage banking joint venture, Jet LLC, is exposed to interest rate risk as it relates to its lending activities. Jet LLC underwrites and originates mortgage loans, which are sold through either optional or mandatory forward delivery contracts into the secondary markets. All of the mortgage banking segment's loan portfolio is held for sale and subject to forward sale commitments. Jet LLC also sells all of its mortgages held for sale on a servicing released basis.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, management evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) of the Securities Exchange Act of 1934) as of June 30, 2022. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer identified three material weaknesses in our internal control over financial reporting. We did not document the design or operation of an effective control environment commensurate with the financial reporting requirements of an SEC registrant. Specifically, we did not design and maintain adequate formal documentation of certain policies and procedures, controls over the segregation of duties within our financial reporting function and the preparation and review of journal entries. In addition, we did not design or maintain effective control activities that contributed to the following additional material weaknesses; we did not design control activities to adequately address identified risks, evidence of performance, or operate at a sufficient level of precision that would identify material misstatements to our financial statements and we did not design and maintain effective controls over certain IT general controls for information systems that are relevant to the preparation of our financial statements. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual or interim financial statements will not be prevented or detected on a timely basis.

Each of the material weaknesses described above involve control deficiencies that could result in a misstatement of one or more account balances or disclosures that would result in a material misstatement to our annual or interim condensed consolidated financial statements that would not be prevented or detected, and, accordingly, we determined that these control deficiencies constitute material weaknesses.

Remediation Plan for Material Weaknesses

Since identifying these material weaknesses and reporting them in our 2020 Annual Report on 10-K, we have developed a remediation plan and implemented measures to address the underlying causes of each material weakness. Our efforts to date have included the following:

- Developed formal policies specific to corporate governance and accounting.
- Developed formal policies for IT general controls; executed IT controls focused training; and designed and implemented controls within user access, program change management, computer operations and program development domains.
- Further augmented leadership and staff responsible for internal control over financial reporting, including adding a Vice President of Internal Audit to assess and report on the Company's processes and internal controls and a Director of SEC Reporting to address SEC reporting and technical accounting matters.
- Designed and implemented segregation of duties controls over financial reporting and review of journal entries.
- Performed a financial statement risk assessment and designed and implemented or identified existing controls designed to prevent or detect a material misstatement in our financial statements.
- As of June 30, 2022, management has designed and implemented controls to address the entity level and financial reporting risks identified.
- As of June 30, 2022, management has implemented a formal testing program to evaluate the design and operating effectiveness of key internal controls. The newly implemented controls are currently being assessed for design effectiveness and will be assessed for operating effectiveness throughout the year.

While we believe these efforts will improve our internal control over financial reporting and address the underlying causes of the material weaknesses, such material weaknesses will not be remediated until our remediation plan has been fully implemented, and we have concluded that our controls are operating effectively for a sufficient period of time.

We cannot be certain that the steps we are taking will be sufficient to remediate the control deficiencies that led to our material weaknesses in our internal control over financial reporting or prevent future material weaknesses or control deficiencies from occurring. In addition, we cannot be certain that we have identified all material weaknesses in our internal control over financial reporting or that in the future we will not have additional material weaknesses in our internal control over financial reporting.

Changes in Internal Controls

Except as set forth above, there was no change in our internal control over financial reporting as such term is defined in Exchange Act Rule 13a-15(f) occurred during the three months ended June 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1.LEGAL PROCEEDINGS

See Note 5, Commitments and Contingencies, in our unaudited financial statements included herein for a description of material legal proceedings. From time to time, we are a party to ongoing legal proceedings in the ordinary course of business. We do not believe the results of currently pending proceedings, individually or in the aggregate, will have a material adverse effect on our business, financial condition, results of operations or liquidity.

ITEM 1A. RISK FACTORS

There are numerous factors that affect our business and results of operations, many of which are beyond our control. Refer to Item 1A in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, which contains descriptions of significant risks that have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes to risk factors previously disclosed in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2021 as updated by the risk factor disclosed in Part II - Item 1A of our Quarterly Report for the quarter ended March 31, 2022.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 6. EXHIBITS

Exhibit No.	Description
10.1+	Amended and Restated Credit Agreement, dated as of June 2, 2022, among Dream Finders Homes, Inc., Bank of America, N.A., as administrative agent, collateral agent and issuing bank, and the lenders named therein as parties thereto (incorporated by reference from Form 8-K filed on June 8, 2022).
31.1*	CEO Certification, Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	CFO Certification, Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document).
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).

* Filed herewith.

+ Certain schedules and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K.

The registrant undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC.

XBRL information is deemed not filed or a part of a registration statement or Annual Report for purposes of Sections 11 and 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under such sections.

SIGNATURES

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

Dream Finders Homes, Inc.

Date: August 4, 2022

/s/ Patrick O. Zalupski

Patrick O. Zalupski
President, Chief Executive Officer and Chairman of the Board of Directors
(Principal Executive Officer)

August 4, 2022

/s/ L. Anabel Fernandez

L. Anabel Fernandez
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of June 2, 2022

among

DREAM FINDERS HOMES, INC.,
as Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent,
and
an L/C Issuer,

The Other L/C Issuers Party Hereto,

and

The Other Lenders Party Hereto

WESTERN ALLIANCE BANK,
as
Syndication Agent

FLAGSTAR BANK, FSB,
as
Documentation Agent

BOFA SECURITIES, INC.,
as
Sole Bookrunner

BOFA SECURITIES, INC.,
WESTERN ALLIANCE BANK,
and
FLAGSTAR BANK, FSB,
as
Joint Lead Arrangers

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EXHIBIT H	Form of Notice of Loan Prepayment
EXHIBIT I	Borrower's Remittance Instructions
EXHIBIT J	Borrower's Instructions Certificate

AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** is entered into as of June 2, 2022, among **DREAM FINDERS HOMES, INC.**, a Delaware corporation (“**Borrower**”), each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), **BANK OF AMERICA, N.A.**, as Administrative Agent and an L/C Issuer, and the other L/C Issuers from time to time party hereto.

Borrower, certain Lenders, the L/C Issuers and Administrative Agent are parties to that certain Credit Agreement dated as of January 25, 2021 (as amended to the date hereof, the “**Existing Credit Agreement**”).

Borrower has requested that the Lenders amend and restate the Existing Credit Agreement, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

I. **DEFINITIONS AND ACCOUNTING TERMS.**

1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acquisition**” means a transaction or series of transactions resulting in acquisition of a business, division, or all or substantially all of the assets of a Person, acquisition of record or beneficial ownership of the equity interests of a Person, or merger, consolidation or combination of a Person with or into another Person.

“**Act**” has the meaning specified in **Section 10.18**.

“**Additional Commitment Lender**” has the meaning specified in **Section 2.13**.

“**Administrative Agent**” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“**Administrative Agent’s Office**” means Administrative Agent’s address and, as appropriate, account as set forth on **Schedule 10.02**, or such other address or account as Administrative Agent may from time to time notify to Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in substantially the form of **Exhibit E-2** or any other form approved by Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement.

“**Applicable Law**” means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

“**Applicable Percentage**” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s

Commitment at such time, subject to adjustment as provided in **Section 2.16**. If the commitment of each Lender to make Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to **Section 8.02** or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments and to any Lender's status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on **Schedule 2.01A** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"**Applicable Rate**" means, from time to time, the following percentages per annum, based upon the Debt to Capitalization Ratio as set forth below:

Pricing Level	Debt to Capitalization Ratio	Term SOFR + Letters of Credit Applicable Rate	Base Rate Applicable Rate	Unused Fee
1	< 45.00%	2.50%	1.50%	0.20%
2	≥ 45.00% - < 50.00%	2.75%	1.75%	0.20%
3	≥ 50.00% - < 55.00%	3.00%	2.00%	0.25%
4	≥ 55.00% - < 60.00%	3.30%	2.30%	0.30%
5	≥ 60.00%	3.60%	2.60%	0.30%

Any increase or decrease in the Applicable Rate resulting from a change in the Debt to Capitalization Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to **Section 6.02(a)**; *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such **Section**, then, upon the request of the Required Lenders, Pricing Level 5 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered; *provided, further*, that, while any Default exists, upon the request of the Required Lenders, Pricing Level 5 shall apply as of the first Business Day after the date on which such Default occurred and shall remain in effect until the date on which such Default is cured or waived. The Applicable Rate in effect from the Closing Date through the date of delivery of the first Compliance Certificate due hereunder shall be determined based upon Pricing Level 4.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of **Section 2.09(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.

"**Arrangers**" means BofA Securities, Inc., in its capacity as a joint lead arranger and sole bookrunner, and Western Alliance Bank and Flagstar Bank, FSB, in their capacity as joint lead arrangers, and "**Arranger**" means any one of the Arrangers.

"**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 10.06(b)**), and accepted by Administrative Agent, in substantially the form of **Exhibit E-1** or any other form (including electronic documentation generated by use of an electronic platform) approved by Administrative Agent.

"**Attributable Indebtedness**" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

“**Audited Financial Statements**” means the audited consolidated balance sheet of the Consolidated Group for the fiscal year ended December 31, 2021, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Consolidated Group, including the notes thereto.

“**Authorized Person**” means any representative of Borrower duly designated by Borrower in accordance with Borrower’s Instruction Certificate, authorized to bind Borrower requesting disbursements of Loan proceeds.

“**Authorized Signer**” means any representative of Borrower duly designated by Borrower in accordance with Borrower’s Instruction Certificate, authorized to bind Borrower and to act for Borrower for all purposes in connection with any Loan, including requesting disbursements of Loan proceeds, obtaining information pertaining to any Loan, requesting any action under the Loan Documents, providing any certificates, and appointing and changing any Authorized Persons.

“**Availability Period**” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to **Section 2.05**, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to **Section 8.02**.

“**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, rule, regulation 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).

“**Bank of America**” means Bank of America, N.A. and its successors.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” (c) Term SOFR *plus* 1.00% and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. §1010.230.

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

“**Borrower**” has the meaning specified in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning specified in **Section 6.02**.

“**Borrower’s Instruction Certificate**” means a certificate provided by or on behalf of Borrower in the form attached hereto as **Exhibit J**, designating certain Authorized Persons and Authorized Signers as set forth therein.

“**Borrowing**” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Term SOFR Rate Loans, having the same Interest Period made by each of the Lenders pursuant to **Section 2.01**.

“**Borrowing Base Availability**” means at any time the sum (without duplication) of the following assets that are (w) wholly-owned in fee simple absolute by Borrower or a Wholly-Owned Subsidiary of Borrower that is a Guarantor, (x) not subject to any ground lease, Lien, Negative Pledge, or other encumbrance or restriction on the ability of the applicable owner to dispose of, pledge or otherwise encumber such asset or any income therefrom (other than Liens permitted by **Section 7.01**), (y) not subject to any title, survey, environmental or other defects and (z) not part of a multifamily residential condominium project having four or more floors or twenty-five or more Housing Units:

- (a) 90% of the Net Book Value of Presold Housing Units; *provided* that such percentage shall be 85% for any Presold Housing Unit the purchaser of which is under contract to purchase more than three Housing Units;
- (b) 85% of the Net Book Value of Model Housing Units; *provided* that such percentage shall be reduced by 5% for any Model Housing Unit that has been included in the calculation of Borrowing Base Availability as a “*Model Housing Unit*” for twenty-four (24) months and shall be further reduced for such Model Housing Unit by an additional 5% every six (6) months thereafter;
- (c) 85% of the Net Book Value of Speculative Housing Units; and
- (d) 70% of the Net Book Value of Finished Lots;

provided that (i) to the extent the portion of Borrowing Base Availability attributable to Finished Lots would exceed 30% of Borrowing Base Availability, then such excess shall be disregarded in the calculation of the Borrowing Base Availability, (ii) to the extent the portion of Borrowing Base Availability attributable to Model Housing Units and the Speculative Housing Units would exceed 65% of Borrowing Base Availability (excluding amounts attributable to Finished Lots), then such excess shall be disregarded in the calculation of Borrowing Base Availability, (iii) any Presold Housing Unit shall be excluded from the calculation of Borrowing Base Availability if such Presold Housing Unit has been included in the calculation of Borrowing Base Availability as a “*Presold Housing Unit*” for more than twenty-four (24) months, as determined on a cumulative basis, (iv) any Model Housing Unit shall be excluded from the calculation of Borrowing Base Availability if such Model Housing Unit has been included in the calculation of Borrowing Base Availability as a “*Model Housing Unit*” for more than 36 months, as determined on a cumulative basis, (v) any Speculative Housing Unit shall be excluded from the calculation of Borrowing Base Availability if such Speculative Housing Unit has been included in the calculation of Borrowing Base Availability as a “*Speculative Housing Unit*” for more than twenty-four (24) months, as determined on a cumulative basis, (vi) any Finished Lot shall be excluded from the calculation of Borrowing Base Availability if such Finished Lot has been included in the calculation of Borrowing Base Availability as a “*Finished Lot*” for more than twenty-four (24) months, as determined on a cumulative basis; and (vii) to the extent the portion of Borrowing Base Availability attributable to Presold Housing Units, the purchaser of which is under contract to purchase more than three Housing Units, exceeds 10% of Borrowing Base Availability, then such excess shall be disregarded in the calculation of Borrowing Base Availability.

“**Borrowing Base Certificate**” means a certificate substantially in the form of **Exhibit D** executed by a Responsible Officer of Borrower setting forth in reasonable detail all assets used in the calculation of

Borrowing Base Availability and component breakdowns on a per unit basis to determine Borrowing Base Availability.

