

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): May 21, 2024

HOVNANIAN ENTERPRISES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other
Jurisdiction
of Incorporation)

1-8551
(Commission File Number)

22-1851059
(IRS Employer
Identification No.)

**90 Matawan Road, Fifth Floor
Matawan, New Jersey 07747**
(Address of Principal Executive Offices) (Zip Code)

(732) 747-7800
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since
Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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 \$0.01 par value per share	HOV	New York Stock Exchange
Preferred Stock Purchase Rights (1)	N/A	New York Stock Exchange
Depository Shares each representing 1/1,000th of a share of 7.625% Series A Preferred Stock	HOVNP	The Nasdaq Stock Market LLC

(1) Each share of Class A Common Stock includes an associated Preferred Stock Purchase Right. Each Preferred Stock Purchase Right initially represents the right, if such Preferred Stock Purchase Right becomes exercisable, to purchase from the Company one ten-thousandth of a share of its Series B Junior Preferred Stock for each share of Common Stock. The Preferred Stock Purchase Rights currently cannot trade separately from the underlying Common Stock.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On May 21, 2024, Hovnanian Enterprises, Inc. (the “Company”) and K. Hovnanian Enterprises, Inc. (“K. Hovnanian”), a wholly-owned subsidiary of the Company, and certain subsidiaries of the Company (collectively, the “Subsidiary Guarantors” and together with the Company and K. Hovnanian, the “Company Parties”) entered into Exchange Agreements (as defined below) providing for the private exchanges (each, an “Exchange” and collectively, the “Exchanges”) of certain of its unsecured debt obligations as described below.

Amended Term Loan Credit Agreement

In connection with the Exchanges, the Company Parties entered into the First Amendment to the Credit Agreement, dated as of May 21, 2024 (the “First Amendment”), to the Credit Agreement, dated as of December 10, 2019 (the “Existing Credit Agreement”; the Credit Agreement, as amended by the First Amendment, the “Amended Credit Agreement”), by and among the Company Parties, Wilmington Trust, National Association as Administrative Agent and the lenders party thereto. The Existing Credit Agreement originally provided for \$81,498,000 of Senior Secured 1.75 Lien Term Loans (the “Existing 1.75 Lien Term Loans”).

The First Amendment (a) permits the issuance of an additional \$93,502,000 of Senior Secured 1.75 Lien Term Loans (the “Additional 1.75 Lien Term Loans” and, together with the Existing 1.75 Lien Term Loans, the “1.75 Lien Term Loans”), (b) modifies and/or adds certain covenants and other provisions, primarily related to indebtedness permitted to be incurred by the Company Parties thereunder, including providing that the interest rate on all the then outstanding 1.75 Lien Term Loans shall be increased in certain circumstances when certain priority secured debt is issued, to a weighted-average rate that results from applying (x) an 11.75% per annum rate to the principal amount of the 1.75 Lien Terms Loans equal to a specified aggregate principal amount of such priority secured debt and (y) a 10.0% per annum rate on the remaining principal amount of 1.75 Lien Term Loans (the “Interest Rate Increase”) and (c) provides for certain other amendments.

The Amended Credit Agreement also provides for an uncommitted incremental term loan facility (the “Incremental Facility”; and term loans thereunder, “Incremental Term Loans”) in a maximum amount equal to the Remaining Unsecured Notes Amount (as defined below). Incremental Term Loans, to the extent requested by K. Hovnanian and incurred in accordance with the Amended Credit Agreement, would be secured on an equal priority basis with the 1.75 Lien Term Loans and would generally have the same terms as the 1.75 Lien Term Loans. K. Hovnanian may request Incremental Term Loans for the sole purpose of exchanging the remaining outstanding principal amount of 13.5% Notes (as defined below) and 5.0% Notes (as defined below) into Incremental Term Loans, which Incremental Term Loans and exchange shall be subject to certain conditions as set forth in the Amended Credit Agreement.

The 1.75 Lien Term Loans and the guarantees thereof are secured by the same assets that secure K. Hovnanian’s other senior secured credit facilities and senior secured notes, subject to permitted liens and certain exceptions. The 1.75 Lien Term Loans will continue to bear interest at a rate equal to 10.0% per annum (subject to the Interest Rate Increase) and will mature on January 31, 2028. Following consummation of the Exchanges, the total outstanding principal amount of the 1.75 Lien Term Loans under the Amended Credit Agreement is \$175,000,000.

The foregoing summary of the First Amendment does not purport to be complete and is qualified in its entirety by reference to the text of the First Amendment filed as Exhibit 10.1 to this Form 8-K and incorporated by reference herein.

Exchange Agreements

Pursuant to the Exchange Agreements, each dated as of May 21, 2024, among the Company Parties and affiliates of certain investment managers named therein (collectively in respect the Exchange Agreements, the “Investors”), the Company Parties and the Investors are exchanging (i) approximately \$64.0 million aggregate principal amount of K. Hovnanian’s 13.5% Senior Notes due 2026 (the “13.5% Notes”) and approximately \$21.5 million in cash for approximately \$42.5 million aggregate principal amount of Additional 1.75 Lien Term Loans, (ii) approximately \$65.2 million aggregate principal amount of K. Hovnanian’s 5.0% Senior Notes due 2040 (“5.0% Notes”) for approximately \$31.4 million aggregate principal amount of Additional 1.75 Lien Term Loans and (iii) approximately \$39.6 million aggregate principal amount of K. Hovnanian’s 5.0% Senior Unsecured Term Loans maturing in 2027 (the “Unsecured Term Loans”) and approximately \$10.0 million in cash for approximately \$19.6 million aggregate principal amount of Additional 1.75 Lien Term Loans.

Following consummation of the Exchanges, there are \$26,588,000 aggregate principal amount of 13.5% Notes outstanding, \$24,968,000 aggregate principal amount of 5.0% Notes outstanding and no Unsecured Term Loans outstanding (see Item 1.02 below), in total equaling \$51,556,000 aggregate principal amount of indebtedness under these instruments outstanding (such amount, the “Remaining Unsecured Notes Amount”).

Item 1.02 Termination of a Material Definitive Agreement.

In connection with the Exchange of the Unsecured Term Loans as described in Item 1.01 above, on May 21, 2024, all outstanding obligations in respect of principal, interest and fees under the Credit Agreement, dated as of January 29, 2018 (as amended by the First Amendment dated as of May 14, 2018, the Second Amendment dated as of October 31, 2019, and as further amended, restated, supplemented or otherwise modified from time to time), among the Company Parties, the lenders party thereto and the administrative agent party thereto, were determined to be repaid by Additional 1.75 Lien Term Loans and all commitments thereunder were terminated.

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

The information set forth above under Item 1.01 is hereby incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

10.1 [First Amendment to the Credit Agreement, dated as of May 21, 2024, in respect of the Credit Agreement, dated as of December 10, 2019, among K. Hovnanian Enterprises, Inc., Hovnanian Enterprises, Inc., the subsidiary guarantors named therein, Wilmington Trust, National Association, as Administrative Agent, and the lenders party thereto.](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

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 hereunto duly authorized.

HOVNANIAN ENTERPRISES, INC.
(Registrant)

By: /s/ Brad G. O'Connor

Name: Brad G. O'Connor

Title: Chief Financial Officer and Treasurer

Date: May 22, 2024

FIRST AMENDMENT TO THE CREDIT AGREEMENT

This FIRST AMENDMENT, dated as of May 21, 2024 (this "Amendment"), to the \$81,498,000 Credit Agreement, dated as of December 10, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement" and the Credit Agreement as amended by this Amendment, the "Amended Credit Agreement"), among HOVNANIAN ENTERPRISES, INC., a Delaware corporation ("Holdings"), K. HOVNANIAN ENTERPRISES, INC., a California corporation ("Borrower"), the Subsidiaries of Holdings from time to time party thereto (each a "Subsidiary Guarantor" and collectively, together with Holdings, the "Guarantors"), each lender from time to time party thereto (collectively, the "Lenders" and individually, each a "Lender") and WILMINGTON TRUST, NATIONAL ASSOCIATION, as administrative agent ("Administrative Agent"), is entered into by and among the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Lenders signatory hereto (which constitute all Lenders immediately prior to giving effect to the Amendment, the "Consenting Lenders") and the Participating Lenders (as defined below) signatory hereto.

WITNESSETH:

WHEREAS, the Borrower is party to that certain \$212,500,000 Credit Agreement, dated as of January 29, 2018 (term loans issued thereunder in the current outstanding principal amount of \$39,551,165.02, the "Unsecured Term Loans"), among the Borrower, the Guarantors, each lender from time to time party thereto and Wilmington Trust, National Association, as administrative agent (in such capacity, the "Unsecured Term Loan Administrative Agent");

WHEREAS, the Borrower has outstanding \$90,590,000 aggregate principal amount of its 13.5% Senior Notes due 2026 (the "13.5% Notes") and \$90,120,000 aggregate principal amount of its 5.0% Senior Notes due 2040 (the "5.0% Notes" and, together with the 13.5% Notes, the "Notes"), in each case issued pursuant to the Indenture, dated as of February 1, 2018, among the Borrower, the Guarantors and Wilmington Trust, National Association, as trustee (in such capacity, the "Trustee");

WHEREAS, the lenders identified on Schedule II hereto (the "Participating Lenders") collectively beneficially own \$64,002,000.00 aggregate principal amount of the 13.5% Notes and \$65,152,000.00 aggregate principal amount of the 5.0% Notes (collectively, the "Exchanged Notes") and collectively own all of the Unsecured Term Loans (together with the Exchanged Notes, the "Exchanged Debt");

WHEREAS, pursuant to (a) the 13.5% Notes Exchange Agreement (the "13.5% Notes Exchange Agreement"), (b) the 5% Notes Exchange Agreement (the "5% Notes Exchange Agreement") and (c) the Unsecured Term Loan Exchange Agreement (the "Unsecured Term Loan Exchange Agreement" and, together with the 13.5% Notes Exchange Agreement and the 5% Notes Exchange Agreement, collectively, the "Exchange Agreements" and each, an "Exchange Agreement"), in each case, dated as of the date hereof and by and among Holdings, the Borrower, the Guarantors and the Participating Lenders, the Borrower and Participating Lenders desire to exchange the Exchanged Debt for additional Initial Term Loans and, in the case of the 13.5% Notes and the Unsecured Term Loans, the Cash Consideration (each, as defined in the Exchange Agreements), as more fully described in the Exchange Agreements (collectively, the "Exchange");

WHEREAS, in order to facilitate the Exchange, the Borrower wishes to increase the principal amount of the Initial Term Loans by \$93,502,000 (the "Additional Term Loans"), such Additional Term Loans to be deemed funded by the Participating Lenders through the Exchange;

WHEREAS, the Borrower, Holdings, the Administrative Agent and the Consenting Lenders have requested an amendment to the Credit Agreement;

WHEREAS, pursuant to Section 9.01 of the Credit Agreement, the Borrower, Holdings, the Subsidiary Guarantors, the Consenting Lenders, the Participating Lenders and the Administrative Agent are willing to agree to this Amendment on the terms set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

ARTICLE 2.
AMENDMENT

SECTION 2.1. Amendments the Credit Agreement. Each of the parties hereto agrees that, upon the satisfaction of the conditions precedent set forth in Section 3 below, (i) the Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto, (ii) Schedule I of the Credit Agreement shall be replaced in its entirety with the Schedule set forth in Exhibit B hereto, (iii) Schedule 1.01 of the Credit Agreement shall be replaced in its entirety with the schedule set forth in Exhibit C hereto, (iii) Schedule 2.01 of the Credit Agreement shall be replaced in its entirety with the schedule set forth in Exhibit D hereto and (iv) Schedule 10.01 of the Credit Agreement shall be replaced in its entirety with the schedule set forth in Exhibit E hereto.