“**Borrowing Base Debt**” means all Indebtedness of the Consolidated Group, including the Obligations, but excluding Non-Recourse Indebtedness.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Administrative Agent’s Office is located.

“**Capitalization**” means, for the Consolidated Group as of any date of determination, the sum of (a) all Indebtedness less all Unrestricted Cash in excess of \$25,000,000, plus (b) Tangible Net Worth.

“**Capital Lease**” means each lease that has been or is required to be, in accordance with GAAP, classified and accounted for as a capital lease or financing lease.

“**Cash Collateralize**” means to pledge and deposit with or deliver to Administrative Agent, for the benefit of one or more of the L/C Issuers or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if Administrative Agent and the L/C Issuers shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and the L/C Issuers. “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**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, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“**Change of Control**” means an event or series of events by which:

(a) any “*person*” or “*group*” (as such terms are used in *Sections 13(d)* and *14(d)* of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than Existing Owners 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 25% or more of the equity securities of Borrower entitled to vote for members of the board of directors or equivalent governing body of Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in *clause (i)* above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals

referred to in *clauses (i) and (ii)* above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body;

(c) the passage of 30 days from the date upon which any Person or two or more Persons (other than Existing Owners) acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Borrower, or control over the equity securities of Borrower entitled to vote for members of the board of directors or equivalent governing body of Borrower on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities; or

(d) Borrower shall, at any time, cease to own, directly or indirectly, 100% of the Equity Interests (other than the Existing Preferred Interests) of DF Holdings and DF Homes.

“**Closing Date**” means the first date all the conditions precedent in **Section 4.01** are satisfied or waived in accordance with **Section 10.01**.

“**CME**” means CME Group Benchmark Administration Limited.

“**Code**” means the Internal Revenue Code of 1986.

“**Collateral Account**” has the meaning specified in **Section 2.03(o)**.

“**Commitment**” means, as to each Lender, its obligation to (a) make Loans to Borrower pursuant to **Section 2.01** and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on **Schedule 2.01A** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“**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.

“**Communication**” means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

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

“**Conforming Changes**” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of “**Base Rate**”, “**SOFR**”, “**Term SOFR**” and “**Interest Period**”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “**Business Day**” and “**U.S. Government Securities Business Day**”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

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

“**Consolidated Group**” means Borrower and its Subsidiaries.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**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.

“**Covered Entity**” has the meaning specified in **Section 10.22(b)**.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Credit Party**” has the meaning set forth in **Section 9.12**.

“**Daily Simple SOFR**” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“**Debt to Capitalization Ratio**” means, as of any date, the ratio (stated as a percentage) of (a) Indebtedness of the Consolidated Group less all Unrestricted Cash in excess of \$25,000,000, to (b) Capitalization.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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

“**Default Rate**” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; *provided, however*, that with respect to a Term SOFR Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“**Defaulting Lender**” means, subject to **Section 2.16(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to 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 Business Days of the date when due, (b) has notified Borrower, 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 Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and 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 Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator,

trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of *clauses (a)* through *(d)* above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to *Section 2.16(b)*) as of the date established therefor by Administrative Agent in a written notice of such determination, which shall be delivered by Administrative Agent to Borrower, each L/C Issuer and each other Lender promptly following such determination.

“**Designated Jurisdiction**” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“**DF Holdings**” means Dream Finders Holdings LLC, a Florida limited liability company.

“**DF Holdings Operating Agreement**” means that certain Fifth Amended and Restated Operating Agreement of DF Holdings, dated on or about the date hereof.

“**DF Homes**” means Dream Finders Homes LLC, a Florida limited liability company.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Stock**” means any Equity Interest of a Person that by its terms (or by the terms of any Equity Interest into which it is convertible or for which it is exchangeable or exercisable) (a) matures or is subject to mandatory redemption, pursuant to a sinking fund obligation or otherwise on or prior to the Maturity Date, (b) is convertible into or exchangeable or exercisable for a liability or Disqualified Stock on or prior to the Maturity Date, (c) is redeemable on or prior to the Maturity Date at the option of the holder of such Equity Interest or (d) otherwise requires any payments by such person on or prior to the Maturity Date.

“**Dividing Person**” has the meaning assigned to it in the definition of “*Division*.”

“**Division**” means the division of the assets, liabilities and/or obligations of a Person (the “**Dividing Person**”) among two or more Persons (whether pursuant to a “*plan of division*” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Earnout Obligations**” means contingent earnout obligations payable to one or more sellers incurred in connection with an Acquisition.

“**EBITDA**” means, for the Consolidated Group for any period, without duplication, an amount equal to the sum of (a) Net Income of the Consolidated Group for such period, in each case, excluding (i) any nonrecurring or extraordinary gains and losses for such period, (ii) any income or gain and any loss in each case resulting from early extinguishment of Indebtedness, and (iii) any net income or gain or any loss resulting from a Swap Contract or other derivative contract (including by virtue of a termination thereof), *plus* (b) an amount which, in the determination of Net Income for such period pursuant to

clause (a) above, has been deducted for or in connection with (i) interest expense (*plus*, amortization of deferred financing costs, to the extent included in the determination of interest expense in accordance with GAAP), (ii) income Taxes, and (iii) depreciation and amortization, all determined in accordance with GAAP.

“**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.

“**Electronic Record**” and “**Electronic Signature**” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under **Section 10.06(b)(iii)**, and **(v)** (subject to such consents, if any, as may be required under **Section 10.06(b)(iii)**).

“**Entitled Land**” means a parcel of real property where all requisite zoning requirements and land use requirements have been identified and approved (on a preliminary or final basis) by the applicable Governmental Authorities, and all other requisite approvals have been obtained from all applicable Governmental Authorities (other than approvals which are simply ministerial and non-discretionary in nature or otherwise not material), including approval of a tentative plat map (or equivalent), for purposes of developing land as a residential housing project.

“**Environmental Laws**” means any and all Federal, state, local, and foreign statutes, laws (including common law), regulations, standards, ordinances, rules, judgments, interpretations, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of human health and safety, the environment and natural resources or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, directly or indirectly relating to (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of *Section 414(b)* or *(c)* of the Code (and *Sections 414(m)* and *(o)* of the Code for purposes of provisions relating to *Section 412* of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of a Loan Party or any ERISA Affiliate from a Pension Plan subject to *Section 4063* of ERISA during a plan year in which such entity was a “*substantial employer*” as defined in *Section 4001(a)(2)* of ERISA or a cessation of operations that is treated as such a withdrawal under *Section 4062(e)* of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under *Section 4041* or *4041A* of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under *Section 4042* of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of *Sections 430, 431* and *432* of the Code or *Sections 303, 304* and *305* of ERISA; or (h) the imposition of any liability under *Title IV* of ERISA, other than for PBGC premiums due but not delinquent under *Section 4007* of ERISA, upon a Loan Party or any ERISA Affiliate.

“**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 specified in *Section 8.01*.

“**Excluded Subsidiary**” means (a) each Financial Services Subsidiary, (b) each Immaterial Subsidiary, and (c) each Subsidiary that is a VIE.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of any Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty 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 (determined after giving effect to *Section 10.23* and any other “*keepwell, support or other agreement*” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time any Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to any 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 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 Borrower under *Section 10.13*) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to *Section 3.01(a)(ii), (a)(iii)* or *(c)*, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such

Recipient's failure to comply with **Section 3.01(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement" has the meaning specified in the recitals.

"Existing Owners" means Patrick Zalupski and POZ Holdings, Inc.

"Existing Preferred Interests" means the Series B Preferred Units (as defined in the DF Holdings Operating Agreement) and the Series C Preferred Units (as defined in the DF Holdings Operating Agreement) issued by DF Holdings on the Closing Date and held by Persons other than a member of the Consolidated Group.

"Extending Lender" has the meaning specified in **Section 2.13**.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means **Sections 1471 through 1474** of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to **Section 1471(b)(1)** of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letter" means any fee letter among Borrower, DF Holdings, Administrative Agent or any Arranger.

"Financial Services Subsidiary" means any Subsidiary engaged exclusively in mortgage banking (including mortgage origination, loan servicing, mortgage broker and title and escrow businesses), master servicing and related activities, including any Subsidiary which facilitates the financing of mortgage loans and mortgage-backed securities and the securitization of mortgage-backed bonds and other activities ancillary thereto.

"Finished Lot" means Entitled Land owned by a member of the Consolidated Group (a) with respect to which development has been completed to such an extent that permits to allow use and construction (other than building permits and the payment of fees that are required to be paid at or near the time of start of construction), including building, sanitary sewer and water, are entitled to be obtained for a Housing Unit on such Entitled Land, and (b) with respect to which start of construction has not occurred.

"Foreign Lender" means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations 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 (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“**GAAP**” means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranty**” means the Amended and Restated Guaranty made by each Guarantor in favor of Administrative Agent, the L/C Issuers and the Lenders, substantially in the form of **Exhibit F**.

“**Guarantors**” means, as of any date, each Subsidiary of Borrower that has executed the Guaranty (or a counterpart thereto in the form attached thereto), but excluding all Excluded Subsidiaries and Subsidiaries of Borrower that have been released from the Guaranty.

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

“**Housing Unit**” means a residential housing unit (whether completed or under construction) owned by a member of the Consolidated Group that is (or will be, upon completion of construction thereof) available for sale.

“**Immaterial Subsidiary**” means, as of any date of determination, any Subsidiary whose (a) total assets determined in accordance with GAAP, as of the last day of the then most recently ended fiscal

quarter for which financial statements are available, were less than \$500,000 and (b) assets are not included in the calculation of Borrowing Base Availability.

“**Improvements**” means on and off-site development work, including but not limited to filling to grade, main water distribution and sewer collection systems and drainage system installation, paving, and other improvements necessary for the use of residential dwelling units and as required pursuant to development agreements which may have been entered into with Governmental Authorities.

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, comfort letters, keep-well agreements, capital maintenances agreements and similar instruments, to the extent such instruments and agreements support financial, rather than performance, obligations;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the date on which such trade account payable was created and (ii) Earnout Obligations);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) Capital Leases and Synthetic Lease Obligations;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Stock or other Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; 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. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

“**Indemnitees**” has the meaning specified in **Section 10.04(b)**.

“**Information**” has the meaning specified in **Section 10.07**.

“**Interest Coverage Ratio**” means, as of the end of each fiscal quarter of Borrower for the twelve (12) month period ending on such date, the ratio of (a) EBITDA for such period to (b) Interest Incurred by the Consolidated Group.

“**Interest Incurred**” means, for the Consolidated Group for any period, interest incurred, whether such interest was expensed, capitalized, paid, accrued or scheduled to be paid or accrued. Notwithstanding that GAAP may otherwise provide, “Interest Incurred” shall not include any fees paid to lot owners in connection with any lot option contracts.

“**Interest Payment Date**” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a Term SOFR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the first Business Day of each calendar month and the Maturity Date.

“**Interest Period**” means, as to each Term SOFR Rate Loan, the period commencing on the date such Term SOFR Rate Loan is disbursed or converted to or continued as a Term SOFR Rate Loan and ending on the date one, three or six months thereafter (in each case, subject to availability), as selected by Borrower in its Loan Notice; *provided that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period pertaining to a Term SOFR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“**IP Rights**” has the meaning specified in **Section 5.18**.

“**IRS**” means the United States Internal Revenue Service.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**ISP**” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“**Issuer Documents**” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

“Land Held for Future Development/Disposition” means Entitled Land upon which no Improvements have been commenced.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing.

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

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Disbursement” means a payment made by an L/C Issuer pursuant to a Letter of Credit.

“L/C Issuer” means each of Bank of America, Western Alliance Bank and Flagstar Bank, FSB, in its capacity as issuer of Letters of Credit hereunder. Any L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term **“L/C Issuer”** shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the **“L/C Issuer”** in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant L/C Issuer with respect thereto.

“L/C Obligations” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, including any automatic or scheduled increases provided for by the terms of such Letters of Credit, determined without regard to whether any conditions to drawing could be met at that time, *plus* (b) the aggregate amount of all Unreimbursed Amounts, including all L/C Borrowings. The L/C Obligations of any Lender at any time shall be its Applicable Percentage of the total L/C Obligations at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of *Article 29(a)* of the UCP or *Rule 3.13* or *Rule 3.14* of the ISP or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of Borrower and each Lender shall remain in full force and effect until the L/C Issuers and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“**Letter of Credit**” means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“**Letter of Credit Expiration Date**” means the date that is one year following the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“**Letter of Credit Fee**” has the meaning specified in **Section 2.03(j)**.

“**Letter of Credit Sublimit**” means an amount equal to \$25,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, easement, right-of-way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Liquidity Ratio**” means, as of any date of determination, the ratio of (a) the sum of (i) Unrestricted Cash and (ii) the amounts immediately available to be drawn under this Agreement but which are not yet drawn, to (b) Interest Incurred by the Consolidated Group for the 12 month period ending on such date.

“**Loan**” means an extension of credit by a Lender to Borrower under **Sections 2.01** and **2.02**.

“**Loan Documents**” means this Agreement, including schedules and exhibits hereto, each Note, each Issuer Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of **Section 2.15** of this Agreement, each Guaranty and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

“**Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Term SOFR Rate Loans, pursuant to **Section 2.02(a)**, which shall be substantially in the form of **Exhibit A** or such other form as may be approved by Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent), appropriately completed and signed by a Responsible Officer of Borrower.

“**Loan Parties**” means, collectively, Borrower and each Guarantor.

“**Lots Under Development**” means Entitled Land owned by a member of the Consolidated Group upon which construction of Improvements has commenced but not been completed and for which: (a) to the extent required, a performance bond, surety or other security has been issued to and in favor of and unconditionally accepted by each local agency and all relevant Governmental Authorities, including any municipal utility district in which the real property is situated with regard to all work to be performed pursuant to each and all of said subdivision improvement agreements or other agreements; (b) all necessary plans have been approved by all relevant Governmental Authorities for the installation of any and all Improvements required to be installed upon such real property; (c) all necessary permits have been issued for the installation of said Improvements; and (d) utility services necessary for construction of Improvements and residential dwelling units and the operation thereon for the purpose intended will be available to such real property upon completion of the Improvements and there exists a binding obligation on the part of each and every utility company to deliver necessary utility services to such real property.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) of the Consolidated Group, taken as a whole; or (b) a material adverse effect on (i) the ability

of any Loan Party to perform its Obligations under any Loan Document, (ii) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or (iii) the rights, remedies and benefits available to, or conferred upon, Administrative Agent or any Lender under any Loan Documents.

“**Material Contract**” means, with respect to any Person, any agreement or contract to which such Person or any of its Subsidiaries is a party the loss of which would be reasonably likely to have a Material Adverse Effect.

“**Maturity Date**” means the later of (a) June 2, 2025 and (b) if maturity is extended pursuant to **Section 2.13**, such extended maturity date as determined pursuant to such **Section**; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“**Minimum Collateral Amount**” means, at any time, (i) 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 (ii) otherwise, an amount determined by Administrative Agent and the L/C Issuers in their sole discretion.

“**Model Housing Unit**” means a Housing Unit for which a building permit has been issued that will be or has been constructed initially for inspection by prospective purchasers and that is not intended to be sold until all or substantially all other Housing Units in such Model Housing Unit’s subdivision are sold.

“**Mult employer Plan**” means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Multiple Employer Plan**” means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

“**Negative Pledge**” means a provision of any agreement (other than any Loan Document) that prohibits the creation of any Lien on any assets of a Person.

“**Net Book Value**” means, with respect to an asset owned by a Loan Party, the gross investment of such Loan Party in such asset, less all reserves (including loss reserves and reserves for depreciation) attributable to such asset, all determined in accordance with GAAP consistently applied, including, in the case of Land Held for Future Development/Disposition, any unamortized land credits.

“**Net Income**” means, for any period, the net income (or loss) of the Consolidated Group *provided, however*, that “**Net Income**” shall exclude (a) extraordinary gains and extraordinary losses for such period, and (b) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that Borrower’s equity in any net loss of any such Subsidiary for such period shall be included in determining Net Income.

“**Non-Consenting Lender**” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of **Section 10.01** 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.

“**Non-Extending Lender**” has the meaning specified in **Section 2.13**.

“**Non-Recourse Indebtedness**” means, for any member of the Consolidated Group, Indebtedness or other obligations of such member of the Consolidated Group secured by a Lien on property to the extent that the liability for such Indebtedness or other obligations is limited to the security of such property (or to Persons other than a member of the Consolidated Group) without liability on the part of any member of the Consolidated Group (other than, in the case of Indebtedness or obligations of a Subsidiary, any Subsidiary that holds title to such property (if such property constitutes all or substantially all the property of such Subsidiary) and a pledge of the Equity Interests of such Subsidiary or its Subsidiaries) for any deficiency.

“**Note**” means a promissory note made by Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of **Exhibit B**, the terms of which are expressly not incorporated herein by reference pursuant to Section 12B-4, Florida Administrative Code.

“**Notice Date**” has the meaning specified in **Section 2.13**.

“**Notice of Loan Prepayment**” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of **Exhibit H** or such other form as may be approved by Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent), appropriately completed and signed by a Responsible Officer.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of the Loan Parties to reimburse any amount in respect of any of the foregoing that Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Loan Parties. Notwithstanding the foregoing, the Obligations shall exclude any Excluded Swap Obligations

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organization Documents**” means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**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 3.06**).

“Outstanding Amount” means (i) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in **Section 10.06(d)**.

“Participant Register” has the meaning specified in **Section 10.06(d)**.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in **Sections 412, 430, 431, 432 and 436** of the Code and **Sections 302, 303, 304 and 305** of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate or with respect to which any Loan Party or any ERISA Affiliate has any liability and is either covered by **Title IV** of ERISA or is subject to the minimum funding standards under **Section 412** of the Code.

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

“Plan” means any employee benefit plan within the meaning of **Section 3(3)** of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in **Section 6.02**.

“Presold Housing Unit” means a Housing Unit as to which the Loan Party that owns such Housing Unit has a bona fide contract of sale, in a form customarily employed by such Loan Party, entered into with a Person who is not an Affiliate of a Loan Party, and: (a) under which contract no defaults then exist; (b) under which contract the purchaser has made the customary earnest money deposit; and (c) under which contract there are no contingencies (other than ordinary and customary contingencies to the purchaser’s obligation to buy such Housing Unit entered into in the ordinary course of business).

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

“Public Lender” has the meaning specified in **Section 6.02**.

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time under §1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in **Section 10.06(c)**.

“**Regulation U**” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“**Reportable Event**” means any of the events set forth in *Section 4043(c)* of ERISA, other than events for which the 30 day notice period has been waived.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“**Required Lenders**” means, at any time, Lenders having aggregate Commitments representing more than 50% of the Aggregate Commitments; *provided*, that if the Commitments have been terminated, “**Required Lenders**” means, at any such time, Lenders having aggregate Revolving Credit Exposure representing more than 50% of aggregate Revolving Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; *provided* that, the amount of any Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the applicable L/C Issuer, as the case may be, in making such determination.

“**Rescindable Amount**” has the meaning set forth in *Section 2.11(b)(ii)*.

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

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller or other Authorized Signer of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to *Section 4.01(b)*, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by Administrative Agent, and appropriate authorization documentation, in form and substance satisfactory to Administrative Agent.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“**Revolving Credit Exposure**” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Loans and such Lender’s participation in L/C Obligations at such time.

“**Risk Assets Ratio**” means, as of any date of determination, the ratio of (a) the sum of the Net Book Value of all Finished Lots, Lots Under Development, and Land Held for Future Development/Disposition of the Consolidated Group, to (b) Tangible Net Worth.

“**Sanction(s)**” means any sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“**HMT**”) or other relevant sanctions authority.

“**Scheduled Unavailability Date**” has the meaning specified in **Section 3.03(b)**.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**SOFR**” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“**SOFR Adjustment**” with respect to Daily Simple SOFR means 0.10% (10 basis points); and with respect to Term SOFR means 0.10% (10 basis points) for an Interest Period of one-month’s duration, 0.15% (15 basis points) for an Interest Period of three-month’s duration, and 0.25% (25 basis points) for an Interest Period of six-months’ duration.

“**Solvent**” means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Specified Loan Party**” means any Loan Party that is not an “*eligible contract participant*” under the Commodity Exchange Act (determined prior to giving effect to **Section 10.23**).

“**Speculative Housing Unit**” means a Housing Unit that is not a Presold Housing Unit or Model Housing Unit.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “**Subsidiary**” or to “**Subsidiaries**” shall refer to a Subsidiary or Subsidiaries of Borrower.

“**Successor Rate**” has the meaning specified in **Section 3.03(b)**.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

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

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

“**Synthetic Lease Obligation**” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Tangible Net Worth**” means, for the Consolidated Group as of any date of determination, (a) total equity on a consolidated basis determined in accordance with GAAP, *minus* (b) all intangible assets on a consolidated basis determined in accordance with GAAP, excluding the portion of goodwill attributable to Earnout Obligations, *plus* (c) all depreciation determined in accordance with GAAP.

“**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:

(a) for any Interest Period with respect to a Term SOFR Rate Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, *plus* the SOFR Adjustment for such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;

provided that if Term SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, Term SOFR shall be deemed zero for purposes of this Agreement.

“**Term SOFR Rate Loan**” means a Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

“**Term SOFR Replacement Date**” has the meaning specified in *Section 3.03(b)*.

“**Term SOFR Screen Rate**” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).

“**Threshold Amount**” means \$20,000,000.

“**Total Credit Exposure**” means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Term SOFR Rate Loan.

“**UCC**” means, at any time, the Uniform Commercial Code as in effect in the applicable jurisdiction at such time.

“**UCP**” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to 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.

“**Unconsolidated Affiliates**” means an Affiliate of Borrower whose financial statements are not required to be consolidated with the financial statements of Borrower in accordance with GAAP.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in **Section 2.03(f)**.

“**Unrestricted Cash**” means an amount equal to (a) cash and cash equivalents of the Loan Parties that are not subject to a Lien (excluding statutory Liens in favor of any depository bank where such cash is maintained), Negative Pledge or other restriction *minus* (b) amounts included in the foregoing **clause (a)** that are with an entity other than a Loan Party as deposits or security for contractual obligations.

“**U.S. Government Securities Business Day**” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“**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 specified in **Section 3.01(g)(ii)(B)(3)**.

“**VIE**” means a variable interest entity (as such term is used in Accounting Standards Codification **Section 810**) in which Borrower owns a direct or indirect interest and that is an Affiliate of Borrower and whose financial statements are required to be consolidated with the financial statements of Borrower under GAAP.

“**Wholly-Owned Subsidiary**” means, with respect to any Person on any date, any corporation, partnership, limited liability company or other entity of which 100% of the Equity Interests and 100% of the ordinary voting power are, as of such date, owned and Controlled by such Person; *provided that, a*

Subsidiary of Borrower shall not be disqualified as a Wholly-Owned Subsidiary solely by virtue of the Existing Preferred Interests.

“**Withholding Agent**” means Borrower and Administrative Agent.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 **Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time, and (vi) the words “*asset*” and “*property*” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “*from*” means “from and including;” the words “*to*” and “*until*” each mean “to but excluding;” and the word “*through*” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability

company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms.

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Consolidated Group shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or the Required Lenders shall so request, Administrative Agent, the Lenders and Borrower 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* 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) Borrower shall provide to Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

1.04 **Rounding.** Any financial ratios required to be maintained by Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 **Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 **Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 **Interest Rates.** Administrative Agent does not warrant, nor accept responsibility, nor shall Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. Administrative Agent and its Affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to Borrower. Administrative Agent may select information sources or services in its reasonable discretion

to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

II. THE COMMITMENTS AND CREDIT EXTENSIONS.

2.01 **Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make Loans to Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; *provided, however*, that after giving effect to any Borrowing, (a) the Total Outstandings shall not exceed the lesser of (i) the Aggregate Commitments and (ii) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations; (b) the outstanding Borrowing Base Debt shall not exceed Borrowing Base Availability; and (c) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, Borrower may borrow under this **Section 2.01**, prepay under **Section 2.04**, and reborrow under this **Section 2.01**. Loans may be Base Rate Loans or Term SOFR Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Term SOFR Rate Loans shall be made upon Borrower's irrevocable notice to Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to Administrative Agent of a Loan Notice. Each such Loan Notice must be received by Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Rate Loans or of any conversion of Term SOFR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Term SOFR Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in **Section 2.03(f)**, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice shall specify (i) whether Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Term SOFR Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Loan in a Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Rate Loans. If Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by Borrower, Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (and, if such Borrowing is the

initial Credit Extension, **Section 4.01**), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the account of Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Administrative Agent by Borrower; *provided, however*, that if, on the date the Loan Notice with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to Borrower as provided above.

(c) Except as otherwise provided herein, a Term SOFR Rate Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Term SOFR Rate Loans without the consent of the Required Lenders.

(d) Administrative Agent shall promptly notify Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 10 Interest Periods in effect with respect to Loans.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by Borrower, Administrative Agent, and such Lender.

(g) With respect to SOFR or Term SOFR, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan 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 Loan Document; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Conforming Changes to Borrower and the Lenders reasonably promptly after such amendment becomes effective.

2.03 Letters of Credit.

(a) **General.** Subject to the terms and conditions set forth herein, in addition to the Loans provided for in **Section 2.01**, Borrower may request any L/C Issuer, in reliance on the agreements of the Lenders set forth in this **Section 2.03**, to issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars for its own account in such form as is acceptable to Administrative Agent and such L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Commitments.

(b) **Notice of Issuance, Amendment, Extension, Reinstatement or Renewal.** To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable L/C Issuer) to an L/C Issuer selected by it and to Administrative Agent not later than 11:00 a.m. at least five Business Days (or such later date and time as Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with

clause (d) of this *Section 2.03*), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the applicable L/C Issuer, Borrower also shall submit a letter of credit application and reimbursement agreement on such L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application and reimbursement agreement or other agreement submitted by Borrower to, or entered into by Borrower with, an L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) **Limitations on Amounts, Issuance and Amendment**. A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (i) the aggregate amount of the outstanding Letters of Credit issued by any L/C Issuer shall not exceed its L/C Commitment, (ii) the aggregate L/C Obligations shall not exceed the Letter of Credit Sublimit, (iii) the Revolving Credit Exposure of any Lender shall not exceed its Commitment, (iv) the Total Outstandings shall not exceed the lesser of (A) the Aggregate Commitments, and (B) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations and (v) the outstanding Borrowing Base Debt shall not exceed Borrowing Base Availability.

(i) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and such L/C Issuer, the Letter of Credit is in an initial stated amount less than \$50,000;

(D) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to *Section 2.16(a)(iv)*) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(ii) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) **Expiration Date.** Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve (12) months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve (12) months after the then current expiration date of such Letter of Credit) and (ii) the Letter of Credit Expiration Date.