SECTION 2.2. Guarantees. Each guarantor listed in Schedule I hereto, by its execution of this Amendment, agrees to be a Guarantor with respect to the obligations under the Credit Agreement and to be bound by the terms of the Credit Agreement applicable to Guarantors, including, but not limited to, Article X thereof.

ARTICLE 3.
CONDITIONS; GENERAL

SECTION 3.1. Effectiveness. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent (the date on which this Amendment becomes effective, the "First Amendment Effective Date"):

(a) the Administrative Agent, the Consenting Lenders and the Participating Lenders (or in each case, its or their outside counsel) shall have received:

i. (i) a duly executed and completed counterpart hereof that bears the signature of each of the Borrower and Holdings and each of the Guarantors, (ii) a duly executed and completed counterpart hereof that bears the signature of the Administrative Agent, (iii) duly executed and completed counterparts hereof that bear the signatures of all the Consenting Lenders and (iv) duly executed and completed counterparts hereof that bear the signatures of all of the Participating Lenders;

ii. a duly executed Loan Notice in respect of the Additional Term Loans;

(b) each of the Exchange Agreements shall have been duly executed prior to or substantially concurrently with the effectiveness of this Amendment;

(c) the Closing Date (as defined in the Exchange Agreements) shall have occurred prior to or substantially concurrently with the effectiveness of this Amendment;

(d) the receipt by the Administrative Agent, the Consenting Lenders and the Participating Lenders of:

i. a certificate of the Borrower and each other Loan Party, dated the First Amendment Effective Date and executed by the secretary or assistant secretary of the Borrower and each applicable Loan Party, respectively, in the form attached as Exhibit G-1 and G-2, respectively, to the Credit Agreement;

ii. (A) a certificate signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit H-1 to the Credit Agreement, (B) a Perfection Certificate substantially in the form attached hereto as Exhibit F and (C) a Solvency Certificate substantially in the form attached as Exhibit H-3 to the Credit Agreement, giving effect to the transactions contemplated by this Amendment;

iii. a written opinion of (i) Simpson Thacher & Bartlett LLP, special counsel for the Borrower and Holdings and (ii) Elizabeth D. Tice, Vice President and Corporate Counsel of the Borrower and Holdings, in each case, dated as of the First Amendment Effective Date;

(e) the representations and warranties of the Borrower and each other Loan Party contained in this Agreement, Article V of the Amended Credit Agreement and any other Loan Document shall be true and correct in all material respects (and in all respects if qualified by materiality) on and as of the date of the First Amendment Effective Date (except in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects (and in all respects if qualified by materiality) as of the respective date or for the respective period, as the case may be);

(f) the Loan Parties shall have paid all reasonable and documented out-of-pocket fees (including closing and/or extension fees), charges and disbursements of the Administrative Agent incurred in connection with this Amendment, including all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent; and

(g) upon consummation of the transactions contemplated by this Amendment, no Default or Event of Default shall have occurred and be continuing. The release of the Consenting Lenders' and Participating Lenders' respective signature pages hereto shall be deemed a confirmation that the conditions set forth in this Section 3.2 have been satisfied.

SECTION 3.3. Representations and Warranties. Each of the Loan Parties hereby represents and warrants to each of the Consenting Lenders and Participating Lenders and the Administrative Agent that, as of the First Amendment Effective Date:

(a) this Amendment has been duly authorized, executed and delivered by it, and this Amendment and the Credit Agreement, as amended hereby, constitutes its valid and binding obligation, enforceable against it in accordance with its terms except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing;

(b) at the time of entering into, and immediately after giving effect to, this Amendment, no Default or Event of Default has occurred and is continuing;

(c) the representations and warranties of the Borrower and each other Loan Party contained in this Agreement, Article V of the Amended Credit Agreement and each other Loan Document are true and correct in all material respects (and in all respects if qualified by materiality) on and as of the First Amendment Effective Date (except in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects (and in all respects if qualified by materiality) as of the respective date or for the respective period, as the case may be); and

(d) the Subsidiaries of Holdings listed in Exhibit C hereto constitute all of the Unrestricted Subsidiaries of Holdings immediately prior to the First Amendment Effective Date.

SECTION 3.4. Additional Term Loans.

(a) Subject to the occurrence of the First Amendment Effective Date, each Participating Lender hereby severally agrees that it shall be deemed to have made Additional Term Loans in an aggregate principal amount set forth opposite its name under the column entitled "Additional Term Loans" in Schedule II hereto in accordance with the relevant requirements of the Credit Agreement and this Amendment.

(b) The Additional Term Loans being made pursuant to this Amendment shall be designated as part of the same Class of Term Loans as the Initial Term Loans.

(c) Other than as set forth herein, for all purposes under the Amended Credit Agreement and the Loan Documents, the Additional Term Loans shall have the same terms as the Initial Term Loans and shall be treated, for purposes of mandatory prepayments and voluntary prepayments and all other terms, as the same Class of Term Loans as the Initial Term Loans.

SECTION 3.5. Participating Lenders. By entering into this Amendment, each Participating Lender hereby:

(a) confirms that it has received a copy of the Amended Credit Agreement and the other Loan Documents and the exhibits thereto, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment;

(b) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Amended Credit Agreement;

(c) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Amended Credit Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and

(d) acknowledges and agrees that, to the extent not already a Lender, upon its execution of this Amendment, it shall become "Lender" under, and for all purposes of, the Amended Credit Agreement and the other Loan Documents, and shall be subject to and bound by the terms thereof, and shall perform all the obligations of and shall have all rights of a Lender thereunder.

SECTION 3.6. Effect of Amendment.

(e) Except as expressly set forth herein and in the Amended Credit Agreement, the execution, delivery and effectiveness of this Amendment shall not, by implication or otherwise, alter, modify, amend or in any way affect any of the terms, conditions, obligations, liabilities, covenants or agreements contained in the Credit Agreement, or any other provision of the Credit Agreement or of any other Loan Document, which shall remain in full force and effect and are hereby ratified and confirmed.

(f) The execution, delivery and effectiveness of this Amendment shall not, by implication or otherwise, (i) constitute or operate as a waiver of any Defaults or Events of Default that may be continuing under the Credit Agreement or (ii) limit, impair, constitute or operate as a waiver of, or otherwise affect any of the rights, powers, privileges or remedies of, the Consenting Lenders or the Administrative Agent under the Credit Agreement or any other Loan Document.

(g) On and after the First Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the Credit Agreement in any other Loan Document shall be deemed a reference to the Credit Agreement, as amended hereby and in the manner set forth herein, and this Amendment and the Credit Agreement shall be read together and construed as a single instrument. This Amendment shall constitute a Loan Document under the terms of the Credit Agreement.

SECTION 3.7. General.

(a) Integration. This Amendment and the Amended Credit Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Amendment and the Amended Credit Agreement and those of any other Loan Document, the provisions of this Amendment and the Amended Credit Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed to be a conflict with this Amendment or the Amended Credit Agreement. Each Loan Document, including this Amendment and the Amended Credit Agreement, was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

(b) Survival. All representations and warranties made hereunder, in the Amended Credit Agreement, 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 each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of this Amendment, and shall continue in full force and effect until the Termination Date.

(c) Severability. If any provision of this Amendment, the Amended Credit Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Amendment, the Amended Credit Agreement and the other Loan Documents shall not be affected or impaired thereby. 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 3.7(c), if and to the extent that the enforceability of any provisions in the Amended Credit Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, then such provisions shall be deemed to be in effect only to the extent not so limited.

(d) Governing Law

- i. THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT AND EACH OTHER LOAN DOCUMENT (OTHER THAN ANY LOAN DOCUMENT EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.
- ii. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE BORROWER, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND APPELLATE COURTS FROM ANY THEREOF (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT OR ANY LENDER IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT GOVERNED BY A LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO). EACH OF THE BORROWER, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

(e) Waiver of Right to Trial by Jury. EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT OR ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT OR ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 3.7(D) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(f) No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby, each of Holdings and the Borrower acknowledge and agrees that (a) the Facility contemplated hereby and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between Holdings and the Borrower, on the one hand, and the Agents and the Lenders, on the other hand, and Holdings and the Borrower are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, each of the Agents and the Lenders is and has been acting solely as a principal and is not the agent or fiduciary, for the Borrower; and (c) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and Holdings and the Borrower have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(g) Counterparts. This Amendment may be executed by one or more of the parties to this Amendment in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or the keeping of electronic records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Headings. The headings of this Amendment are used for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

(i) Binding; Administrative Agent. Each Loan Party and each of the Consenting Lenders and Participating Lenders party hereto, by its execution below, (i) authorizes and directs the Administrative Agent to execute and deliver this Amendment and (ii) agrees to be bound by the terms and conditions of this Amendment. Wilmington Trust, National Association is entering into this Amendment solely in its capacity as Administrative Agent under the Credit Agreement and as such in executing this Amendment and acting hereunder (including pursuant to the following sentence), it shall be entitled to the rights, benefits, protections, indemnities and immunities afforded to it as Administrative Agent under the Credit Agreement. Each of the Consenting Lenders and Participating Lenders party hereto represents, as to itself, that it has the power and authority to provide the authorization and direction contained herein and that it has not pledged or otherwise hypothecated such power or authority to another party.

SECTION 3.8. Reaffirmation; No Novation. Each Loan Party hereby (a) reaffirms and agrees that each of the Collateral Documents to which it is a party is, and shall continue to be, in full force and effect and is hereby in all respects ratified and confirmed on the First Amendment Effective Date, (b) reaffirms and confirms its guarantee under the Credit Agreement as a continuing guarantee under the Amended Credit Agreement and its pledge and/or grant of a security interest in the Collateral to secure the Loan Obligations under the Collateral Documents, with all such security interests continuing in full force and effect after giving effect to this Amendment on the First Amendment Effective Date, (c) reaffirms and agrees that each mortgage to which it is a party is, and shall continue to be, in full force and effect and is hereby in all respects ratified and confirmed on the First Amendment Effective Date, (d) acknowledges and agrees that, from and after the First Amendment Effective Date, the Collateral Documents to which it is a party and all the Collateral shall continue to secure the Obligations under the Amended Credit Agreement and (e) reaffirms and confirms its compensation, reimbursement and indemnification obligations under the Credit Agreement and any other Loan Documents. This Amendment is not a novation of the Credit Agreement or any other Loan Document.

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

HOVNANIAN ENTERPRISES, INC.,

as Holdings

By: /s/ Brad O'Connor

Name: Brad O'Connor

Title: Chief Financial Officer and Treasurer

K. HOVNANIAN ENTERPRISES, INC.,

as the Borrower

By: /s/ Brad O'Connor

Name: Brad O'Connor

Title: Chief Financial Officer and Treasurer

K. HOV IP, II, INC.,

By: /s/ Brad O'Connor

Name: Brad O'Connor

Title: Treasurer

**On behalf of each of the entities listed on
Schedule I hereto**

By: /s/ Brad O'Connor

Name: Brad O'Connor

Title: Vice President/Authorized Representative

[Hovnanian – First Amendment to Credit Agreement (1.75L Term Loan)]

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

By: /s/ Jessica A. Jankiewicz
Name: Jessica A. Jankiewicz
Title: Vice President

[Hovnanian – First Amendment to Credit Agreement (1.75L Term Loan)]

Signature pages of Lenders on file with Administrative Agent.