(e) **Participations.** By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the applicable L/C Issuer or the Lenders, such L/C Issuer hereby grants to each Lender, and each Lender hereby acquires from such L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this *clause (e)* in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

In consideration and in furtherance of the foregoing, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to Administrative Agent, for account of the applicable L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by an L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by Administrative Agent to the Lenders pursuant to **Section 2.03(f)** until such L/C Disbursement is reimbursed by Borrower or at any time after any reimbursement payment is required to be refunded to Borrower for any reason, including after the Maturity Date then in effect. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in **Section 2.02** with respect to Loans made by such Lender (and **Section 2.02** shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and Administrative Agent shall promptly pay to the applicable L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to **Section 2.03(f)**, Administrative Agent shall distribute such payment to the applicable L/C Issuer or, to the extent that the Lenders have made payments pursuant to this *clause (e)* to reimburse such L/C Issuer, then to such Lenders and such L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this *clause (e)* to reimburse an L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve Borrower of its obligation to reimburse such L/C Disbursement.

Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of **Section 2.13** or **2.14**, as a result of an assignment in accordance with **Section 10.06** or otherwise pursuant to this Agreement.

If any Lender fails to make available to Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.03(e)**, then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the applicable L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by such L/C Issuer in

connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of any L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this *clause (e)* shall be conclusive absent manifest error.

(f) **Reimbursement.** If an L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, Borrower shall reimburse such L/C Issuer in respect of such L/C Disbursement by paying to Administrative Agent an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that Borrower receives notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time, *provided* that, if such L/C Disbursement is not less than \$1,000,000, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with **Section 2.02** that such payment be financed with a Borrowing of Base Rate Loans in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans. If Borrower fails to make such payment when due, Administrative Agent shall notify each Lender of the applicable L/C Disbursement, the payment then due from Borrower in respect thereof (the "**Unreimbursed Amount**") and such Lender's Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the date of payment by the applicable L/C Issuer under a Letter of Credit in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.02** for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in **Section 4.02** (other than the delivery of a Loan Notice). Any notice given by any L/C Issuer or Administrative Agent pursuant to this **Section 2.03(f)** may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. Notwithstanding the foregoing, any L/C Disbursement in respect of a Letter of Credit made by L/C Issuer after the Maturity Date shall be due and payable by Borrower on demand.

(g) **Obligations Absolute.** Borrower's obligation to reimburse L/C Disbursements as provided in *clause (f)* of this **Section 2.03** shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by any L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of Borrower or any waiver by such L/C Issuer which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;

(vi) any payment made by any L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) payment by the applicable L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or any payment made by any L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this **Section 2.03**, constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the applicable L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against each L/C Issuer and its correspondents unless such notice is given as aforesaid.

None of Administrative Agent, the Lenders, any L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the applicable L/C Issuer 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, any error in translation or any consequence arising from causes beyond the control of the applicable L/C Issuer; *provided* that the foregoing shall not be construed to excuse an L/C Issuer from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by Applicable Law) suffered by Borrower that are caused by such 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 an L/C Issuer (as finally determined by a court of competent jurisdiction), an L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) an L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;

(ii) an L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) an L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by an L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of Administrative Agent, the Lenders, any L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (i) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (ii) an L/C Issuer declining to take-up documents and make payment (A) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor or (B) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (iii) an L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to such L/C Issuer.

(h) **Applicability of ISP and UCP; Limitation of Liability.** Unless otherwise expressly agreed by the applicable L/C Issuer and Borrower when a Letter of Credit is issued by it, the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to Borrower for, and no L/C Issuer's rights and remedies against Borrower shall be impaired by, any action or inaction of any L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where any L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) **Benefits and Immunities of each L/C Issuer.** Each 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, and each L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in *Article IX* with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "*Administrative Agent*" as used in *Article IX* included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(j) **Letter of Credit Fees.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance, subject to *Section 2.16*, with its Applicable Percentage a Letter of Credit fee (the "*Letter of Credit Fee*") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with *Section 1.06*. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(k) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.** Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, equal to the greater of (i) \$1,500 and (ii) 0.125% per annum times the maximum amount available to be drawn under such Letter of Credit (whether or not

such maximum amount is then in effect with respect to such Letter of Credit), payable at the time of the issuance of such Letter of Credit and at each renewal of same. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**. In addition, Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(l) **Disbursement Procedures.** The L/C Issuer for any Letter of Credit shall, within the time allowed by Applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. such L/C Issuer shall promptly after such examination notify Administrative Agent and Borrower in writing of such demand for payment if such L/C Issuer has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse such L/C Issuer and the Lenders with respect to any such L/C Disbursement.

(m) **Interim Interest.** If the L/C Issuer for any Letter of Credit shall make any L/C Disbursement, then, unless Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; *provided* that if Borrower fails to reimburse such L/C Disbursement when due pursuant to **clause (f)** of this **Section 2.03**, then **Section 2.07(b)** shall apply. Interest accrued pursuant to this **clause (m)** shall be for account of such L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to **clause (f)** of this **Section 2.03** to reimburse such L/C Issuer shall be for account of such Lender to the extent of such payment.

(n) **Replacement of any L/C Issuer.** any L/C Issuer may be replaced at any time by written agreement between Borrower, Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. Administrative Agent shall notify the Lenders of any such replacement of an L/C Issuer. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer pursuant to **Section 2.03(j)**. From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "**L/C Issuer**" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuer, as the context shall require. After the replacement of an 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 an 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.

(o) **Cash Collateralization.** If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with L/C Obligations representing at least 50% of the total L/C Obligations) demanding the deposit of Cash Collateral pursuant to this **clause (o)**, Borrower shall immediately deposit into an account established and maintained on the books and records of Administrative Agent (the "**Collateral Account**") an amount in cash equal to the Minimum Collateral Amount as of such date *plus* any accrued and unpaid interest thereon, *provided* that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in **clause (f)** of **Section 8.01**. Such deposit shall be held by Administrative Agent as collateral for the payment and performance of the obligations of Borrower under this Agreement. In addition, and without limiting the foregoing or **clause (d)** of this **Section 2.03**, if any L/C Obligations remain outstanding after the expiration date specified in said **clause (d)**, Borrower shall immediately deposit into the Collateral Account an amount in cash equal to the

Minimum Collateral Amount as of such date *plus* any accrued and unpaid interest thereon; *provided*, that Borrower shall Cash Collateralize, in an amount equal to the Minimum Collateral Amount *plus* any accrued and unpaid interest thereon, each Letter of Credit that has an expiration date beyond the Maturity Date then in effect at least 30 days prior to the Maturity Date then in effect.

Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of Administrative Agent and at Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Moneys in the Collateral Account shall be applied by Administrative Agent to reimburse each L/C Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the L/C Obligations at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with L/C Obligations representing 50% of the total L/C Obligations), be applied to satisfy other obligations of Borrower under this Agreement. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to Borrower within three Business Days after all Events of Default have been cured or waived.

(p) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Prepayments.

(a) Borrower may, upon notice to Administrative Agent pursuant to delivery to Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that (i) such notice must be received by Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Term SOFR Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Term SOFR Rate Loans are to be prepaid, the Interest Period(s) of such Loans. Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term SOFR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to **Section 3.05**. Subject to **Section 2.16**, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason (i) the Total Outstandings at any time exceed the lesser of (A) Aggregate Commitments then in effect or (B) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations or (ii) the outstanding Borrowing Base Debt shall at any time exceed Borrowing Base Availability, then Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided*, however, that Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.04(b)** unless after the prepayment in full of the Loans either (x) the Total Outstandings exceed the lesser of (1) the Aggregate Commitments then in effect or (2) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations or (y) the outstanding Borrowing Base Debt exceeds Borrowing Base Availability.

2.05 Termination or Reduction of Commitments. Borrower may, upon notice to Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; *provided* that (i) any such notice shall be received by Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, (A) the Total Outstandings would exceed the lesser of (1) the Aggregate Commitments and (2) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations or (B) the outstanding Borrowing Base Debt would exceed Borrowing Base Availability, and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit shall be automatically reduced by the amount of such excess. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.06 Repayment of Loans. Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Loans and L/C Borrowings outstanding on such date.

2.07 Interest.

(a) Subject to the provisions of *subsection (b)* below, (i) each Term SOFR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Term SOFR for such Interest Period *plus* the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate.

(b) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in *clauses (b)(i)* and *(b)(ii)* above), Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.08 Fees. In addition to any other fees described herein or in any other Loan Document, but subject in all cases to the provisions of *Section 2.16*:

(a) **Unused Fee.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an unused fee equal to the Applicable Rate *times* the actual daily amount by which the Aggregate Commitments then in effect (or, if terminated, in effect immediately prior to such termination) exceed the Total Outstandings at such time, subject to adjustment as provided in **Section 2.16**. The unused fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in **Article IV** is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period (and, if applicable, thereafter on demand). The unused fee shall be calculated quarterly in arrears and if there is any change in the Applicable Rate during any quarter, the daily amount shall be computed and multiplied by the Applicable Rate for each period during which such Applicable Rate was in effect.

(b) **Other Fees.**

(i) Borrower shall pay to each Arranger and Administrative Agent for their own respective accounts fees in the amounts and at the times specified in each Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.09 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to **Section 2.11(a)**, bear interest for one day. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of Borrower or for any other reason, Borrower or the Lenders determine that (i) the Debt to Capitalization Ratio as calculated by Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Debt to Capitalization Ratio would have resulted in higher pricing for such period, Borrower shall immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as the case may be, promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, automatically and without further action by Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This **clause (b)** shall not limit the rights of Administrative Agent, any Lender or any L/C Issuer, as the case may be, under **Section 2.03(h)** or **2.07(b)** or under **Article VIII**. Borrower's obligations under this **clause (b)** shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.10 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. Administrative

Agent shall maintain the Register in accordance with **Section 10.06(c)**. The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the request of any Lender made through Administrative Agent, Borrower shall execute and deliver to such Lender (through Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in **subsection (a)** above, each Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

2.11 Payments Generally; Administrative Agent's Clawback.

(a) **General.** All payments to be made by Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Administrative Agent, for the account of the respective Lenders to which such payment is owed, at Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Funding by Lenders; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Term SOFR Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to Administrative Agent such Lender's share of such Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.02** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by **Section 2.02**) and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to Base Rate Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrower shall be without prejudice

to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(ii) **Payments by Borrower; Presumptions by Administrative Agent.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuer, as the case may be, the amount due. With respect to any payment that Administrative Agent makes for the account of the Lenders or any L/C Issuer hereunder as to which Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “*Rescindable Amount*”): (1) Borrower has not in fact made such payment; (2) Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable L/C Issuers, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this *clause (b)* shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this *Article II*, and such funds are not made available to Borrower by Administrative Agent because the conditions to the applicable Credit Extension set forth in *Article IV* are not satisfied or waived in accordance with the terms hereof, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to *Section 10.04(c)* are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under *Section 10.04(c)* on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under *Section 10.04(c)*.

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) **Insufficient Funds.** If at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.12 **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 the Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided* that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this **Section 2.12** shall not be construed to apply to (x) any payment made by or on behalf of 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), (y) the application of Cash Collateral provided for in **Section 2.15**, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this **Section 2.12** shall apply).

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

2.13 **Extension of Maturity Date.**

(a) **Requests for Extension.** Borrower may, by written notice to Administrative Agent (who shall promptly notify the Lenders) not earlier than 120 days and not later than 30 days prior to each annual anniversary of the Closing Date, request that the then-existing Maturity Date be extended for an additional one year; *provided, however*, that any such request may be made only once during each such 90-day period.

(b) **Lender Elections to Extend.** Each Lender, acting in its sole and individual discretion, shall, by notice to Administrative Agent given not later than the date (the "**Notice Date**") that is 20 days prior to the annual anniversary of the Closing Date, advise Administrative Agent whether or not such Lender agrees to such extension (and each Lender that determines not to so extend its Maturity Date (a "**Non-Extending Lender**") shall promptly notify Administrative Agent of such determination (but in any event no later than the Notice Date) and any Lender that does not so advise Administrative Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender). The election of any Lender to agree to such extension shall not obligate any other Lender to so agree.

(c) **Notification by Administrative Agent.** Administrative Agent shall notify Borrower of each Lender's determination under this **Section** no later than the date 15 days prior to the annual anniversary of the Closing Date (or, if such date is not a Business Day, on the next preceding Business Day).

(d) **Additional Commitment Lenders.** Borrower shall have the right to replace each Non-Extending Lender with, and add as "**Lenders**" under this Agreement in place thereof, one or more Eligible Assignees (each, an "**Additional Commitment Lender**") as provided in **Section 10.13**; *provided* that each of such Additional Commitment Lenders shall enter into an

Assignment and Assumption pursuant to which such Additional Commitment Lender shall, effective as of the Maturity Date then in effect, undertake a Commitment (and, if any such Additional Commitment Lender is already a Lender, its Commitment shall be in addition to such Lender's Commitment hereunder on such date).

(e) **Minimum Extension Requirement.** If (and only if) the total of the Commitments of the Lenders that have agreed so to extend their Maturity Date (each, an "**Extending Lender**") and the additional Commitments of the Additional Commitment Lenders shall be more than 66-2/3% of the aggregate amount of the Commitments in effect immediately prior to the Maturity Date then in effect, then, effective as of the then-existing Maturity Date, the Maturity Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date falling one year after the Maturity Date then in effect (except that, if such date is not a Business Day, such Maturity Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a "**Lender**" for all purposes of this Agreement.

(f) **Conditions to Effectiveness of Extensions.** As conditions precedent to each such extension:

(i) Borrower shall deliver to Administrative Agent a certificate of each Loan Party as of the Maturity Date then in effect (in sufficient copies for each Lender and each Additional Commitment Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (B) in the case of Borrower, certifying that, before and after giving effect to such extension, (1) the representations and warranties contained in **Article V** and the other Loan Documents are true and correct on and as of the Maturity Date then in effect, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.13**, the representations and warranties contained in **clauses (a) and (b) of Section 5.05** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a) and (b)**, respectively, of **Section 6.01**, and (2) no Default exists or would result therefrom.

(ii) On the Maturity Date of each Non-Extending Lender, Borrower shall prepay any Loans outstanding on such date to such Non-Extending Lender (and pay any additional amounts required pursuant to **Section 3.05**) and such other Loans to the extent necessary to keep outstanding Loans ratable with any revised Applicable Percentages of the respective Lenders that are not Non-Extending Lenders effective as of such date.

(iii) On the Maturity Date then in effect, Borrower shall pay to Administrative Agent a fee, for the pro rata account of each Extending Lender and each Additional Commitment Lender in an amount to be determined by Borrower and Administrative Agent at the time of any request to extend the Maturity Date under this **Section**, which fee shall, when paid, be fully earned and non-refundable under any circumstances.

(iv) (A) Upon the reasonable request of any Lender, including any Additional Commitment Lender, made at least 15 days prior to the Maturity Date then in effect, Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least 10 days prior to the Maturity Date then in effect and (B) at least 10 days prior to the Maturity Date then in effect, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(v) On the date of the notice described in **Section 2.13(a)** and the date of such extension and after giving effect thereto, (A) the representations and warranties contained in **Article V** and the other Loan Documents are true and correct on and as of the Maturity Date then in effect, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.13**, the representations and warranties contained in **clauses (a)** and **(b)** of **Section 5.05** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a)** and **(b)**, respectively, of **Section 6.01**, and (B) no Default exists or would result therefrom.

(g) **Amendment; Sharing of Payments.** In connection with any extension of the Maturity Date, Borrower, Administrative Agent and each Extending Lender may make such amendments to this Agreement as Administrative Agent determines to be reasonably necessary to evidence the extension. This **Section 2.13** shall supersede any provisions in **Section 2.12** or **10.01** to the contrary.

2.14 Increase in Commitments.

(a) **Request for Increase.** Provided there exists no Default, upon notice to Administrative Agent (which shall promptly notify the Lenders), Borrower may from time to time, request an increase in the Aggregate Commitments (which increase may take the form of additional Commitments, new revolving loan tranches, new term loan tranches or any combination of the foregoing) to an amount (for all such requests) not exceeding \$1,625,000,000; *provided* that any such request for an increase shall be in a minimum amount of \$25,000,000 (or such lesser amount approved by Administrative Agent in writing). At the time of sending such notice, Borrower (in consultation with Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Increase.** Each Lender shall notify Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) **Notification by Administrative Agent; Additional Lenders.** Administrative Agent shall notify Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of Administrative Agent and each L/C Issuer, Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Administrative Agent and its counsel.

(d) **Effective Date and Allocations.** If the Aggregate Commitments are increased in accordance with this **Section**, Administrative Agent and Borrower shall determine the effective date (the "**Increase Effective Date**") and the final allocation of such increase. Administrative Agent shall promptly notify Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) **Conditions to Effectiveness of Increase.** As conditions precedent to each such increase:

(i) Administrative Agent shall have approved in writing of such increase;

(ii) Borrower shall deliver to Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of Borrower, certifying that, before and after giving effect to such increase, (1) the

representations and warranties contained in *Article V* and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this *Section 2.14*, the representations and warranties contained in *clauses (a)* and *(b)* of *Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to *subsections (a)* and *(b)*, respectively, of *Section 6.01*, and (2) no Default exists or would result therefrom.

(iii) (x) Upon the reasonable request of any Lender made at least 15 days prior to the Increase Effective Date, Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least 10 days prior to the Increase Effective Date and (y) at least 10 days prior to the Increase Effective Date, any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(iv) On the date of the notice described in *Section 2.14(a)* and the Increase Effective Date and after giving effect thereto, (A) the representations and warranties contained in *Article V* and the other Loan Documents are true and correct on and as of the Maturity Date then in effect, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this *Section 2.14*, the representations and warranties contained in *clauses (a)* and *(b)* of *Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01*, and (B) no Default exists or would result therefrom.

(v) To the extent that the increase of the Aggregate Commitments shall take the form of a term loan tranche, this Agreement shall be amended, in form and substance satisfactory to Administrative Agent to include such terms as are customary for a term loan commitment. Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to *Section 3.05*) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this *Section*. Each Loan Party shall execute and deliver such other documents or instruments as Administrative Agent may reasonably require to evidence such increase to the Commitments and to ratify each such Loan Party’s continuing obligations hereunder and under the other Loan Documents.

(f) **Conflicting Provisions.** This *Section 2.14* shall supersede any provisions in *Section 2.12* or *10.01* to the contrary.

2.15 **Cash Collateral.**

(a) **Obligation to Cash Collateralize.** At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of Administrative Agent or any L/C Issuer (with a copy to Administrative Agent), Borrower shall Cash Collateralize the L/C Issuers’ Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to *Section 2.16(a)(iv)*) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be

applied pursuant to **Section 2.15(c)**. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent or the applicable L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to **clause (a)(iv)** above, after giving effect to **Section 2.16(a)(iv)** and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.15** or **Sections 2.03, 2.04, 2.16** or **8.02** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 10.06(b)(vi)**)) or (ii) the determination by Administrative Agent and the applicable L/C Issuer that there exists excess Cash Collateral; *provided, however,* (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and **Section 10.01**.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article VIII** or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to **Section 10.08** shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to 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 Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.15**; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and 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 Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.15**; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any 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 or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by 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 Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and 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 the Commitments hereunder without giving effect to **Section 2.16(a)(iv)**. 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 2.16(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 fee payable under **Section 2.08** for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.15**.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to **clause (A)** or **(B)** above, 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 Applicable Percentages 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 Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to **Section 10.21**, 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 (a)(iv)* above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in *Section 2.15*.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent and each L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, 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 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 the Commitments (without giving effect to *Section 2.16(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 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, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

III. TAXES, YIELD PROTECTION AND ILLEGALITY.

3.01 Taxes.

(a) **Defined Terms.** For purposes of this *Section 3.01*, 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 3.01*) 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 Loan Parties.** The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by Loan Parties.** Each of the Loan Parties shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this *Section 3.01*) 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 Borrower by a Lender (with a copy to Administrative Agent), or by 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 Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified 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 10.06(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 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes 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 Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this **clause (e)**.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority as provided in this **Section 3.01**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(g) **Status of Lenders; Tax Documentation.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or 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 Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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 3.01(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, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and 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 Borrower or Administrative Agent), executed copies 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 Borrower and 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 Borrower or Administrative Agent), whichever of the following is applicable:

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under *Section 881(c)* of the Code, (x) a certificate substantially in the form of *Exhibit G-1* to the effect that such Foreign Lender is not a “bank” within the meaning of *Section 881(c)(3)(A)* of the Code, a “10 percent shareholder” of Borrower within the meaning of *Section 881(c)(3)(B)* of the Code, or a “controlled foreign corporation” described in *Section 881(c)(3)(C)* of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of *Exhibit G-2* or *Exhibit G-3*, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of *Exhibit G-4* on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and 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 Borrower or Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or 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 Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or 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 Borrower or Administrative Agent as may be necessary for Borrower and 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.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this **Section 3.01** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(h) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or any L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this **Section 3.01**, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this **Section 3.01** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **clause (h)**, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this **clause (h)** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 **subsection** shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(i) **Survival.** Each party's obligations under this **Section 3.01** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 **Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to Borrower (through Administrative Agent), (a) any obligation of such Lender to make or continue Term SOFR Rate Loans or to convert Base Rate Loans to Term SOFR Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Term SOFR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the

Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to **Section 3.05**.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a Term SOFR Rate Loan or a conversion of Base Rate Loans to Term SOFR Rate Loans or a continuation of any of such Loans, as applicable, (i) Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with **Section 3.03(b)**, and the circumstances under **clause (i)** of **Section 3.03(b)** or the Scheduled Unavailability Date have occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Rate Loan or in connection with an existing or proposed Base Rate Loan, or (ii) Administrative Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Administrative Agent will promptly so notify Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Rate Loans, or to convert Base Rate Loans to Term SOFR Rate Loans, shall be suspended (to the extent of the affected Term SOFR Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this **Section 3.03(a)**, until Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Rate Loans (to the extent of the affected Term SOFR Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) **Replacement of Term SOFR or Successor Rate.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Administrative Agent determines (which determination shall be conclusive absent manifest error), or Borrower or Required Lenders notify Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower) that Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining

the interest rate of Dollar denominated syndicated loans, or shall or will otherwise cease, *provided* that, at the time of such statement, there is no successor administrator that is satisfactory to Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “*Scheduled Unavailability Date*”);

then, on a date and time determined by Administrative Agent (any such date, the “*Term SOFR Replacement Date*”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “*Successor Rate*”).

If the Successor Rate is Daily Simple SOFR *plus* the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in *Section 3.03(b)(i)* or *(ii)* have occurred with respect to the Successor Rate then in effect, then in each case, Administrative Agent and Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this *Section 3.03* at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark. and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar Dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a “*Successor Rate*”. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Administrative Agent shall have posted such proposed amendment to all Lenders and Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to Administrative Agent written notice that such Required Lenders object to such amendment.

Administrative Agent will promptly (in one or more notices) notify Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any

amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Conforming Changes to Borrower and the Lenders reasonably promptly after such amendment becomes effective.

For purposes of this **Section 3.03**, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in Dollars shall be excluded from any determination of Required Lenders.

3.04 **Increased Costs.**

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or 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 any other condition, cost or expense affecting this Agreement or Term SOFR Rate 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 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 or such L/C Issuer 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 or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such 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 such L/C Issuer's capital or on the capital of such Lender's or such 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 such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in **clauses (a)** or **(b)** of this **Section 3.04** and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender

or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this **Section 3.04** shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, *provided* that Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this **Section 3.04** for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such 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).

3.05 **Compensation for Losses.** Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower; or

(c) any assignment of a Term SOFR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 10.13**;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** Each Lender may make any Credit Extension to Borrower through any Lending Office, *provided* that the exercise of this option shall not affect the obligation of Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under **Section 3.04**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to **Section 3.01**, or if any Lender gives a notice pursuant to **Section 3.02**, then at the request of Borrower such Lender or such L/C Issuer shall, as applicable, 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 or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.04**, or if 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 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 3.06(a)**, Borrower may replace such Lender in accordance with **Section 10.13**.

3.07 **Survival.** All of Borrower's obligations under this **Article III** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

IV. **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS.**

4.01 **Conditions of Initial Credit Extension.** The obligation of each L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and each Guaranty, sufficient in number for distribution to Administrative Agent, each L/C Issuer, each Lender and Borrower;

(ii) a Note executed by Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which any Loan Party is a party;

(iv) such documents and certifications as Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Holland & Knight LLP, counsel to the Loan Parties, addressed to Administrative Agent, each L/C Issuer and each Lender, regarding the Loan Parties and the Loan Documents in form and substance reasonably acceptable to the Required Lenders;

(vi) a certificate of a Responsible Officer of each Loan Party (A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required; and (B) certifying that there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of each such Loan Party after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any member of the Consolidated Group or against any of their properties or revenues that (1) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (2) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect;

(vii) a certificate signed by a Responsible Officer of Borrower certifying (A) that the conditions specified in **Sections 4.02(a)** and **(b)** have been satisfied; and (B) that there has been no event or circumstance since December 31, 2021 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(viii) executed affidavits establishing that all of the Loan Documents have been executed and delivered by Borrower and accepted by Administrative Agent outside of the State of Florida and delivered to Administrative Agent (or its agent or designee) outside of the State of Florida;

(ix) the Audited Financial Statements and the unaudited financial statements referred to in **Section 5.05(a)** and **5.05(b)**;

(x) a duly completed Compliance Certificate dated as of the Closing Date, signed by a Responsible Officer of Borrower;

(xi) a duly completed Borrowing Base Certificate calculated as of April 30, 2022, signed by a Responsible Officer of Borrower; and

(xii) such other assurances, certificates, documents, consents or opinions as Administrative Agent, any L/C Issuer or the Required Lenders reasonably may require.

(b) (i) Upon the reasonable request of any Lender made at least 15 days prior to the Closing Date, Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least 10 days prior to the Closing Date and (ii) at least 10 days prior to the Closing Date, any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) Any fees required to be paid on or before the Closing Date shall have been paid.

(d) Unless waived by Administrative Agent, Borrower shall have paid all fees, charges and disbursements of counsel to Administrative Agent (directly to such counsel if requested by Administrative Agent) to the extent invoiced prior to or on the Closing Date, *plus* such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (*provided* that such estimate shall not thereafter preclude a final settling of accounts between Borrower and Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of **Section 9.03**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Term SOFR Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of Borrower and each other Loan Party contained in **Article V** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of

such earlier date, and except that for purposes of this **Section 4.02**, the representations and warranties contained in **subsections clauses (a) and (b) of Section 5.05** shall be deemed to refer to the most recent statements furnished pursuant to **subsections (a) and (b)**, respectively, of **Section 6.01**.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Administrative Agent and, if applicable, the applicable L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) Administrative Agent and, if applicable, the applicable L/C Issuer shall have received a pro forma Borrowing Base Certificate, dated as of the date of the applicable Credit Extension.