[Hovnanian – First Amendment to Credit Agreement (1.75L Term Loan)]

List of Existing Guarantors

1. 2700 Empire, LLC
 2. AMBER RIDGE, LLC
 3. ARBOR TRAILS, LLC
 4. BUILDER SERVICES NJ, L.L.C.
 5. BUILDER SERVICES PA, L.L.C.
 6. EASTERN NATIONAL ABSTRACT, INC.
 7. EASTERN NATIONAL TITLE AGENCY ARIZONA, LLC
 8. EASTERN NATIONAL TITLE AGENCY FLORIDA, LLC
 9. EASTERN NATIONAL TITLE AGENCY ILLINOIS, LLC
 10. EASTERN NATIONAL TITLE AGENCY MARYLAND, LLC
 11. EASTERN NATIONAL TITLE AGENCY VIRGINIA, INC.
 12. EASTERN NATIONAL TITLE AGENCY, INC.
 13. F&W MECHANICAL SERVICES, L.L.C.
 14. GLENRISE GROVE, L.L.C.
 15. GTIS-HOV ARBORS AT MONROE LLC
 16. GTIS-HOV Arbors at Monroe Parent LLC
 17. GTIS-HOV AT SILVERSTONE LLC
 18. GTIS-HOV Four Ponds Parent LLC
 19. GTIS-HOV Heatherfield Parent LLC
 20. GTIS-HOV Hilltop at Cedar Grove Parent LLC
 21. GTIS-HOV Holdings IX LLC
 22. GTIS-HOV Holdings LLC
 23. GTIS-Hov Holdings V LLC
 24. GTIS-HOV Holdings VI LLC
 25. GTIS-HOV HOLDINGS VII LLC
 26. GTIS-HOV HOLDINGS VIII LLC
 27. GTIS-HOV HOLDINGS X LLC
 28. GTIS-HOV HOLDINGS XI LLC
 29. GTIS-HOV Lakes of Cane Bay Parent LLC
 30. GTIS-HOV LEELAND STATION LLC
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31. GTIS-HOV Nicholson Parent LLC
 32. GTIS-HOV PARKSIDE OF LIBERTYVILLE LLC
 33. GTIS-HOV Parkside of Libertyville Parent LLC
 34. GTIS-HOV Pender Oaks Parent LLC
 35. GTIS-HOV Pinnacle Peak Patio Parent LLC
 36. GTIS-HOV POINTE 16 LLC
 37. GTIS-HOV Rancho 79 LLC
 38. GTIS-HOV SAUGANASH GLEN LLC
 39. GTIS-HOV Sauganash Glen Parent LLC
 40. GTIS-HOV VILLAGES AT PEPPER MILL LLC
 41. GTIS-HOV WARMINSTER LLC
 42. GTIS-HOV WILLOWSFORD WINDMILL LLC
 43. HILLTOP AT CEDAR GROVE URBAN RENEWAL, LLC
 44. HOMEBUYERS FINANCIAL SERVICES, L.L.C.
 45. Homebuyers Financial USA, LLC
 46. HOVNANIAN DEVELOPMENTS OF FLORIDA, INC.
 47. Hovnianian Enterprises, Inc.
 48. HOVNANIAN LAND INVESTMENT GROUP OF MARYLAND, L.L.C.
 49. HOVNANIAN LAND INVESTMENT GROUP, L.L.C.
 50. HovSite Churchill Club LLC
 51. HovSite Firenze LLC
 52. HovSite Hunt Club LLC
 53. HovSite Liberty Lakes LLC
 54. HovSite Providence LLC
 55. HovSite Southampton LLC
 56. K. HOV IP, II, Inc.
 57. K. HOVNANIAN ABERDEEN, LLC
 58. K. HOVNANIAN ACQUISITIONS, INC.
 59. K. HOVNANIAN AKRON SCATTERED SITE, LLC
 60. K. HOVNANIAN AMBER GLEN, LLC
 61. K. HOVNANIAN ARIZONA NEW GC, LLC
 62. K. HOVNANIAN ARIZONA OPERATIONS, LLC
 63. K. HOVNANIAN ASBURY POINTE, LLC
 64. K. HOVNANIAN ASPIRE AT AULD FARMS, LLC
 65. K. Hovnianian Aspire at Bellevue Ranch M2, LLC
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66. K. Hovnanian Aspire at Bellevue Ranch, LLC
 67. K. HOVNANIAN ASPIRE AT BOATMAN HAMMOCK, LLC
 68. K. HOVNANIAN ASPIRE AT EAST LAKE, LLC
 69. K. HOVNANIAN ASPIRE AT HAWKS RIDGE, LLC
 70. K. Hovnanian Aspire at Lynnbury Woods, LLC
 71. K. HOVNANIAN ASPIRE AT MARION OAKS, LLC
 72. K. HOVNANIAN ASPIRE AT PALM BAY, LLC
 73. K. HOVNANIAN ASPIRE AT PALM COAST, LLC
 74. K. HOVNANIAN ASPIRE AT PORT ST. LUCIE, LLC
 75. K. Hovnanian Aspire at River Terrace, LLC
 76. K. Hovnanian Aspire at Solaire, LLC
 77. K. Hovnanian Aspire at Stones Throw, LLC
 78. K. HOVNANIAN ASPIRE AT VICTORIA PARC, LLC
 79. K. HOVNANIAN ASPIRE AT WATERSTONE, LLC
 80. K. HOVNANIAN ASPIRE AT WESTON PLACE, LLC
 81. K. HOVNANIAN AT 17 NORTH, LLC
 82. K. HOVNANIAN AT 23 NORTH, LLC
 83. K. HOVNANIAN AT 240 MISSOURI, LLC
 84. K. HOVNANIAN AT ACACIA PLACE, LLC
 85. K. HOVNANIAN AT ACADEMY HILL URBAN RENEWAL, LLC
 86. K. Hovnanian at Admiral's Landing, LLC
 87. K. HOVNANIAN AT AIRE ON MCDOWELL, LLC
 88. K. HOVNANIAN AT ALAMEDA POINT, LLC
 89. K. HOVNANIAN AT ALEXANDER LAKES, LLC
 90. K. HOVNANIAN AT ALTO, LLC
 91. K. HOVNANIAN AT AMBERLEY WOODS, LLC
 92. K. HOVNANIAN AT AMBRA, LLC
 93. K. Hovnanian at Andalusia, LLC
 94. K. HOVNANIAN AT APPLE BLOSSOM, LLC
 95. K. HOVNANIAN AT ARMEN GROVES, LLC
 96. K. HOVNANIAN AT ASBURY PARK URBAN RENEWAL, LLC
 97. K. Hovnanian at Ashby Place, LLC
 98. K. HOVNANIAN AT ASHLEY POINTE LLC
 99. K. Hovnanian at Aspire at Apricot Grove PH2, LLC
 100. K. Hovnanian at Aspire at Webber Farm, LLC
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101. K. Hovnanian at Aspire at Wickersham, LLC
 102. K. HOVNANIAN AT ASTER RIDGE, LLC
 103. K. Hovnanian at Autumn Ridge, LLC
 104. K. HOVNANIAN AT AVENIR II, LLC
 105. K. HOVNANIAN AT AVENIR, LLC
 106. K. Hovnanian at Bakersfield 463, L.L.C.
 107. K. Hovnanian at Bay Knolls, LLC
 108. K. Hovnanian at Beacon Park Area 129 II, LLC
 109. K. Hovnanian at Beacon Park Area 129, LLC
 110. K. Hovnanian at Beacon Park Area 137, LLC
 111. K. HOVNANIAN AT BELLEWOOD, LLC
 112. K. Hovnanian at Bennett Ranch, LLC
 113. K. HOVNANIAN AT BENSEN'S MILL ESTATES, LLC
 114. K. Hovnanian at Blackstone, LLC
 115. K. HOVNANIAN AT BOCA DUNES, LLC
 116. K. HOVNANIAN AT BOOTH FARM, LLC
 117. K. HOVNANIAN AT BRADWELL ESTATES, LLC
 118. K. Hovnanian at Brenford Station, LLC
 119. K. HOVNANIAN AT BRITTANY MANOR, LLC
 120. K. HOVNANIAN AT BURCH KOVE, LLC
 121. K. Hovnanian at Cadence Park, LLC
 122. K. HOVNANIAN AT CANTER V, LLC
 123. K. HOVNANIAN AT CAPISTRANO, L.L.C.
 124. K. Hovnanian at Carlsbad, LLC
 125. K. HOVNANIAN AT CARRIAGES AT WALL URBAN RENEWAL, LLC
 126. K. HOVNANIAN AT CATANIA, LLC
 127. K. HOVNANIAN AT CATON'S RESERVE, LLC
 128. K. Hovnanian at Cedar Lane Estates, LLC
 129. K. Hovnanian at Cedar Lane, LLC
 130. K. HOVNANIAN AT CHARLESTON MEADOWS, LLC
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131. K. HOVNANIAN AT CHESTERFIELD, L.L.C.
 132. K. HOVNANIAN AT CHRISTINA COURT, LLC
 133. K. HOVNANIAN AT CHURCHILL FARMS LLC
 134. K. Hovnanian at Cielo, L.L.C.
 135. K. HOVNANIAN AT CITRUS COVE, LLC
 136. K. HOVNANIAN AT COOPER'S LANDING, LLC
 137. K. HOVNANIAN AT COOSAW POINT, LLC
 138. K. HOVNANIAN AT CORAL LAGO, LLC
 139. K. HOVNANIAN AT COUNTRY VIEW ESTATES, LLC
 140. K. HOVNANIAN AT CREEKSIDE CROSSING, LLC
 141. K. HOVNANIAN AT DEER RIDGE, LLC
 142. K. HOVNANIAN AT DILLON FARM, LLC
 143. K. HOVNANIAN AT DOMINION CROSSING, LLC
 144. K. HOVNANIAN AT DOYLESTOWN, LLC
 145. K. HOVNANIAN AT DUNELLEN URBAN RENEWAL, LLC
 146. K. HOVNANIAN AT EAGLE HEIGHTS, LLC
 147. K. HOVNANIAN AT EAGLES EDGE, LLC
 148. K. HOVNANIAN AT EAST BRUNSWICK III, LLC
 149. K. HOVNANIAN AT EAST BRUNSWICK, LLC
 150. K. HOVNANIAN AT EAST CHASE, LLC
 151. K. HOVNANIAN AT EAST WINDSOR, LLC
 152. K. HOVNANIAN AT EDEN TERRACE, L.L.C.
 153. K. HOVNANIAN AT EDGEWOOD, LLC
 154. K. Hovnanian at Egret Shores, LLC
 155. K. HOVNANIAN AT EMBREY MILL VILLAGE, LLC
 156. K. HOVNANIAN AT EMBREY MILL, LLC
 157. K. HOVNANIAN AT ESTATES AT WHEATLANDS, LLC
 158. K. HOVNANIAN AT ESTATES OF CHANCELLORSVILLE, LLC
 159. K. HOVNANIAN AT ESTATES OF FOX CHASE, LLC
 160. K. HOVNANIAN AT ESTATES OF TUSCARORA, LLC
 161. K. HOVNANIAN AT FAIRFIELD RIDGE, LLC
 162. K. Hovnanian at Fiddymment Ranch, LLC
 163. K. Hovnanian at Firefly at Winding Creek, LLC
 164. K. Hovnanian at Fork Landing, LLC
 165. K. HOVNANIAN AT FOX PATH AT HAMPTON LAKE, LLC
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166. K. HOVNANIAN AT FRANKLIN II, L.L.C.
 167. K. HOVNANIAN AT FRANKLIN, L.L.C.
 168. K. HOVNANIAN AT FREEHOLD TOWNSHIP III, LLC
 169. K. Hovnanian at Fresno, LLC
 170. K. HOVNANIAN AT GALLERY PARK AT WESTFIELDS, LLC
 171. K. HOVNANIAN AT GALLERY, LLC
 172. K. HOVNANIAN AT GALLOWAY RIDGE, LLC
 173. K. HOVNANIAN AT GAMBRILL GLENN, LLC
 174. K. Hovnanian at Gilroy 60, LLC