(e) After giving effect to such proposed Credit Extension, (i) the Total Outstandings do not exceed the lesser of (A) the Aggregate Commitments and (B) Borrowing Base Availability minus Borrowing Base Debt other than the Obligations; (ii) the amount of the credit extension does not exceed the unused portion of the Aggregate Commitments; (iii) the outstanding Borrowing Base Debt does not exceed Borrowing Base Availability; and (iv) Borrower is in compliance with the covenants set forth in **Section 7.13** calculated on a pro forma basis.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term SOFR Rate Loans) submitted by Borrower shall be deemed to be a representation and warranty that the conditions specified in **Sections 4.02(a) and (b)** have been satisfied on and as of the date of the applicable Credit Extension.

V. **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Administrative Agent and the Lenders that:

5.01 **Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing or active status under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in **clause (b)(i) or (c)**, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 **Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Law.

5.03 **Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

5.04 **Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal,

valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Consolidated Group dated March 31, 2022, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby, subject, in the case of *clauses (i) and (ii)*, to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the actual knowledge of any member of the Consolidated Group after due and diligent investigation, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any member of the Consolidated Group or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No member of the Consolidated Group is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens. Each member of the Consolidated Group has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of Borrower and its Subsidiaries is subject to no Liens, other than Liens permitted by *Section 7.01*.

5.09 Environmental Compliance. Each member of the Consolidated Group conducts in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties. Such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of each member of the Consolidated Group are insured with financially sound and reputable insurance companies not Affiliates of any member of the Consolidated Group, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable member of the Consolidated Group operates.

5.11 **Taxes.** The members of the Consolidated Group have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the members of the Consolidated Group that would, if made, have a Material Adverse Effect. No member of the Consolidated Group is party to any tax sharing agreement.

5.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each member of the Consolidated Group, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of each member of the Consolidated Group, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under *Title IV* of ERISA to terminate any Pension Plan.

(d) No Loan Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than Pension Plans not otherwise prohibited by this Agreement.

(e) Each Loan Party represents and warrants as of the Closing Date that such Loan Party is not and will not be using “plan assets” (within the meaning of 29 CFR §2510.3-101, as modified by *Section 3(42)* of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

5.13 **Subsidiaries; Equity Interests.** As of the Closing Date, Borrower has no Subsidiaries (other than any VIE’s) other than those specifically disclosed in *Part (a)* of *Schedule 5.13*, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on *Part (a)* of *Schedule 5.13* free

and clear of all Liens. As of the Closing Date, Borrower has no equity Investments in any other Person other than those specifically disclosed in **Part (b)** of **Schedule 5.13**. As of the Closing Date, Borrower has no Investments in any VIE's other than those specifically disclosed in **Part (c)** of **Schedule 5.13**.

5.14 Margin Regulations; Investment Company Act.

(a) No member of the Consolidated Group is engaged nor will any member of the Consolidated Group engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock.

(b) Following the application of the of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of Borrower only or of the Consolidated Group) subject to the provisions of **Section 7.01** or **Section 7.05** or subject to any restriction contained in any agreement or instrument between Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of **Section 8.01(e)** will be margin stock.

(c) No member of the Consolidated Group, nor any Person Controlling any member of the Consolidated Group, is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure.

(a) Each Loan Party has disclosed to Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the date most recently delivered, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.16 Compliance with Laws. Each member of the Consolidated Group is in compliance in all material respects with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Taxpayer Identification Number. Borrower's true and correct U.S. taxpayer identification number is set forth on **Schedule 10.02**.

5.18 Intellectual Property; Licenses, Etc. Each member of the Consolidated Group owns, or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of its respective businesses, without conflict with the rights of any other Person. To the best knowledge of each member of the Consolidated Group, no product, service, process, method, substance, part or other material now used, or now contemplated to be used, by any member of the Consolidated Group infringes, misappropriates or otherwise violates upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to

the actual knowledge of each member of the Consolidated Group, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. To the best knowledge of each member of the Consolidated Group, there has been no unauthorized use, access, interruption, modification, corruption or malfunction of any information technology assets or systems (or any information or transactions stored or contained therein or transmitted thereby) owned or used by any member of the Consolidated Group, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.19 **OFAC.** No member of the Consolidated Group, nor, to the knowledge of any member of the Consolidated Group, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (a) currently the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction. The members of the Consolidated Group have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

5.20 **Anti-Corruption Laws.** Each member of the Consolidated Group has conducted its businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.21 **Affected Financial Institutions.** No Loan Party is an Affected Financial Institution.

5.22 **Covered Entities.** No Loan Party is a Covered Entity.

5.23 **Solvency.** Each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.24 **Stock Exchange Listing.** Borrower's common Equity Interests are currently publicly traded on NASDAQ.

5.25 **Borrowing Base.** Each Housing Unit and each Finished Lot included in Borrowing Base Availability is eligible to be included therein pursuant to the requirements of this Agreement.

VI. **AFFIRMATIVE COVENANTS.** So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Borrower shall, and shall (except in the case of the covenants set forth in *Sections 6.01, 6.02, and 6.03*) cause each other member of the Consolidated Group to:

6.01 **Financial Statements.** Deliver to Administrative Agent and each Lender, in form and detail satisfactory to Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)) (commencing with the fiscal year ended December 31, 2022), a consolidated balance sheet of the Consolidated Group as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Borrower (or, if earlier, five days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)) (commencing with the fiscal quarter ended June 30, 2022), a consolidated balance sheet of the Consolidated Group as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity, and cash flows for the portion of Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Group in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 90 days after the end of each fiscal year of Borrower, forecasts prepared by management of Borrower, in form satisfactory to Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Consolidated Group on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs).

As to any information contained in materials furnished pursuant to **Section 6.02(e)**, Borrower shall not be separately required to furnish such information under **subsection (a)** or **(b)** above, but the foregoing shall not be in derogation of the obligation of Borrower to furnish the information and materials described in **subsections (a)** and **(b)** above at the times specified therein.

6.02 Certificates; Other Information. Deliver to Administrative Agent and each Lender, in form and detail satisfactory to Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in **Sections 6.01(a)** and **(b)**, a duly completed Compliance Certificate signed by a Responsible Officer of Borrower (which delivery may, unless Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) representing and certifying, inter alia, compliance with the covenants set forth in **Section 7.13** for the period covered by such Compliance Certificate, and containing the calculations in reasonable detail evidencing such compliance as of the end of the period covered by such Compliance Certificate;

(b) promptly, and in any event within 45 days after each fiscal quarter end, a report from a Responsible Officer of Borrower detailing, sales, closings, and inventory of Housing Units of the Consolidated Group for such fiscal quarter;

(c) promptly, and in any event within 30 days after each calendar month end, a Borrowing Base Certificate with calculations as of the end of such calendar month;

(d) promptly after any request by Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Borrower by independent accountants in connection with the accounts or books of Borrower or any Subsidiary, or any audit of any of them;

(e) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Borrower, and copies of all annual, regular, periodic and special reports and registration statements which Borrower may file or be required to file with the SEC under **Section 13** or **15(d)** of the Securities Exchange Act of 1934, and not otherwise required to be delivered to Administrative Agent pursuant hereto;

(f) promptly, and in any event within five Business Days after receipt thereof by any member of the Consolidated Group, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any member of the Consolidated Group;

(g) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation; and

(h) promptly, such additional information regarding the business, financial, legal or corporate affairs of any member of the Consolidated Group, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to *Section 6.01(a)* and *(b)* or *Section 6.02(e)* (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the applicable member of the Consolidated Group posts such documents, or provides a link thereto on a member of the Consolidated Group’s website on the Internet at the website address listed on *Schedule 10.02*; or (ii) on which such documents are posted on the applicable member of the Consolidated Group’s behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); *provided* that: (i) Borrower shall deliver paper copies of such documents to Administrative Agent or any Lender upon its request to Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent or such Lender and (ii) Borrower shall notify Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Borrower hereby acknowledge that (a) Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of Borrower hereunder (collectively, “*Borrower Materials*”) by posting Borrower Materials on IntraLinks, SyndTrak, ClearPar, or a substantially similar electronic transmission system (the “*Platform*”) and (b) certain of the Lenders (each, a “*Public Lender*”) may have personnel who do not wish to receive material non-public information with respect to Borrower or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” Borrower shall be deemed to have authorized Administrative Agent, the Arrangers, each L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Borrower or their securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in *Section 10.07*); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, Borrower shall not be under any obligation to mark any Borrower Materials “PUBLIC.”

6.03 **Notices.** Promptly notify Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of any member of the Consolidated Group; (ii) any action, suit, dispute, litigation, investigation, proceeding or suspension involving any Loan Party or any Subsidiary or any of their respective properties and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any member of the Consolidated Group, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event; and

(d) of any material change in accounting policies or financial reporting practices by any member of the Consolidated Group, including any determination by Borrower referred to in **Section 2.09(b)**.

Each notice pursuant to this **Section 6.03** shall be accompanied by a statement of a Responsible Officer of the applicable member of the Consolidated Group setting forth details of the occurrence referred to therein and stating what action such member of the Consolidated Group has taken and proposes to take with respect thereto. Each notice pursuant to **Section 6.03(a)** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 **Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 **Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by **Section 7.04** or **7.05**; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 **Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 **Maintenance of Insurance.** Maintain with financially sound and reputable insurance companies not Affiliates of Borrower, insurance with respect to its properties and business 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.

6.08 **Compliance with Laws.** Comply in all material respects with the requirements of all Applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or

decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 **Books and Records.** (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each such Person, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Person, as the case may be.

6.10 **Inspection Rights.** Permit representatives and independent contractors of Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Borrower; *provided, however*, that when an Event of Default exists Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Borrower at any time during normal business hours and without advance notice.

6.11 **Use of Proceeds.** Use the proceeds of the Credit Extensions for general corporate purposes (including, without limitation, working capital, capital expenditures, acquisitions, construction, horizontal and vertical development and redevelopment), and other lawful corporate purposes not in contravention of any Law or of any Loan Document.

6.12 **Additional Guarantors.** Notify Administrative Agent at the time that any Person becomes a Subsidiary (other than an Excluded Subsidiary) or any Subsidiary no longer qualifies as an Excluded Subsidiary, and promptly thereafter (and in any event within 30 days), cause such Person to (a) become a Guarantor by executing and delivering to Administrative Agent a counterpart of the Guaranty or such other document as Administrative Agent shall deem appropriate for such purpose, and (b) deliver to Administrative Agent documents of the types referred to in *clauses (iii) and (iv) of Section 4.01(a)* and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in *clause (a)*), all in form, content and scope reasonably satisfactory to Administrative Agent.

6.13 **Anti-Corruption Laws; Sanctions.** Conduct its businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

6.14 **Environmental Matters.** (a) Comply with all Environmental Laws except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect; and (b) keep its properties free of Hazardous Material to the extent failing to take any such action or actions could reasonably be expected to have a Material Adverse Effect.

6.15 **Further Assurances.** Execute any and all further documents, agreements and instruments, and take all such further actions which may be required under any Applicable Law, or which either Administrative Agent or any Lender may reasonably request, to effectuate the transactions contemplated by the Loan Documents to which it is a party.

6.16 **Lien Searches.** Promptly following a written request from Administrative Agent, Borrower shall deliver to Administrative Agent completed requests for information listing all financing statements that name any Loan Party as debtor, together with copies of such financing statements.

6.17 **Material Contracts.** Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by Administrative Agent and, upon request of Administrative Agent, make

to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so.

VII. **NEGATIVE COVENANTS.** So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, Borrower shall not, nor shall it permit any other member of the Consolidated Group to, directly or indirectly:

7.01 **Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens for Taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (c) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;
- (d) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (e) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (f) notices of commencement, easements, rights-of-way, restrictions, development agreements, special taxing district documents, community development district documents, metropolitan district documents and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (g) Liens securing Indebtedness permitted under **Section 7.03(d)**; provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;
- (h) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 8.01(h)**;
- (i) Liens securing Indebtedness permitted under **Section 7.03(h)**; and
- (j) Liens that secure Indebtedness that has been paid in full in accordance with payoff statements, payoff letters, or other similar documentation but for which Lien terminations have not yet been filed or recorded but are being diligently pursued in good faith, so long as such

Lien terminations are filed or recorded within 60 days following the date such Indebtedness has been paid in full (or such later date as Administrative Agent agrees in its sole discretion).

7.02 **Investments.** Make any Investments, except:

- (a) Investments held by a member of the Consolidated Group in the form of cash equivalents;
- (b) advances to officers, directors and employees of a member of the Consolidated Group in an aggregate amount not to exceed \$6,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;
- (c) Subject to **Section 7.13(f)**, Investments of any member of the Consolidated Group in any other Person that is, or will upon the making of such Investment become, a member of the Consolidated Group;
- (d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (e) Subject to **Section 7.13(f)**, Investments in any Person that is, or will upon the making of such Investment become, an Unconsolidated Affiliate;
- (f) acquisitions of real property in the ordinary course of business; and
- (g) Guarantees permitted by **Section 7.03**.

7.03 **Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
- (b) Guarantees of any member of the Consolidated Group in respect of Indebtedness otherwise permitted hereunder of any other member of the Consolidated Group;
- (c) obligations (contingent or otherwise) of Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person 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, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;
- (d) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in **Section 7.01(g)**; *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$5,000,000; *provided, further* Borrower or its Affiliates shall be permitted to enter into any model home lease back in the normal course of business in which Borrower or its Affiliates are a tenant to the extent any such lease is deemed a Capital Lease and such model home leases shall not be subject to the limitation in the preceding clause;
- (e) Non-Recourse Indebtedness to the extent permitted under **Section 7.13(g)**;
- (f) obligations with respect to homeowners’ association obligations, community facility district bonds, metro district bonds, Mello-Roos bonds and subdivision improvement

bonds and similar bonding requirements arising in the ordinary course of business of a homebuilder;

(g) obligations not constituting Indebtedness for borrowed money with vendors, subcontractors and other contractors in the normal course of business;

(h) Indebtedness of Financial Services Subsidiaries and VIEs, in each case so long as no other member of the Consolidated Group has guaranteed or is otherwise obligated with respect to such Indebtedness or has pledged collateral to secure such Indebtedness; and

(i) obligations under contracts to purchase real property in the ordinary course of business so long as such obligations are not evidenced by a promissory note and are not secured by a Lien on any property or other assets of any member of the Consolidated Group.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except that, so long as no Default exists or would result therefrom:

(a) (i) any Subsidiary may merge or consolidate with Borrower, *provided* that Borrower shall be the continuing or surviving Person, (ii) any Subsidiary other than DF Homes may merge or consolidate with DF Holdings, *provided* that DF Holdings shall be the continuing or surviving Person, (iii) any Subsidiary other than DF Holdings may merge or consolidate with DF Homes, *provided* that DF Homes shall be the continuing or surviving Person, or (iv) any Subsidiary other than DF Holdings and DF Homes may merge or consolidate with any one or more Subsidiaries other than DF Holdings and DF Homes, *provided* that when any Guarantor is merging with another Subsidiary pursuant to this subsection, the continuing or surviving Person shall be or become a Guarantor; and

(b) any Subsidiary other than DF Holdings and DF Homes may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Borrower or to another Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then the transferee must either be Borrower or a Guarantor.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of Housing Units and Finished Lots in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to Borrower or to a Wholly-Owned Subsidiary; *provided* that if the transferor of such property is a Guarantor, the transferee thereof must either be Borrower or a Guarantor; and

(e) Dispositions permitted by **Section 7.04**;

provided, however, that any Disposition pursuant to **subsections (a) through (e)** shall be for fair market value.

7.06 **Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests if any Default shall have occurred and be continuing or would result therefrom or if, after giving effect thereto, Borrower would not be in compliance with the covenants set forth in **Section 7.13** calculated on a pro forma basis.

7.07 **Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by the Consolidated Group on the date hereof or any business substantially related or incidental thereto.

7.08 **Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of a member of the Consolidated Group, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such member of the Consolidated Group as would be obtainable by such member of the Consolidated Group at the time in a comparable arm's length transaction with a Person other than an Affiliate.

7.09 **Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to Borrower or any Guarantor or to otherwise transfer property to Borrower or any Guarantor, (ii) of any Guarantor to Guarantee the Indebtedness of Borrower or (iii) of Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; *provided, however*, that this **clause (iii)** shall not prohibit any Negative Pledge incurred or provided in favor of any holder of Indebtedness permitted under **Section 7.03(e)** solely to the extent any such Negative Pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10 **Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 **Amendment to Organizational Documents.** Amend any Organization Document of any Loan Party in any manner that would adversely affect any Loan Party's ability to pay its Obligations hereunder or materially and adversely impairs any rights or remedies of Administrative Agent or any Lender under the Loan Documents or Applicable Laws.

7.12 **Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by or otherwise in accordance with GAAP, the Financial Accounting Standards Board, the SEC or other Governmental Authority, or (b) its fiscal year.

7.13 **Financial Covenants.**

(a) **Maximum Debt to Capitalization Ratio.** Permit the Debt to Capitalization Ratio as of the last day of any fiscal quarter of Borrower to be greater than the ratio set forth below opposite such fiscal quarter:

Four Fiscal Quarters Ending	Maximum Debt to Capitalization Ratio
Closing Date through December 2022	62.50%
January 2023 and each fiscal quarter thereafter	60.00%

(b) **Minimum Interest Coverage Ratio.** Permit the Interest Coverage Ratio as of the last day of any fiscal quarter of Borrower to be less than 2.00 to 1.00.

(c) **Minimum Liquidity Ratio.** Permit the Liquidity Ratio as of the last day of any fiscal quarter of Borrower to be less than 1.00 to 1.00.

(d) **Minimum Tangible Net Worth.** Permit Tangible Net Worth at any time to be less than the sum of (i) \$385,000,000, (ii) an amount equal to 50% of the Net Income earned in each full fiscal quarter after December 31, 2021 (with no deduction for a net loss in any such fiscal quarter) and (iii) an amount equal to 50% of the aggregate increases in shareholders' equity of the Consolidated Group after December 31, 2021 by reason of the issuance and sale of Equity Interests of the members of the Consolidated Group (other than issuances to Borrower or a Wholly-Owned Subsidiary), including upon any conversion of debt securities of any member of the Consolidated Group into such Equity Interests.

(e) **Maximum Risk Assets Ratio.** Permit the Risk Assets Ratio as of the last day of any fiscal quarter of Borrower to be less than 1.00 to 1.00.

(f) **Investments in Unconsolidated Affiliates.** Permit the aggregate amount of Investments of the Consolidated Group in Unconsolidated Affiliates to exceed 15% of Tangible Net Worth as of the last day of any fiscal quarter of Borrower.

(g) **Maximum Non-Recourse Indebtedness.** Permit the aggregate amount of Non-Recourse Indebtedness of the Consolidated Group to exceed 15% of Tangible Net Worth as of the last day of any fiscal quarter of Borrower.

7.14 **Sanctions.** Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, or otherwise) of Sanctions.

7.15 **Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other anti-corruption legislation in other jurisdictions.

VIII. EVENTS OF DEFAULT AND REMEDIES.

8.01 **Events of Default.** Any of the following shall constitute an event of default (each, an “*Event of Default*”):

(a) **Non-Payment.** Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document, in the case of this *clause (iii)*, within five Business Days after written notice from Administrative Agent; or

(b) **Specific Covenants.** Any member of the Consolidated Group fails to perform or observe any term, covenant or agreement contained in any of *Section 6.01, 6.02, 6.03, 6.05, 6.10, 6.11 or 6.12* or *Article VII*; or

(c) **Other Defaults.** Any member of the Consolidated Group fails to perform or observe any other covenant or agreement (not specified in *subsection (a) or (b)* above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or misleading when made or deemed made; or

(e) **Cross-Default.** (i) Any member of the Consolidated Group (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) beyond any applicable cure period in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform beyond any applicable cure period any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any member of the Consolidated Group is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any member of the Consolidated Group is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such member of the Consolidated Group as a result thereof is greater than the Threshold Amount; or

(f) **Insolvency Proceedings, Etc.** Any member of the Consolidated Group institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its

property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment.** (i) Any member of the Consolidated Group becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) **Judgments.** There is entered against any member of the Consolidated Group (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any member of the Consolidated Group under *Title IV* of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) Any member of the Consolidated Group fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents.** Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) **Change of Control.** There occurs any Change of Control; or

(l) **Stock Exchange Listing.** Borrower's common Equity Interests shall cease to be traded on the New York Stock Exchange, NASDAQ, or other nationally recognized exchange reasonably acceptable to Required Lenders.

8.02 **Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided, however, that upon the occurrence of an event described in **Section 8.01(f)**, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in **Section 8.02** (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to **Section 8.02**), any amounts received on account of the Obligations shall, subject to the provisions of **Sections 2.15** and **2.16**, be applied by Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent and amounts payable under **Article III**) payable to Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers (including fees and time charges for attorneys who may be employees of any Lender or any L/C Issuer) and amounts payable under **Article III**), ratably among them in proportion to the respective amounts described in this **clause Second** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this **clause Third** payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this **clause Fourth** held by them;

Fifth, to Administrative Agent for the account of the applicable L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to **Sections 2.03** and **2.15**; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Subject to **Sections 2.03(c)** and **2.15**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to **clause Fifth** above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

IX. ADMINISTRATIVE AGENT.

9.01 Appointment and Authority. Each of the Lenders and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article IX** are solely for the benefit of Administrative Agent, the Lenders and the L/C Issuers, and no member of the Consolidated Group 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 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.

9.02 **Rights as a Lender.** The Person serving as 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 Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as 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 Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 **Exculpatory Provisions.** Administrative Agent or the Arrangers, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent or the Arrangers, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that 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 Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose 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;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, Administrative Agent, Arrangers or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by Administrative Agent herein;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 10.01** and **8.02**) 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. Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to Administrative Agent by Borrower, a Lender or an L/C Issuer; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this

Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **Article IV** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

9.04 **Reliance by Administrative Agent**. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 **Delegation of Duties**. 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 Administrative Agent. Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this **Article IX** shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 **Resignation of Administrative Agent.**

(a) Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower (so long as no Event of Default exists), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above, *provided* that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to **clause (d)** of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, in consultation with Borrower (so long as no Event of Default exists), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in **Section 3.01(g)**) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 9.06**). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article IX** and **Section 10.04** shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation or removal by Bank of America as Administrative Agent pursuant to this **Section 9.06** shall also constitute its resignation as an L/C Issuer. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**. Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as applicable, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) 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 Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent, the Arrangers and the Other Lenders . Each Lender and each L/C Issuer expressly acknowledges that none of Administrative Agent nor any Arranger has made any representation or warranty to it, and that no act by Administrative Agent or any Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by Administrative Agent or any Arranger to any Lender or each L/C Issuer as to any matter, including whether Administrative Agent or any Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to Administrative Agent and each Arranger that it has, independently and without reliance upon Administrative Agent, any Arranger, 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 of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent, any Arranger, 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 credit analysis, appraisals and 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, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 **No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09 **Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, 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 Administrative Agent shall have made any demand on 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 the Lenders, the L/C Issuers and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and Administrative Agent under **Sections 2.03(i)** and **(j)** and **10.04**) 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 each L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Section 10.04**.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

9.10 **Guaranty Matters.** Without limiting the provisions of *Section 9.09*, the Lenders and the L/C Issuers irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be required to be a Guarantor as a result of a transaction permitted under the Loan Documents.

Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this *Section 9.10*.

9.11 **Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of *Section 3(42)* of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of *Part VI* of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of *subsections (b) through (g)* of *Part I* of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of *subsection (a)* of *Part I* of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) *subclause (i)* in the immediately preceding *clause (a)* is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with *subclause (iv)* in the immediately preceding *clause (a)*, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including

in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.12 **Recovery of Erroneous Payments.** Without limitation of any other provision in this Agreement, if at any time Administrative Agent makes a payment hereunder in error to any Lender or any L/C Issuer (the “**Credit Party**”), whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

X. MISCELLANEOUS.

10.01 **Amendments, Etc.** Subject to **Section 3.03** and the last paragraph of this **Section 10.01**, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and Borrower or the applicable Loan Party, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in **Section 4.01(a)** without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.02**) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to the second proviso to this **Section 10.01**) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to (i) amend the definition of “**Default Rate**”, (ii) waive any obligation of Borrower to pay interest or Letter of Credit Fees at the Default Rate or (iii) amend any financial covenant in the Loan Documents, including **Section 7.13**, (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable under the Loan Documents);
- (e) without the written consent of each Lender, release, or have the effect of releasing, all or substantially all of the value of the Obligations;
- (f) without the written consent of each Lender directly affected thereby, (i) change **Section 2.12**, **Section 8.03**, or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments or the pro rata sharing of payments otherwise required hereunder; or (ii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation;

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

(h) release all or substantially all of the value of the Guaranties without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to **Section 9.10** (in which case such release may be made by Administrative Agent acting alone);

and, *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of each L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; and (iii) any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, 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 or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any waiver, amendment, consent or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, Administrative Agent and Borrower (i) to add one or more additional revolving credit or term loan facilities to this Agreement, in each case subject to the limitations in **Section 2.14**, and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

Notwithstanding any provision herein to the contrary, if Administrative Agent and Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then Administrative Agent and Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

10.02 Notices; Effectiveness; Electronic Communication.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in *clause (b)* below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower or any other Loan Party, Administrative Agent, any L/C Issuer, to the address, electronic mail address or telephone number specified for such Person on **Schedule 10.02**; and

(ii) if to any other Lender, to the address, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by e-mail shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in sub **clause (b)** below, shall be effective as provided in such **clause (b)**.

This Agreement was prepared by: Haynes and Boone, LLP
2323 Victory Park, Suite 700
Dallas, TX 75219
Attention: Scott Night, Cory Feldman, Nick Monier
Phone: 214-651-5000
E-mail: nick.monier@haynesboone.com

(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, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to **Article II** if such Lender or such L/C Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such **Article II** by electronic communication. Administrative Agent, any L/C Issuer or Borrower may each, 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 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)**, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall Administrative Agent or any of its

Related Parties (collectively, the “*Agent Parties*”) have any liability to Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrower’s, any Loan Party’s or Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) **Change of Address, Etc.** Each of Borrower, Administrative Agent, and each L/C Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and Applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to Borrower or its securities for purposes of United States Federal or state securities laws.

(e) **Reliance by Administrative Agent, L/C Issuer and Lenders** . Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Loan Notices and Letter of Credit Applications) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 **No Waiver; Cumulative Remedies; Enforcement**. No failure by any Lender, any L/C Issuer or Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 8.02** for the benefit of all the Lenders and the L/C Issuers; *provided, however*, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with **Section 10.08** (subject to the terms of **Section 2.12**), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to

Administrative Agent pursuant to **Section 8.02** and (ii) in addition to the matters set forth in **clauses (b), (c) and (d)** of the preceding proviso and subject to **Section 2.12**, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) **Costs and Expenses.** Borrower shall pay (i) all reasonable out of pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for Administrative Agent, any Lender or any L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this **Section 10.04**, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent (and any sub-agent thereof), each Arranger, 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) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including 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, the consummation of the transactions contemplated hereby or thereby, or, in the case of Administrative Agent (and any sub agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in **Section 3.01**), (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 actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim not involving an act or omission of Borrower and that is brought by an Indemnitee against another Indemnitee (other than against an Arranger or Administrative Agent in their capacities as such). Without limiting the provisions of **Section 3.01(c)**, this **Section 10.04(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 Borrower for any reason fails to indefeasibly pay any amount required under *clauses (a) or (b)* of this **Section 10.04** to be paid by it to Administrative Agent (or any sub-agent thereof), any L/C Issuer, or any Related Party of any of the foregoing, each Lender severally agrees to pay to 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), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against 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 Administrative Agent (or any such sub-agent) or such L/C Issuer in connection with such capacity. The obligations of the Lenders under this *clause (c)* are subject to the provisions of **Section 2.11(d)**.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, 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 *clause (b)* above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee 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 10.04** shall be payable not later than ten Business Days after demand therefor.