 175. K. Hovnanian at Gilroy, LLC
 176. K. HOVNANIAN AT GLEN OAKS, LLC
 177. K. HOVNANIAN AT GRACE MEADOWS, LLC
 178. K. HOVNANIAN AT GRANDE PARK, LLC
 179. K. HOVNANIAN AT GREAT NOTCH, L.L.C.
 180. K. HOVNANIAN AT HAMMOCK BREEZE, LLC
 181. K. HOVNANIAN AT HAMPSHIRE FARMS, LLC
 182. K. HOVNANIAN AT HAMPTON COVE, LLC
 183. K. HOVNANIAN AT HAMPTON LAKE, LLC
 184. K. HOVNANIAN AT HAMPTON RUN, LLC
 185. K. HOVNANIAN AT HANOVER ESTATES, LLC
 186. K. Hovnanian at Harbor's Edge at Bayside, LLC
 187. K. HOVNANIAN AT HARVEST MEADOWS, LLC
 188. K. HOVNANIAN AT HARVEST OAKS, LLC
 189. K. HOVNANIAN AT HAULOVER CREEK, LLC
 190. K. HOVNANIAN AT HAWK RIDGE, LLC
 191. K. HOVNANIAN AT HEATHERFIELD, LLC
 192. K. HOVNANIAN AT HERITAGE GROVE, LLC
 193. K. HOVNANIAN AT HERITAGE PARK, LLC
 194. K. Hovnanian at Hidden Brook, LLC
 195. K. Hovnanian at Hidden Lake, LLC
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196. K. HOVNANIAN AT HIGHLAND PARK, LLC
 197. K. HOVNANIAN AT HILLANDALE, LLC
 198. K. HOVNANIAN AT HILLSBOROUGH, LLC
 199. K. HOVNANIAN AT HILLTOP RESERVE II, LLC
 200. K. HOVNANIAN AT HILLTOP RESERVE, LLC
 201. K. HOVNANIAN AT HOLLY RIDGE, LLC
 202. K. HOVNANIAN AT HONEYSUCKLE TRAIL, LLC
 203. K. HOVNANIAN AT HOWELL FORT PLAINS, LLC
 204. K. HOVNANIAN AT HOWELL II, LLC
 205. K. HOVNANIAN AT HOWELL, LLC
 206. K. HOVNANIAN AT HUNTER'S POND, LLC
 207. K. HOVNANIAN AT HUNTFIELD, LLC
 208. K. HOVNANIAN AT INDIAN WELLS, LLC
 209. K. HOVNANIAN AT ISLAND LAKE, LLC
 210. K. HOVNANIAN AT JACKS RUN, LLC
 211. K. HOVNANIAN AT JACKSON I, L.L.C.
 212. K. HOVNANIAN AT JACKSON VILLAGE, LLC
 213. K. HOVNANIAN AT JACKSON, L.L.C.
 214. K. Hovnanian at Jaeger Ranch, LLC
 215. K. Hovnanian at La Laguna, L.L.C.
 216. K. Hovnanian at Ladd Ranch, LLC
 217. K. HOVNANIAN AT LAKE BURDEN, LLC
 218. K. HOVNANIAN AT LAKE FLORENCE, LLC
 219. K. HOVNANIAN AT LAKE LECLARE, LLC
 220. K. HOVNANIAN AT LAKES AT NEW RIVERSIDE, LLC
 221. K. HOVNANIAN AT LAUREL HILLS CROSSING, LLC
 222. K. HOVNANIAN AT LAVEEN SPRINGS, LLC
 223. K. HOVNANIAN AT LENA H WOODS, LLC
 224. K. HOVNANIAN AT LIBERTY HILL FARM, LLC
 225. K. Hovnanian at Liberty West, LLC
 226. K. HOVNANIAN AT LILY ORCHARD, LLC
 227. K. HOVNANIAN AT LINCOLN PARK, LLC
 228. K. HOVNANIAN AT LINK CROSSING, LLC
 229. K. HOVNANIAN AT LITTLE EGG HARBOR TOWNSHIP II, L.L.C.
 230. K. HOVNANIAN AT LOCKE LANDING, LLC
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231. K. HOVNANIAN AT LUKE LANDING, LLC
 232. K. Hovnanian at Luna Vista, LLC
 233. K. HOVNANIAN AT MADISON SQUARE, LLC
 234. K. HOVNANIAN AT MAGNOLIA PLACE, LLC
 235. K. HOVNANIAN AT MAIN STREET SQUARE, LLC
 236. K. HOVNANIAN AT MANALAPAN CROSSING, LLC
 237. K. HOVNANIAN AT MANALAPAN II, L.L.C.
 238. K. HOVNANIAN AT MANALAPAN IV, LLC
 239. K. HOVNANIAN AT MANALAPAN V, LLC
 240. K. HOVNANIAN AT MAPLE AVENUE, L.L.C.
 241. K. HOVNANIAN AT MAPLE HILL LLC
 242. K. HOVNANIAN AT MARLBORO GROVE, LLC
 243. K. HOVNANIAN AT MARSHVIEW ESTATES, LLC
 244. K. HOVNANIAN AT MARYLAND RIDGE, LLC
 245. K. HOVNANIAN AT MCCARTNEY RANCH, LLC
 246. K. HOVNANIAN AT MEADOW SPRINGS RUN, LLC
 247. K. HOVNANIAN AT MEADOWRIDGE VILLAS, LLC
 248. K. Hovnanian at Melanie Meadows, LLC
 249. K. HOVNANIAN AT MELODY FARM, LLC
 250. K. Hovnanian at Meridian Hills, LLC
 251. K. HOVNANIAN AT MIDDLETOWN III, LLC
 252. K. HOVNANIAN AT MIDDLETOWN IV, LLC
 253. K. Hovnanian at Middletown Reserve, LLC
 254. K. HOVNANIAN AT MIDDLETOWN, LLC
 255. K. HOVNANIAN AT MILLVILLE II, L.L.C.
 256. K. Hovnanian at Monarch Glen, LLC
 257. K. HOVNANIAN AT MONROE NJ II, LLC
 258. K. HOVNANIAN AT MONROE NJ III, LLC
 259. K. HOVNANIAN AT MONROE NJ, L.L.C.
 260. K. HOVNANIAN AT MONROE RANCH, LLC
 261. K. HOVNANIAN AT MONTANA VISTA DOBBINS, LLC
 262. K. HOVNANIAN AT MONTANA VISTA, LLC
 263. K. HOVNANIAN AT MONTGOMERY, LLC
 264. K. HOVNANIAN AT MONTVALE II, LLC
 265. K. HOVNANIAN AT MORRIS TWP, LLC
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266. K. HOVNANIAN AT MORRIS WOODS, LLC
 267. K. Hovnanian at Muirfield, LLC
 268. K. HOVNANIAN AT NEW POST, LLC
 269. K. HOVNANIAN AT NICHOLSON, LLC
 270. K. Hovnanian at North Brunswick VI, L.L.C.
 271. K. HOVNANIAN AT NORTH CALDWELL III, L.L.C.
 272. K. HOVNANIAN AT NORTH GROVE CROSSING, LLC
 273. K. HOVNANIAN AT NORTH HILL, LLC
 274. K. HOVNANIAN AT NORTH POINTE ESTATES LLC
 275. K. HOVNANIAN AT NORTH RIDGE, LLC
 276. K. HOVNANIAN AT NORTH WILDWOOD, L.L.C.
 277. K. HOVNANIAN AT NORTHAMPTON, L.L.C.
 278. K. HOVNANIAN AT NORTHLAKE, LLC
 279. K. HOVNANIAN AT NORTHRIDGE ESTATES, LLC
 280. K. HOVNANIAN AT NORTON LAKE LLC
 281. K. Hovnanian at Nottingham Meadows, LLC
 282. K. HOVNANIAN AT OAK POINTE, LLC
 283. K. HOVNANIAN AT OAKLAND, LLC
 284. K. Hovnanian at Ocean View Beach Club, LLC
 285. K. HOVNANIAN AT OLD BRIDGE II, LLC
 286. K. HOVNANIAN AT OLD BRIDGE, L.L.C.
 287. K. HOVNANIAN AT OLD CAROLINA, LLC
 288. K. HOVNANIAN AT ORANGEWOOD RANCH, LLC
 289. K. HOVNANIAN AT ORCHARD MEADOWS, LLC
 290. K. HOVNANIAN AT ORCHARD PARK, LLC
 291. K. HOVNANIAN AT OREGON TOWN CENTER, LLC
 292. K. Hovnanian at Oyster Cove, LLC
 293. K. HOVNANIAN AT PALERMO, LLC
 294. K. HOVNANIAN AT PALM VALLEY, L.L.C.
 295. K. HOVNANIAN AT PARK PASEO, LLC
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296. K. Hovnanian at Parkside, LLC
 297. K. Hovnanian at Patriots Bluff, LLC
 298. K. Hovnanian at Pavilion Park, LLC
 299. K. HOVNANIAN AT PICKETT RESERVE, LLC
 300. K. HOVNANIAN AT PINCKNEY FARM, LLC
 301. K. HOVNANIAN AT PINE CREST, LLC
 302. K. HOVNANIAN AT PINNACLE PEAK PATIO, LLC
 303. K. Hovnanian at Plantation Lakes, L.L.C.
 304. K. Hovnanian at Pleasanton, LLC
 305. K. HOVNANIAN AT POINTE 16, LLC
 306. K. HOVNANIAN AT PORT IMPERIAL URBAN RENEWAL V, L.L.C.
 307. K. HOVNANIAN AT PORT IMPERIAL URBAN RENEWAL VIII, L.L.C.
 308. K. Hovnanian at Positano, LLC
 309. K. HOVNANIAN AT POTOMAC TRACE, LLC
 310. K. HOVNANIAN AT PRAIRIE POINTE, LLC
 311. K. HOVNANIAN AT QUAIL CREEK, L.L.C.
 312. K. HOVNANIAN AT RANCHO CABRILLO, LLC
 313. K. HOVNANIAN AT RANCHO EL DORADO, LLC
 314. K. HOVNANIAN AT RANCHO MIRAGE PARCEL 17, LLC
 315. K. HOVNANIAN AT RANCHO MIRAGE PARCEL 23, LLC
 316. K. HOVNANIAN AT RANCOCAS CREEK, LLC
 317. K. HOVNANIAN AT RANDALL HIGHLANDS, LLC
 318. K. HOVNANIAN AT RAYMOND FARM, LLC
 319. K. Hovnanian at Red Mill Pond, LLC
 320. K. HOVNANIAN AT REDTAIL, LLC
 321. K. HOVNANIAN AT RESERVES AT WHEATLANDS, LLC
 322. K. HOVNANIAN AT RESERVOIR POINT, LLC
 323. K. HOVNANIAN AT RESIDENCE AT DISCOVERY SQUARE, LLC
 324. K. Hovnanian at Retreat at Millstone, LLC
 325. K. HOVNANIAN AT RIDGEMONT, L.L.C.
 326. K. HOVNANIAN AT RIVER HILLS, LLC
 327. K. HOVNANIAN AT RIVERFIELD RESERVE, LLC
 328. K. HOVNANIAN AT ROCKLAND VILLAGE GREEN, LLC
 329. K. HOVNANIAN AT ROCKY RUN VILLAGE, LLC
 330. K. HOVNANIAN AT ROSEMARY LANTANA, L.L.C.
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331. K. Hovnanian at Sage II Harvest at Limoneira, LLC
 332. K. HOVNANIAN AT SAGEBROOK, LLC
 333. K. HOVNANIAN AT SALERNO RESERVE, LLC
 334. K. HOVNANIAN AT SANDPIPER PLACE, LLC
 335. K. Hovnanian at Santa Nella, LLC
 336. K. HOVNANIAN AT SANTA ROSA SPRINGS, LLC
 337. K. HOVNANIAN AT SANTANILLA, LLC
 338. K. Hovnanian at Satterfield, LLC
 339. K. HOVNANIAN AT SCOTTSDALE HEIGHTS, LLC
 340. K. HOVNANIAN AT SEA ISLAND COLLECTIVE, LLC
 341. K. Hovnanian at Seabrook, LLC
 342. K. Hovnanian at Sendero Ranch, LLC
 343. K. HOVNANIAN AT SHREWSBURY, LLC