(f) **Survival.** The agreements in this **Section 10.04** and the indemnity provisions of **Section 10.02(e)** shall survive the resignation of Administrative Agent, the L/C Issuers, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, any L/C Issuer or any Lender, or 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 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 Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under *clause (b)* of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 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 Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of 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 **subsection (b)** of this **Section**, (ii) by way of participation in accordance with the provisions of **subsection (d)** of this **Section**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (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 **clause (d)** of this **Section 10.06** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, the L/C Issuers 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 Commitment and the Loans (including for purposes of this **subsection (b)**, participations in L/C Obligations) 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 Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in **clause (b)(i)(B)** of this **Section 10.06** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in **clause (b)(i)(A)** of this **Section 10.06**, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, 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 Loans 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 the revolving credit facility provided hereunder and any separate revolving credit provided pursuant to the second to last paragraph of **Section 10.01** on a non-pro rata basis;

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **clause (b)(i)(B)** of this **Section 10.06** and, in addition:

(A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that Borrower shall be deemed to have consented to any such assignment unless it

shall object thereto by written notice to Administrative Agent within five Business Days after having received notice thereof; and *provided, further*, that Borrower's consent shall not be required during the primary syndication of the credit facility provided herein;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of each L/C Issuer shall be required for any assignment.

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

(v) **No Assignment to Certain Persons.** No such assignment shall be made (A) to Borrower or any of Borrower's Affiliates or Subsidiaries, (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)*, or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons).

(vi) **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 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 Borrower and 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 Administrative Agent, any L/C Issuer or any 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 Applicable 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 *clause (vi)*, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by Administrative Agent pursuant to *clause (c)* of this **Section 10.06**, 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 3.01, 3.04, 3.05, and 10.04** 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. Upon request, Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this *clause (b)* shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with *clause (d)* of this **Section 10.06**.

(c) **Register.** Administrative Agent, acting solely for this purpose as an agent of Borrower (and such agency being solely for Tax purposes), shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, 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 Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender or Borrower or any of Borrower'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 Commitment and/or the Loans (including such Lender's participations in L/C Obligations) 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) Borrower, Administrative Agent, the Lenders and the L/C Issuers 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 10.04(c)** without regard to the existence of any participation.

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, waiver or other modification described in the first proviso to **Section 10.01** that affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *clause (b)* of this **Section 10.06** (it being understood that the documentation required under **Section 3.01(e)** shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *clause (b)* of this **Section 10.06**; *provided* that such Participant (A) agrees to be subject to the provisions of **Sections 3.06 and 10.13** as if it were an assignee under *clause (b)* of this **Section 10.06** and (B) shall not be entitled to receive any greater payment under **Sections 3.01 or 3.04**, with respect to any participation, than the Lender from whom it acquired the applicable participation 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 Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 3.06** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 10.08** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 2.12** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of 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, 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 (including under its Note, if any) 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.

(f) **Resignation as L/C Issuer after Assignment.** Notwithstanding anything to the contrary contained herein, if at any time any L/C Issuer assigns all of its Commitment and Loans pursuant to *clause (b)* above, such L/C Issuer may, upon 30 days’ notice to Administrative Agent, Borrower and the Lenders, resign as an L/C Issuer. In the event of any such resignation as an L/C Issuer, Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; *provided, however*, that no failure by Borrower to appoint any such successor shall affect the resignation of the applicable L/C Issuer as an L/C Issuer. If the applicable L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to *Section 2.03(c)*). Upon the appointment of a successor L/C Issuer, (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (y) 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 applicable retiring L/C Issuer to effectively assume the obligations of the applicable retiring L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other 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 containing provisions substantially the same as those of this *Section 10.07*, 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 any Eligible Assignee invited to be a Lender pursuant to *Section 2.14(c)* or *Section 10.01* or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of

CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 10.07**, (y) becomes available to Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower or (z) is independently discovered or developed by a party hereto without utilizing any Information received from Borrower or violating the terms of this **Section 10.07**. In addition, Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this **Section 10.07**, “**Information**” means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary, *provided* that, in the case of information received from Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 10.07** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including United States Federal and state securities Laws.

10.08 Right of Setoff. 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 any Loan Party against any and all of the obligations of 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 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 Administrative Agent for further application in accordance with the provisions of **Section 2.16** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, the L/C Issuers and the Lenders, and (y) the Defaulting Lender shall provide promptly to 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 10.08** 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 each L/C Issuer agrees to notify Borrower and 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.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the “**Maximum Rate**”). If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted

by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Integration; Effectiveness. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to Administrative Agent or any L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 4.01**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 10.12**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Administrative Agent or any L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If Borrower is entitled to replace a Lender pursuant to the provisions of **Section 3.06**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives Borrower the right to replace a Lender as a party hereto, then Borrower may, at its sole expense and effort, upon notice to such Lender and 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 10.06**), all of its interests, rights (other than its existing rights to payments pursuant to **Sections 3.01** and **3.04**) 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*:

- (a) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in **Section 10.06(b)**;
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 3.05**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under **Section 3.04** or payments required to be made pursuant to **Section 3.01**, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an 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 Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this **Section 10.13** may be effected pursuant to an Assignment and Assumption executed by Borrower, Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; *provided* that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, *provided, further* that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this **Section 10.13** to the contrary, (i) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as Administrative Agent may not be replaced hereunder except in accordance with the terms of **Section 9.06**.

10.14 Governing Law; Jurisdiction; Etc.

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS

AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN **CLAUSE (b)** OF THIS **SECTION 10.14**. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 10.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 10.15**.

10.16 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), Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by Administrative Agent, the Arrangers, and the Lenders are arm's-length commercial transactions between each Loan Party and its respective Affiliates, on the one hand, and Administrative Agent, the Arrangers, and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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; (ii) (A) Administrative Agent, each Arranger, and each Lender 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 their respective Affiliates, or any other Person and (B) neither Administrative Agent, the Arrangers nor any Lender has any obligation to any Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and neither Administrative Agent, nor any Arranger, nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against Administrative Agent, any Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution; Electronic Records; Counterparts. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of Administrative Agent and the Credit Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Administrative Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither Administrative Agent nor any L/C Issuer is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent Administrative Agent and/or an L/C Issuer has agreed to accept such Electronic Signature, Administrative Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Credit Party without further verification and (b) upon the request of Administrative Agent or any Credit Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Neither Administrative Agent nor any L/C Issuer shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with Administrative Agent’s or any L/C Issuer’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). Administrative Agent and each L/C Issuer shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and (ii) waives any claim against Administrative Agent, each Credit Party and each Related Party for any liabilities arising solely from Administrative Agent’s and/or any Credit Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

10.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (*Title III* of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each such Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Loan Party in accordance with the Act. Each Loan Party shall, promptly following a request by Administrative Agent or any Lender,

provide all documentation and other information that Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.19 **Time of the Essence.** Time is of the essence of the Loan Documents.

10.20 **ENTIRE AGREEMENT.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

10.21 **Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected Financial Institution arising under any Loan 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 Lender or L/C Issuer 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 Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.22 **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject

to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this **Section 10.22**, the following terms have the following meanings:

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

“**Covered Entity**” means any of the following: (i) a “*covered entity*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (ii) a “*covered bank*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or (iii) a “*covered FSI*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

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

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

10.23 **Keepwell.** Each Loan Party that is a Qualified ECP Guarantor at the time any Guaranty, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under its Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor’s obligations and undertakings under this **Section** voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this **Section** shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this **Section** to constitute, and this **Section** shall be deemed to constitute, a guarantee of the obligations of, and a “*keepwell, support, or other agreement*” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

10.24 **Florida Administrative Code.** Notwithstanding anything to the contrary herein, pursuant to *Section 12B-4*, Florida Administrative Code, the terms and provisions of the Note are expressly not incorporated herein by reference to this Loan Agreement.

10.25 **Existing Credit Agreement.** Upon the satisfaction of all conditions precedent to the effectiveness of this Agreement, this Agreement amends and restates the Existing Credit Agreement in its entirety. Notwithstanding such amendment and restatement or anything in any other Loan Document entered into prior to the date hereof (as such term is defined in the Existing Credit Agreement and referred to herein, collectively, as the “*Existing Loan Documents*”), the parties hereto agree that and confirm that (a) all of the indebtedness, liabilities and obligations owing by Borrower or any other Person under the Existing Credit Agreement and the other Existing Loan Documents shall continue as indebtedness, liabilities and obligations owing hereunder and thereunder and (b) this Agreement is given as an amendment and substitution of, and not as a novation, discharge, termination or payment of the indebtedness, liabilities and obligations of Borrower or any other Person under the Existing Credit Agreement or any other Existing Loan Document, and neither the execution and delivery of this Agreement nor the consummation of any other transaction contemplated hereunder is intended to constitute a novation, discharge, termination or payment of the Existing Credit Agreement or of any of the

other Existing Loan Documents or any indebtedness, liabilities or obligations owing thereunder. On the Closing Date, (i) the commitment of any “Lender” under the Existing Credit Agreement that is not continuing as a Lender hereunder shall terminate, and (ii) Administrative Agent shall reallocate the Commitments hereunder to reflect the terms hereof.

***Remainder of Page Intentionally Left Blank;
Signature Page(s) Follow(s).***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

DREAM FINDERS HOMES, INC.

By: /s/ Robert E. Riva, Jr.
Name: Robert E. Riva, Jr.
Title: General Counsel and VP

BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ William Campano
Name: William Campano
Title: Senior Vice President

BANK OF AMERICA, N.A., as a Lender and an L/C Issuer

By: /s/ William Campano
Name: William Campano
Title: Senior Vice President

WESTERN ALLIANCE BANK, as a Lender and an L/C Issuer

By: /s/ Tomas Fach
Name: Tomas Fach
Title: Senior Vice President

FLAGSTAR BANK, FSB, as a Lender and an L/C
Issuer

By: /s/ Drew Szilagyi
Name: Drew Szilagyi
Title: First Vice President

U.S. BANK NATIONAL ASSOCIATION, as a
Lender

By: /s/ Grant Gornick
Name: Grant Gornick
Title: Assistant Vice President

BMO HARRIS BANK N.A., as a Lender

By: /s/ Lisa Smith Boyer
Name: Lisa Smith Boyer
Title: Director

AMERIS BANK, as a Lender

By: /s/ Steve Felske
Name: Steve Felske
Title: Vice President

TEXAS CAPITAL BANK, A TEXAS STATE BANK, F/K/A TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Barbara Gremmer
Name: Barbara Gremmer
Title: Vice President

COMERICA BANK, as a Lender

By: /s/ Charles Weddell
Name: Charles Weddell
Title: Senior Vice President

SYNOVUS BANK, as a Lender

By: /s/ Michael Sawicki
Name: Michael Sawicki
Title: Director

FIRST NATIONAL BANK OF PENNSYLVANIA, as a Lender

By: /s/ Jay Hall
Name: Jay Hall
Title: Senior Vice
President

UNITED BANK, as a Lender

By: /s/ Thomas VanLierde
Name: Thomas VanLierde
Title: Senior Vice President

HOMETRUST BANK, as a Lender

By: /s/ Justin Dunn
Name: Justin Dunn
Title: Senior Vice President

CADENCE BANK, as a Lender

By: /s/ Tim Ashcraft
Name: Tim Ashcraft
Title: Senior Vice President

Signature Page to
Amended and Restated Credit Agreement

COMMITMENTS AND APPLICABLE PERCENTAGES

LETTER OF CREDIT COMMITMENTS

SUPPLEMENT TO INTERIM FINANCIAL STATEMENTS

SUBSIDIARIES AND OTHER EQUITY INVESTMENTS

SUBSIDIARIES AND OTHER EQUITY INVESTMENTS (CONTINUED)

ADMINISTRATIVE AGENT'S OFFICE; CERTAIN ADDRESSES FOR NOTICES

FORM OF LOAN NOTICE

FORM OF [AMENDED AND RESTATED] NOTE

FORM OF COMPLIANCE CERTIFICATE

FORM OF BORROWING BASE CERTIFICATE

ASSIGNMENT AND ASSUMPTION

FORM OF ADMINISTRATIVE QUESTIONNAIRE

EXHIBIT E-2

FORM OF AMENDED AND RESTATED GUARANTY

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

FORM OF NOTICE OF LOAN PREPAYMENT

FORM OF BORROWER'S REMITTANCE INSTRUCTIONS

FORM OF BORROWER'S INSTRUCTION CERTIFICATE

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Dream Finders Homes, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Patrick O. Zalupski, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 4, 2022

/s/ Patrick O. Zalupski

Patrick O. Zalupski
President, Chief Executive Officer and Chairman of
the Board of Directors

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Dream Finders Homes, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, L. Anabel Fernandez, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 4, 2022

/s/ L. Anabel Fernandez

L. Anabel Fernandez

Senior Vice President and Chief Financial Officer