 344. K. HOVNANIAN AT SIENNA HILLS, LLC
 345. K. Hovnanian at Sierra Vista, LLC
 346. K. HOVNANIAN AT SILVER LEAF, LLC
 347. K. HOVNANIAN AT SILVERSTONE G, LLC
 348. K. HOVNANIAN AT SILVERSTONE, LLC
 349. K. HOVNANIAN AT SILVERWOOD GLEN, LLC
 350. K. Hovnanian at Skye Isle, LLC
 351. K. HOVNANIAN AT SKYE ON MCDOWELL, LLC
 352. K. HOVNANIAN AT SMITHVILLE, INC.
 353. K. HOVNANIAN AT SOMERSET, LLC
 354. K. HOVNANIAN AT SOUTH BRUNSWICK II, LLC
 355. K. HOVNANIAN AT SOUTH BRUNSWICK III, LLC
 356. K. HOVNANIAN AT SOUTH BRUNSWICK IV, LLC
 357. K. HOVNANIAN AT SOUTHPOINTE, LLC
 358. K. HOVNANIAN AT SPRING ISLE, LLC
 359. K. HOVNANIAN AT STATION SQUARE, L.L.C.
 360. K. HOVNANIAN AT STERLING VISTAS, LLC
 361. K. HOVNANIAN AT SUMMERLAKE, LLC
 362. K. HOVNANIAN AT SUMMIT CROSSING ESTATES, LLC
 363. K. HOVNANIAN AT SUN CITY WEST, LLC
 364. K. Hovnanian at Sunridge Park, LLC
 365. K. HOVNANIAN AT SUNRISE TRAIL II, LLC
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366. K. HOVNANIAN AT SUNRISE TRAIL III, LLC
 367. K. HOVNANIAN AT TAMARACK SOUTH LLC
 368. K. HOVNANIAN AT TANAGER, LLC
 369. K. HOVNANIAN AT TANGLEWOOD OAKS, LLC
 370. K. HOVNANIAN AT TERRA BELLA TWO, LLC
 371. K. HOVNANIAN AT THE COMMONS AT RICHMOND HILL, LLC
 372. K. HOVNANIAN AT THE HIGHLANDS AT SUMMERLAKE GROVE, LLC
 373. K. HOVNANIAN AT THE MEADOWS 9, LLC
 374. K. HOVNANIAN AT THE MEADOWS, LLC
 375. K. HOVNANIAN AT THE MONARCH, L.L.C.
 376. K. HOVNANIAN AT THE PROMENADE AT BEAVER CREEK, LLC
 377. K. HOVNANIAN AT THE VIEWS AT NORTHSORE URBAN RENEWAL, LLC
 378. K. HOVNANIAN AT TORTOSA SOUTH, LLC
 379. K. HOVNANIAN AT TOUSSAINT SPRINGS, LLC
 380. K. Hovnanian at Tower Hill, LLC
 381. K. HOVNANIAN AT TOWNES AT COUNTY CENTER, LLC
 382. K. HOVNANIAN AT TOWNES AT PARKVIEW, LLC
 383. K. HOVNANIAN AT TOWNES AT WEST LONG BRANCH, LLC
 384. K. Hovnanian at Townsend Fields, LLC
 385. K. HOVNANIAN AT TRAFFORD PLACE, LLC
 386. K. Hovnanian at Trail Ridge, LLC
 387. K. HOVNANIAN AT TRAMORE LLC
 388. K. HOVNANIAN AT UNION PARK, LLC
 389. K. HOVNANIAN AT UPPER PROVIDENCE, LLC
 390. K. Hovnanian at Valle Del Sol, LLC
 391. K. HOVNANIAN AT VALLETTA, LLC
 392. K. HOVNANIAN AT VDARA, LLC
 393. K. HOVNANIAN AT VENTANA LAKES, LLC
 394. K. Hovnanian at Verona Estates, LLC
 395. K. HOVNANIAN AT VERRADO CASCINA, LLC
 396. K. HOVNANIAN AT VERRADO MARKETSIDE, LLC
 397. K. Hovnanian at Victorville, L.L.C.
 398. K. HOVNANIAN AT VICTORY AT VERRADO PH3C, LLC
 399. K. HOVNANIAN AT VICTORY AT VERRADO PH9, LLC
 400. K. HOVNANIAN AT VICTORY AT VERRADO, LLC
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401. K. HOVNANIAN AT VIEWS AT SEASIDE URBAN RENEWAL, LLC
 402. K. Hovnanian at Village Center, LLC
 403. K. HOVNANIAN AT VILLAGES AT COUNTRY VIEW, LLC
 404. K. HOVNANIAN AT VILLAGES AT FLORHAM PARK, LLC
 405. K. HOVNANIAN AT VILLAGO, LLC
 406. K. HOVNANIAN AT VILLAS AT THE COMMONS, LLC
 407. K. Hovnanian at Vineyard Heights, LLC
 408. K. HOVNANIAN AT VIVIENDO, LLC
 409. K. HOVNANIAN AT WADE'S GRANT, L.L.C.
 410. K. HOVNANIAN AT WALDWICK, LLC
 411. K. HOVNANIAN AT WALKERS GROVE, LLC
 412. K. HOVNANIAN AT WALL DONATO, LLC
 413. K. HOVNANIAN AT WALL QUAIL RIDGE, LLC
 414. K. HOVNANIAN AT WARREN TOWNSHIP II, LLC
 415. K. HOVNANIAN AT WASHINGTON RIDGE, LLC
 416. K. Hovnanian at Waterstone, LLC
 417. K. HOVNANIAN AT WAXPOOL CROSSING, LLC
 418. K. HOVNANIAN AT WELLSPRINGS, LLC
 419. K. Hovnanian at West View Estates, L.L.C.
 420. K. HOVNANIAN AT WESTBROOK, LLC
 421. K. Hovnanian at Westshore, LLC
 422. K. Hovnanian at Wheeler Ranch, LLC
 423. K. HOVNANIAN AT WHEELER WOODS, LLC
 424. K. HOVNANIAN AT WILDWOOD BAYSIDE, L.L.C.
 425. K. HOVNANIAN AT WILLOWSFORD GREENS III, LLC
 426. K. Hovnanian at Woodcreek West, LLC
 427. K. Hovnanian at Woodfield, LLC
 428. K. HOVNANIAN AT WOOLWICH I, L.L.C.
 429. K. HOVNANIAN AT WREN HOLLOW, LLC
 430. K. HOVNANIAN BELDEN POINTE, LLC
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431. K. HOVNIANIAN BELMONT RESERVE, LLC
 432. K. HOVNIANIAN BRITTANY MANOR BORROWER, LLC
 433. K. HOVNIANIAN BUILD ON YOUR LOT DIVISION, LLC
 434. K. Hovnianian CA Land Holdings, LLC
 435. K. Hovnianian California Operations, Inc.
 436. K. Hovnianian California Region, Inc.
 437. K. HOVNIANIAN CAMBRIDGE HOMES, L.L.C.
 438. K. Hovnianian Central Acquisitions, L.L.C.
 439. K. HOVNIANIAN CENTRAL OHIO, LLC
 440. K. HOVNIANIAN CHICAGO DIVISION, INC.
 441. K. HOVNIANIAN CLASSICS, L.L.C.
 442. K. HOVNIANIAN CLEVELAND DIVISION, LLC
 443. K. Hovnianian Communities, Inc.
 444. K. HOVNIANIAN COMPANIES OF ARIZONA, LLC
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 446. K. HOVNIANIAN COMPANIES OF NEW YORK, INC.
 447. K. Hovnianian Companies of Southern California, Inc.
 448. K. Hovnianian Companies, LLC
 449. K. HOVNIANIAN CORNERSTONE FARMS, LLC
 450. K. HOVNIANIAN CRAFTBUILT HOMES OF SOUTH CAROLINA, L.L.C.
 451. K. HOVNIANIAN CYPRESS CREEK, LLC
 452. K. HOVNIANIAN CYPRESS KEY, LLC
 453. K. Hovnianian Delaware Division, Inc.
 454. K. Hovnianian Delaware Operations, LLC
 455. K. HOVNIANIAN DEVELOPMENTS OF D.C., INC.
 456. K. HOVNIANIAN DEVELOPMENTS OF GEORGIA, INC.
 457. K. HOVNIANIAN DEVELOPMENTS OF MARYLAND, INC.
 458. K. HOVNIANIAN DEVELOPMENTS OF MINNESOTA, INC.
 459. K. HOVNIANIAN DEVELOPMENTS OF NEW YORK, INC.
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 461. K. HOVNIANIAN DEVELOPMENTS OF PENNSYLVANIA, INC.
 462. K. Hovnianian Developments of Texas, Inc.
 463. K. HOVNIANIAN DEVELOPMENTS OF VIRGINIA, INC.
 464. K. HOVNIANIAN DEVELOPMENTS OF WEST VIRGINIA, INC.
 465. K. Hovnianian DFW Agave Ranch, LLC
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466. K. Hovnanian DFW Ascend at Creekshaw, LLC
 467. K. Hovnanian DFW Ascend at Justin Crossing, LLC
 468. K. Hovnanian DFW ASPIRE AT Reunion, LLC
 469. K. Hovnanian DFW Auburn Farms, LLC
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 479. K. Hovnanian DFW Commodore at Preston, LLC
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 482. K. Hovnanian DFW Diamond Creek Estates, LLC
 483. K. Hovnanian DFW Division, LLC
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 485. K. Hovnanian DFW Encore of Las Colinas II, LLC
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 487. K. Hovnanian DFW Harmon Farms, LLC
 488. K. Hovnanian DFW Heritage Crossing, LLC
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 492. K. Hovnanian DFW Hightower, LLC
 493. K. Hovnanian DFW Homestead, LLC
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 495. K. Hovnanian DFW Kensington Place, LLC
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496. K. Hovnanian DFW Kreymer at the Park, LLC
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725. K. HOVNANIAN'S DELTA AT ASBURY PARK URBAN RENEWAL, LLC
726. K. HOVNANIAN'S ENCLAVE AT OLD TAPPAN, LLC
727. K. HOVNANIAN'S FOUR SEASONS AT ADDISON FARMS, LLC
728. K. HOVNANIAN'S FOUR SEASONS AT BAKERSFIELD, L.L.C.
729. K. Hovnanian's Four Seasons at Baymont Farms L.L.C.
730. K. Hovnanian's Four Seasons at Beaumont, LLC
731. K. HOVNANIAN'S FOUR SEASONS AT CANE BAY EXPANSION, LLC
732. K. HOVNANIAN'S FOUR SEASONS AT CHARLOTTESVILLE II, LLC
733. K. HOVNANIAN'S FOUR SEASONS AT COLTS FARM, LLC
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751. K. Hovnanian's Veranda at RiverPark II, LLC
752. K. Hovnanian's Veranda at RiverPark, LLC
753. KHH Shell Hall Loan Acquisition, LLC
754. KHOV WINDING BAY II, LLC

755. LANDARAMA, INC.
756. LINKS AT CALUSA SPRINGS, LLC
757. M & M AT MONROE WOODS, L.L.C.
758. M&M AT WEST ORANGE, L.L.C.
759. MATZEL & MUMFORD AT EGG HARBOR, L.L.C.
760. MCNJ, INC.
761. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES OF PENNSYLVANIA, L.L.C.
762. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES OF WEST VIRGINIA, L.L.C.
763. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES, L.L.C.
764. MM-BEACHFRONT NORTH I, LLC
765. NEW HOME REALTY, LLC
766. PARK TITLE COMPANY, LLC
767. RIDGEMORE UTILITY L.L.C.
768. Ridgemore Utility of Delaware, LLC
769. ROUTE 1 AND ROUTE 522, L.L.C.
770. SHELL HALL CLUB AMENITY ACQUISITION, LLC
771. SHELL HALL LAND ACQUISITION, LLC
772. STONEBROOK HOMES, INC.
773. TERRAPIN REALTY, L.L.C.
774. THE MATZEL & MUMFORD ORGANIZATION, INC
775. Traverse Partners, LLC
776. VISTAS AT SILVERSTONE LLC
777. Washington Homes, Inc.
778. WTC Ventures, L.L.C.

[Participating Lenders]

Amended Credit Agreement

[See attached]

~~\$81,498,000~~

CREDIT AGREEMENT
Dated as of December 10, 2019

(as amended by Amendment No. 1, dated as of May 21, 2024)

among

K. HOVNIANIAN ENTERPRISES, INC.,
as Borrower
HOVNIANIAN ENTERPRISES, INC.,
as Holdings

THE SUBSIDIARIES OF HOLDINGS NAMED HEREIN,
as Subsidiary Guarantors

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

and

THE LENDERS PARTY HERETO

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, restated, amended and restated or otherwise modified from time to time, this “Agreement”) is entered into as of December 10, 2019, among HOVNANIAN ENTERPRISES, INC., a Delaware corporation (“Holdings”), K. HOVNANIAN ENTERPRISES, INC., a California corporation (the “Borrower”), the Subsidiaries of Holdings from time to time party hereto (each a “Subsidiary Guarantor” and collectively, together with Holdings, the “Guarantors”), each lender from time to time party hereto (collectively, the “Lenders” and individually, each a “Lender”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent (as defined herein).

PRELIMINARY STATEMENTS

~~The~~On the Closing Date, the Borrower ~~has~~ requested that the Initial Term Lenders make Initial Term Loans to the Borrower in an aggregate principal amount of \$81,498,000.

On the Amendment No. 1 Effective Date, Holdings, the Borrower and the Subsidiary Guarantors entered into the Amendment No. 1 Exchange Agreements pursuant to which, among other things, the Borrower exchanged the Exchanged Debt (as defined in the Amendment No. 1 Exchange Agreements) on the terms and conditions set forth in the Amendment No. 1 Exchange Agreements, including for Amendment No. 1 Term Loans.

The Guarantors have agreed to guarantee the Loan Obligations of the Borrower hereunder pursuant to the Guarantee.

The Lenders have agreed to provide the Loans on the terms and subject to the conditions set forth in this Agreement and the other Loan Documents.

In consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

~~“1.125 Lien Indenture” means the Indenture, dated as of October 31, 2019 (as amended, supplemented, amended and restated or otherwise modified from time to time), among the Borrower, Holdings, each of the other guarantors party thereto and Collateral Agent” means~~ Wilmington Trust, National Association, as trustee and collateral agent until such time, if any, a successor replaces such party in accordance with the applicable provisions of the 1.125 Lien Notes Indenture and thereafter means the successor serving thereunder.

“1.125 Lien Fixed Debt Cap” has the meaning assigned to such term in the definition of “Permitted Indebtedness”.

“1.125 Lien Guarantees” means the guarantee of the 1.125 Lien Notes by each guarantor under the 1.125 Lien Notes Indenture.

“1.125 Lien Notes” means the 7.75% Borrower’s 8.0% Senior Secured 1.125 Lien Notes due 2026, 2028 issued by the Borrower under pursuant to the 1.125 Lien Notes Indenture.

~~“1.25 1.125 Lien Notes Indenture” means the Indenture, dated as of October 31, 2019 (2023, as amended, supplemented, amended and restated or otherwise modified from time to time), among the Borrower, Holdings, each of the other the guarantors party thereto and Wilmington Trust, National Association, as the 1.125 Lien Trustee and the 1.125 Lien Collateral Agent.~~

~~“1.25 Lien Guarantees” means the guarantee of the 1.25 Lien Notes by each guarantor under the 1.25 Lien Indenture.~~

“1.125 Lien Trustee” means Wilmington Trust, National Association until such time, if any, a successor replaces such party in accordance with the applicable provisions of the 1.125 Lien Notes Indenture and thereafter means the successor serving thereunder

~~“1.25 Lien Notes” means the 10.5% Senior Secured 1.25 Lien Notes due 2026, issued by the Borrower under Collateral Agent” means~~ Wilmington Trust, National Association until such time, if any, a successor replaces such party in accordance with the applicable provisions of the 1.25 Lien Notes Indenture and thereafter means the successor serving thereunder.

~~“1.5 Lien Indenture” means the Indenture, dated as of October 31, 2019 (as amended, supplemented, amended and restated or otherwise modified from time to time), among the Borrower, Holdings, each of the other guarantors party thereto and Wilmington Trust, National Association, as trustee and collateral agent.~~

“1.25 Lien Fixed Debt Cap” has the meaning assigned to such term in the definition of “Permitted Indebtedness”.

~~“1.51.25 Lien Guarantees” means the guarantee of the 1.51.25 Lien Notes by each guarantor under the 1.51.25 Lien Notes Indenture.~~

~~“1.51.25 Lien Notes” means the 11.25 Borrower’s 11.75% Senior Secured 1.51.25 Lien Notes due 2026, 2029 issued by pursuant to the Borrower under the 1.51.25 Lien Notes Indenture.~~

~~“1.5 Lien Obligations” means (a) the Obligations under the 1.5 Lien Notes and (b) all other Indebtedness of Holdings, the Borrower or any Restricted Subsidiary secured by Liens on the Collateral that are equal in priority to the Liens on the Collateral securing the 1.5 Lien Notes and guarantees thereof on a 1.5-lien basis, including all Obligations in respect thereof.~~

~~“1.751.25 Lien Notes Indenture” means the Indenture, dated as of the Closing Date (October 5, 2023, as amended, supplemented, amended and restated or otherwise modified from time to time), among the Borrower, Holdings, each of the other the guarantors party thereto and Wilmington Trust, National Association, as the 1.25 Lien Trustee and the 1.25 Lien eCollateral Agent.~~

“1.25 Lien Trustee” means Wilmington Trust, National Association until such time, if any, a successor replaces such party in accordance with the applicable provisions of the 1.25 Lien Notes Indenture and thereafter means the successor serving thereunder.

~~“1.75 Lien Guarantees” means the guarantee of the 1.75 Lien Notes by each guarantor under the 1.75 Lien Indenture.~~

~~“1.75 Lien Notes” means the 10.00% Senior Secured 1.75 Lien Notes due 2025, issued by the Borrower under the 1.75 Lien Indenture.~~

~~“1.75 Lien Obligations” means (a) the Obligations under the 1.75 Lien Notes and (b) the Loan Obligations under this Agreement and the other Loan Documents.~~
Fixed Debt Cap” has the meaning assigned to such term in the definition of “Permitted Indebtedness”.

“1.75 Pari Passu Lien Collateral Agent” means Wilmington Trust, National Association, in its capacity as 1.75 Pari Passu Lien Collateral Agent as appointed under the Security Agreement.

“13.5% Notes Exchange Agreement” means the 13.5% Notes Exchange Agreement, dated on or about the Amendment No. 1 Effective Date, among the Borrower, Holdings, the other guarantors party thereto and the other parties named therein, relating to the Amendment No. 1 Exchange.

“2023 8-K” has the meaning assigned to such term in the definition of “Side Letter”.

“5% Notes Exchange Agreement” means the 5% Notes Exchange Agreement, dated on or about the Amendment No. 1 Effective Date, among the Borrower, Holdings, the other guarantors party thereto and the other parties named therein, relating to the Amendment No. 1 Exchange.

“Acceptable Commitment” has the meaning specified in Section 2.03(a)(vi).

“Acquired Indebtedness” means (a) with respect to any Person that becomes a Restricted Subsidiary (or is merged into Holdings, the Borrower or any Restricted Subsidiary) after the Closing Date, Indebtedness of such Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary (or is merged into Holdings, the Borrower or any Restricted Subsidiary) that was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary (or being merged into Holdings, the Borrower or any Restricted Subsidiary) and (b) with respect to Holdings, the Borrower or any Restricted Subsidiary, any Indebtedness expressly assumed by Holdings, the Borrower or any Restricted Subsidiary in connection with the acquisition of any assets from another Person (other than Holdings, the Borrower or any Restricted Subsidiary), which Indebtedness was not incurred by such other Person in connection with or in contemplation of such acquisition. Indebtedness incurred in connection with or in contemplation of any transaction described in clause (a) or (b) of the preceding sentence shall be deemed to have been incurred by Holdings or a Restricted Subsidiary, as the case may be, at the time such Person becomes a Restricted Subsidiary (or is merged into Holdings, the Borrower or any Restricted Subsidiary) in the case of clause (a) or at the time of the acquisition of such assets in the case of clause (b), but shall not be deemed Acquired Indebtedness.

“Administrative Agent” means (a) on the Closing dDate hereof and the Amendment No. 1 Effective Date, Wilmington Trust, National Association in its capacity as administrative agent or collateral agent, as the case may be, under any of the Loan Documents or (b) at any time after the Amendment No. 1 Effective dDate hereof, any permitted successor administrative agent or collateral agent, as the case may be, appointed in accordance with the terms hereof.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.02, or such other address or account as the Administrative Agent may from time to time notify in writing to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire substantially in the form of Exhibit D.

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

“Affiliate” means, when used with reference to a specified Person, any Person directly or indirectly controlling, or controlled by or under direct or indirect common control with, the Person specified.

“Affiliate Transaction” has the meaning specified in Section 6.10.

“Agent Fee Letter” means that certain letter, dated as of the Closing dDate hereof, by and among the Borrower and the Administrative Agent.

“Agent-Related Person” means the Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Agents” means, collectively, the Administrative Agent and the Supplemental Administrative Agents (if any).

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

“Aggregate Exposure” means, with respect to a Lender at any time, an amount equal to such Lender’s Total Outstandings at such time *plus* the amount of such Lender’s unfunded Term Commitment then in effect (if any).

“Aggregate Exposure Percentage” means, with respect to a Lender at any time, the ratio (expressed as a percentage) of such Lender’s (a) Aggregate Exposure at such time to (b) the sum of the Aggregate Exposures of all Lenders at such time.

“Agreement” has the meaning specified in the introductory paragraph.

“All-In Yield” means, as to any Indebtedness, the effective yield applicable thereto calculated by the Borrower in a manner consistent with generally accepted financial practices, taking into account (a) interest rate margins, (b) interest rate floors, (c) any amendment to the relevant interest rate margins and interest rate floors prior to the applicable date of determination and (d) original issue discount and upfront or similar fees (based on an assumed four-year average life to maturity or lesser remaining average life to maturity).

“Amendment No. 1” means the First Amendment to the Credit Agreement, dated as of May 21, 2024, by and among Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent, and the Lenders party thereto.

“Amendment No. 1 Effective Date” means May 21, 2024.

“Amendment No. 1 Effective Date Transactions” means (1) the consummation of the Amendment No. 1 Exchange and (2) the entry into and effectiveness of Amendment No. 1 and any related documents or agreements and the incurrence of the Amendment No. 1 Term Loans.

“Amendment No. 1 Exchange” means the exchange by holders of Amendment No. 1 Exchanged Existing Debt for Amendment No. 1 Term Loans and, as applicable in respect of certain of the Amendment No. 1 Exchanged Existing Debt, cash, in each case, pursuant to the terms and conditions of Amendment No. 1 Exchange Agreements.

“Amendment No. 1 Exchange Agreements” means the 13.5% Notes Exchange Agreement, the 5% Notes Exchange Agreement and the Unsecured Term Loan Exchange Agreement.

“Amendment No. 1 Exchanged Existing Debt” means the “Exchanged Debt” under and as defined in the Amendment No. 1 Exchange Agreements.

“Amendment No. 1 Term Commitment” means, as to each Amendment No. 1 Term Lender, the outstanding principal amount of such Amendment No. 1 Exchanged Existing Debt exchanged for the principal amount of the Amendment No. 1 Term Loans, as set forth opposite such Amendment No. 1 Term Lender’s name on Schedule 2.01 set forth on Exhibit D to Amendment No. 1 under the caption “Amendment No. 1 Term Commitment”. The aggregate principal amount of the Amendment No. 1 Term Commitments as of the Amendment No. 1 Effective Date is \$93,502,000.

“Amendment No. 1 Term Lenders” means each Lender making or holding an Amendment No. 1 Term Loan.

“Amendment No. 1 Term Loan” a Loan made pursuant to Section 2.01(b).

“Anti-Money Laundering Laws” has the meaning specified in Section 5.11(b).

“Applicable Debt” means all Indebtedness of Holdings, the Borrower or any other Loan Party (a) under Credit Facilities or (b) for borrowed money.

“Applicable Rate” means with respect to an Initial Term Loan, 10.0% per annum—; provided, that, upon the occurrence of a Specified Condition Event, the Applicable Rate applicable to Initial Term Loans will be increased as determined by the following formula:

$$AR = \frac{((TO - x) * 10.0\%) \pm (x * 11.75\%)}{TO}$$

where,

AR = as-adjusted Applicable Rate;

TO = Total Outstandings as of the applicable calculation date less the portion of the Required Prepayment Amount as of the applicable calculation date that is prepaid as required by Section 2.03(a)(iv); and

x = the portion of the Required Prepayment Amount as of the applicable calculation date that is not prepaid as required by Section 2.03(a)(iv).

Upon the occurrence of a Specified Condition Event, the Applicable Rate shall be (i) included in the Specified Condition Event Notice to be sent pursuant to Section 2.06 hereof and (ii) calculated by the party sending such notice.

“Appropriate Lender” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“Approved Fund” means any Fund that is administered, advised, sub-advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises, sub-advises or manages a Lender.

“Asset Acquisition” means (a) an Investment by Holdings, the Borrower or any Restricted Subsidiary in any other Person if, as a result of such Investment, such Person shall become a Restricted Subsidiary or shall be consolidated or merged with or into Holdings, the Borrower or any Restricted Subsidiary or (b) the acquisition by Holdings, the Borrower or any Restricted Subsidiary of the assets of any Person, which constitute all or substantially all of the assets or of an operating unit or line of business of such Person or which is otherwise outside the ordinary course of business.

“Asset Disposition” means any sale, transfer, conveyance, lease or other disposition (including by way of merger, consolidation or sale and leaseback or sale of shares of Capital Stock in any Subsidiary) (each, a “transaction”) by Holdings, the Borrower or any Restricted Subsidiary to any Person of any Property having a Fair Market Value in any transaction or series of related transactions of at least \$10.0 million; provided that such de minimis amount shall not apply to any Land Banking Transactions (and with respect to Land Banking Transactions, the proviso in clause (b) below shall apply). The term “Asset Disposition” shall not include:

- (a) a transaction between Holdings, the Borrower and any Subsidiary Guarantor or a transaction between Subsidiary Guarantors,

(b) a transaction in the ordinary course of business, including, without limitation, sales (directly or indirectly), sales subject to repurchase options, dedications and other donations to governmental authorities, leases and sales and leasebacks of (i) homes, improved land and unimproved land and (ii) real estate (including related amenities and improvements) ; provided that in the case of any Land Banking Transaction involving sales of Collateral (other than Collateral acquired by Holdings, the Borrower or any Restricted Subsidiary within 180 days prior to the entering into of a definitive agreement for such Land Banking Transaction) (“Land Banking Collateral Sales”) this exception (b) to the definition of “Asset Disposition” shall only apply if (x) on a pro forma basis after giving effect to any such Land Banking Collateral Sales, the Collateral Ratio would not be less than 150% or (y) if the Collateral Ratio is not at least 150% after giving pro forma effect thereto, any Land Banking Collateral Sales do not in the aggregate exceed a GAAP book value for all such Collateral of (i) \$50.0 million in the first fiscal quarter ending October 31, 2023 plus (ii) an additional \$10.0 million during any fiscal quarter beginning with the fiscal quarter ended July/January 31, 2016/2024 (with any unused amounts in any fiscal quarter ~~aggregating inclusive of the fiscal quarter ended July 31, 2016~~ being carried over to subsequent fiscal quarters subject to a maximum GAAP book value of ~~\$50.0~~75.0 million in any fiscal quarter),

(c) a transaction involving the sale of Capital Stock of, or the disposition of assets in, an Unrestricted Subsidiary (other than a JV Holding Company or Permitted Joint Venture, except a sale or a disposition to a Restricted Subsidiary),

(d) any exchange or swap of assets of Holdings, the Borrower or any Restricted Subsidiary for assets (including Capital Stock of any Person that is or will be a Restricted Subsidiary following receipt thereof) that (i) are to be used by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of its Real Estate Business and (ii) have a Fair Market Value not less than the Fair Market Value of the assets exchanged or swapped (provided that (except as permitted by clause (c) under the definition of “Permitted Investment”) to the extent that the assets exchanged or swapped were Collateral, the assets received are pledged as Collateral under the Collateral Documents substantially simultaneously with such exchange or swap, with the Lien on such assets received being of the same priority with respect to Loans as the Lien on the assets disposed of),

(e) any sale, transfer, conveyance, lease or other disposition of assets and properties that is governed by Section 6.11 hereof,

(f) dispositions of mortgage loans and related assets and mortgage-backed securities in the ordinary course of a mortgage lending business,

(g) the creation of a Permitted Lien and dispositions in connection with Permitted Liens,

(h) any sale, transfer, conveyance, lease or other disposition that constitutes a Restricted Payment or Permitted Investment,

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

(j) the unwinding of any Hedging Obligations,

(k) foreclosures, condemnation, eminent domain or any similar action on assets,

(l) any financing transaction with respect to property built or acquired by Holdings or any Restricted Subsidiary after the Closing Date,

(m) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business, and

(n) the issuance of directors’ qualifying shares and shares issued to foreign nationals or other third parties as required by applicable law.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit C or in another form reasonably acceptable to the Administrative Agent.

“Attorney Costs” means and includes all reasonable and documented out-of-pocket fees, expenses and disbursements of any law firm or other external counsel.

“Attributable Debt” means, with respect to any Financing Lease Obligations, the capitalized amount thereof determined in accordance with GAAP.

“Authorization” has the meaning specified in Section 5.03.

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

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

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

“Board of Directors” means, when used with reference to the Borrower or Holdings, as the case may be, the board of directors or any duly authorized committee of that board or any director or directors and/or officer or officers to whom that board or committee shall have duly delegated its authority.

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Borrower’s Office” means the Borrower’s address and, as appropriate, account as set forth on Schedule 9.02, or such other address or account as the Borrower may from time to time notify in writing to the Administrative Agent and the Lenders

“Borrowing” means a borrowing of Refinancing Term Loans ~~or~~, Extended Term Loans or Incremental Term Loans, as the context may require.

“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 the Administrative Agent’s Office is located.

“Capital Stock” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests, and options, rights or warrants to purchase such capital stock or other equity interests, whether now outstanding or issued after the Closing Date, including all Disqualified Stock and Preferred Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“Cash Equivalents” means:

(a) U.S. dollars, Canadian dollars, euros, pounds sterling, any national currency of any participating member state in the European Union or local currencies held from time to time in the ordinary course of business;

(b) securities issued or directly and fully guaranteed or insured by the U.S. government or any country that is a member state of the European Union or any agency or instrumentality thereof having maturities of one year or less from the date of acquisition;

(c) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers’ acceptances with maturities of one year or less from the date of acquisition, in each case with any domestic commercial bank having capital and surplus in excess of \$500.0 million;

(d) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of at least “A” or the equivalent thereof by S&P or Moody’s, or carrying an equivalent rating by a nationally recognized Rating Agency, if both of the two named Rating Agencies cease publishing ratings of investments;

(e) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (d) of this definition entered into with any financial institution meeting the qualifications specified in clause (c) of this definition;

(f) commercial paper rated P-1, A-1 or the equivalent thereof by Moody’s or S&P, respectively, and in each case maturing within one year after the date of acquisition;

(g) investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s; and

(h) investments in investment companies or money market funds substantially all of the assets of which consist of securities described in the foregoing clauses (a) through (g) of this definition.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (a) above; provided that such amounts are converted into any currency listed in clause (a) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Services” means any of the following to the extent not constituting a line of credit (other than an overnight overdraft facility that is not in default): ACH transactions, treasury and/or cash management services, including controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

“Change of Control” means:

(a) any sale, lease or other transfer (in one transaction or a series of transactions) of all or substantially all of the consolidated assets of Holdings and its Restricted Subsidiaries to any Person (other than a Restricted Subsidiary); provided, however, that a transaction where the holders of all classes of Common Equity of Holdings immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of such Person immediately after such transaction shall not be a Change of Control;

(b) a “person” or “group” (within the meaning of Section 13(d) of the Exchange Act (other than (x) Holdings or (y) the Permitted Hovnanian Holders)) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of Common Equity of Holdings representing more than 50% of the voting power of the Common Equity of Holdings; or

(c) the stockholders of Holdings approve any plan or proposal for the liquidation or dissolution of Holdings; provided, however, that a liquidation or dissolution of Holdings which is part of a transaction that does not constitute a Change of Control under the proviso contained in clause (a) of this definition shall not constitute a Change of Control.

“Change of Control Offer” has the meaning specified in Section 6.16.

“Change of Control Repurchase Date” has the meaning specified in Section 6.16.

“Class” (a) when used with respect to Lenders, refers to whether such Lenders are Initial Term Lenders, Refinancing Term Lenders ~~or~~, Extending Term Lenders or Incremental Lenders with loans or commitments hereunder with identical terms, (b) when used with respect to Term Commitments, refers to whether such Term Commitments are Initial Term Commitments or Term Commitments in respect of Refinancing Term Loans with identical terms and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Initial Term Loans, Refinancing Term Loans ~~or~~, Extended Term Loans or Incremental Term Loans with identical terms, in the case of each of clauses (a), (b) and (c), under this Agreement as originally in effect or as amended or otherwise modified pursuant to Section 2.13, Section 2.14, Section 2.16 or Section 9.01, of which such Loan, Borrowing or Term Commitment shall be a part.

“Closing Date” means the date on which the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 4.02, which date is December 10, 2019.

“Closing Date Exchange” means the exchange by holders of Closing Date Exchanged Existing Debt for the Initial Term Loans and cash pursuant to the Closing Date Exchange Agreement.

“Closing Date Exchange Agreement” means that certain Exchange Agreement, dated on or about the Closing Date, among the Borrower, Holding, other guarantors named therein, the other parties named therein and the holders named therein, relating to the Closing Date Exchange.

“Closing Date Exchange Documentation” means, collectively, the Closing Date Exchange Agreement and all definitive documentation governing, or related to, the Closing Date Exchange, this Agreement and the Closing Date Exchanged Existing Debt, including all exchange agreements, consent agreements, indentures, security agreements, pledge agreements, certificates, instruments and other agreements.

“Closing Date Exchanged Existing Debt” means \$162,996,000 aggregate principal amount of the term loans under the Existing Term Loan Agreement.

“Closing Date Transactions” shall mean (1) the consummation of the Closing Date Exchange, (2) the entry into and effectiveness of this Agreement and the incurrence of the Initial Term Loans and (3) the consummation of the Closing Date Exchange.

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time, and rules and regulations related thereto.

“Collateral” means all property or assets of the Borrower and the Guarantors (whether now owned or hereafter arising or acquired) that secure the Obligations with respect to the Loan Obligations under the Collateral Documents.

“Collateral Documents” means, collectively, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, the First Lien Collateral Agency Agreement, the [First Lien Joinder](#), the Security Agreement, the Pledge Agreement, the Intellectual Property Security Agreements and any collateral agency agreement related to any of the foregoing, in each case, if any, and each of the other agreements, instruments or documents that creates, perfects or evidences, or purports to create, perfect or evidence, a Lien on any Collateral in favor of the Administrative Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties as security for the Loan Obligations, in each case, to be entered on or after the Closing Date.

“Collateral Ratio” means the ratio of the aggregate fair market value of the Collateral (to the extent the Liens securing such Collateral have been perfected) (as determined in good faith by Holdings’ chief financial officer) to the aggregate principal amount of Collateralized Debt as of such date of determination.

“Collateralized Debt” means (i) the aggregate principal amount of all outstanding Indebtedness and all letters of credit secured by Liens on the Collateral, plus (ii) the aggregate amount of all unfunded commitments under all revolving credit facilities or revolving lines of credit secured by Liens on the Collateral, plus (iii) without duplication, the aggregate principal amount of Indebtedness that at the time of determination would be permitted to be incurred under this Agreement and secured by Liens on the Collateral pursuant to clause (i)(a), (i)(c) and (i)(f) under the definition of “Permitted Liens,” but excluding any such principal amount of potential Indebtedness to the extent any outstanding debt instrument of Holdings or the Borrower would prohibit the incurrence of a Lien in respect thereof at such time, but in each case, excluding Indebtedness, letters of credit and unfunded commitments secured by Liens on the Collateral that rank junior to the Liens on the Collateral securing the Loans.

“Commission” means the U.S. Securities and Exchange Commission.

“Common Equity” of any Person means Capital Stock of such Person that is generally entitled to (a) vote in the election of directors of such Person or (b) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Company Acquisition Price” has the meaning set forth in the definition of “Side Letter”.

“Compensation Period” has the meaning specified in [Section 2.10\(b\)\(ii\)](#).

“Competitors” means those Persons identified in writing to the Administrative Agent and the Initial Term Lenders on or prior to the Closing Date as competitors or who are clearly identifiable Affiliates of such Persons solely by similarity of such Affiliate’s name.

“Consolidated Cash Flow Available for Fixed Charges” means, for any period, Consolidated Net Income for such period plus (each to the extent deducted in calculating such Consolidated Net Income and determined in accordance with GAAP) the sum for such period, without duplication, of:

- (a) provision for taxes based on income or profits or capital gains, including U.S. federal, state, non-U.S., franchise, excise, value added and similar taxes and foreign withholding taxes of such Person paid or accrued during such period, including any penalties and interest relating to such taxes or arising from any tax examinations,
- (b) Consolidated Interest Expense,
- (c) depreciation and amortization expenses and other non-cash charges to earnings,
- (d) any fees, expenses, charges or losses (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the making of Loans hereunder and (ii) any amendment or other modification of the Loans hereunder or other Indebtedness,
- (e) any other non-cash charges, including any write-offs, write-downs, expenses, losses or items, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period,
- (f) costs of surety bonds incurred in such period in connection with financing activities,
- (g) any costs or expense incurred by Holdings, the Borrower or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of Holdings or net cash proceeds of an issuance of Qualified Stock solely to the extent that such net cash proceeds are excluded from the calculation set forth in [clause \(iii\)](#) of [Section 6.04\(a\)](#),

(h) effects of adjustments (including the effects of such adjustments pushed down to Holdings and its Restricted Subsidiaries) in any line item in such Person's consolidated financial statements in accordance with GAAP resulting from the application of purchase accounting, or the amortization or write-off of any amounts thereof, net of taxes,

(i) any impairment charge, asset write-off or write-down pursuant to ASC 350 and ASC 360 (formerly Financial Accounting Standards Board Statement Nos. 142 and 144, respectively) and the amortization of intangibles arising pursuant to ASC 805 (formerly Financial Accounting Standards Board Statement No. 141), and

(j) cash receipts (or any netting arrangements resulting in reduced cash expenses) not included in Consolidated Cash Flow Available for Fixed Charges in any period to the extent non-cash gains relating to such receipts were deducted in the calculation of Consolidated Cash Flow Available for Fixed Charges pursuant to clause (k) below for any previous period and not added back, *minus*

(k) non-cash gains increasing Consolidated Net Income for such period, excluding any non-cash gains which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced Consolidated Cash Flow Available for Fixed Charges in any prior period; provided that, to the extent non-cash gains are deducted pursuant to this clause (k) for any previous period and not otherwise added back to Consolidated Cash Flow Available for Fixed Charges, Consolidated Cash Flow Available for Fixed Charges shall be increased by the amount of any cash receipts (or any netting arrangements resulting in reduced cash expenses) in respect of such non-cash gains received in subsequent periods to the extent not already included therein, and *plus or minus* (as applicable and without duplication) to eliminate the following items to the extent reflected in Consolidated Net Income,

(l) (i) any net gain or loss resulting in such period from currency gains or losses related to Indebtedness, intercompany balances and other balance sheet items, and (ii) any unrealized net gain or loss resulting in such period from Hedging Obligations, and the application of Financial Accounting Standards Codification No. 815—Derivatives and Hedging (formerly Financing Accounting Standards Board Statement No. 133), and its related pronouncements and interpretations (or any successor provision).

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any determination date, the ratio of (x) Consolidated Cash Flow Available for Fixed Charges for the prior four full fiscal quarters (the “Four Quarter Period”) for which financial results have been reported immediately preceding the determination date (the “Transaction Date”), to (y) the aggregate Consolidated Interest Incurred for the Four Quarter Period. For purposes of this definition, “Consolidated Cash Flow Available for Fixed Charges” and “Consolidated Interest Incurred” shall be calculated after giving effect on a *pro forma* basis for the period of such calculation to:

(a) the incurrence or the repayment, repurchase, redemption, retirement, defeasance or other discharge or the assumption by another Person that is not an Affiliate (collectively, “repayment”) of any Indebtedness of Holdings, the Borrower or any Restricted Subsidiary (and the application of the proceeds thereof) giving rise to the need to make such calculation, and any incurrence or repayment of other Indebtedness (and the application of the proceeds thereof), at any time on or after the first day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period, except that Indebtedness under revolving credit facilities shall be deemed to be the average daily balance of such Indebtedness during the Four Quarter Period (as reduced on such *pro forma* basis by the application of any proceeds of the incurrence of Indebtedness giving rise to the need to make such calculation);

(b) any Asset Disposition, Asset Acquisition (including any Asset Acquisition giving rise to the need to make such calculation as a result of Holdings, the Borrower or any Restricted Subsidiary (including any Person that becomes a Restricted Subsidiary as a result of any such Asset Acquisition) incurring Acquired Indebtedness at any time on or after the first day of the Four Quarter Period and on or prior to the Transaction Date), Investment, merger or consolidation as if such Asset Disposition, Asset Acquisition (including the incurrence or repayment of any such Indebtedness), Investment, merger or consolidation and the inclusion, notwithstanding clause (b) of the definition of “Consolidated Net Income,” of any Consolidated Cash Flow Available for Fixed Charges associated with such Asset Acquisition or other transaction as if it occurred on the first day of the Four Quarter Period; provided, however, that the Consolidated Cash Flow Available for Fixed Charges associated with any Asset Acquisition or other transaction shall not be included to the extent the net income so associated would be excluded pursuant to the definition of “Consolidated Net Income,” other than clause (b) thereof, as if it applied to the Person or assets involved before they were acquired; and

(c) the Consolidated Cash Flow Available for Fixed Charges and the Consolidated Interest Incurred attributable to discontinued operations, as determined in accordance with GAAP, shall be excluded.

Furthermore, in calculating “Consolidated Cash Flow Available for Fixed Charges” for purposes of determining the denominator (but not the numerator) of this “Consolidated Fixed Charge Coverage Ratio,”

(a) interest on Indebtedness in respect of which a *pro forma* calculation is required that is determined on a fluctuating basis as of the Transaction Date (including Indebtedness actually incurred on the Transaction Date) and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on the Transaction Date, and

(b) notwithstanding the immediately preceding clause (a), interest on such Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Protection Agreements, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

“Consolidated Interest Expense” of Holdings for any period means the Interest Expense of Holdings, the Borrower and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Incurred” for any period means the Interest Incurred of Holdings, the Borrower and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” for any period means the aggregate net income (or loss) of Holdings and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, that there will be excluded from such net income (loss) (to the extent otherwise included therein), without duplication:

(a) the net income (or loss) of (x) any Unrestricted Subsidiary (other than a Mortgage Subsidiary) or (y) any Person (other than a Restricted Subsidiary or a Mortgage Subsidiary) that is accounted for by the equity method of accounting, except, in each case, to the extent that any such income has actually been received by Holdings, the Borrower or any Restricted Subsidiary in the form of cash dividends or similar cash distributions during such period,

(b) except to the extent includable in Consolidated Net Income pursuant to clause (a) of this definition, the net income (or loss) of any Person that accrued prior to the date that (i) such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with Holdings, the Borrower or any of its Restricted Subsidiaries (except, in the case of an Unrestricted Subsidiary that is redesignated a Restricted Subsidiary during such period, to the extent of its retained earnings from the beginning of such period to the date of such redesignation) or (ii) the assets of such Person are acquired by Holdings or any Restricted Subsidiary,

(c) solely for the purpose of determining the amount available for Restricted Payments under clause (iii) of Section 6.04(a), the net income of any Restricted Subsidiary that is not a Loan Party to the extent that (but only so long as) the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of that income is not permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary during such period, except, the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to Holdings or another Restricted Subsidiary as a dividend,

(d) the gains or losses, together with any related provision for taxes, realized during such period by Holdings, the Borrower or any Restricted Subsidiary resulting from (i) the acquisition of securities, or extinguishment of Indebtedness or Hedging Obligations or other derivative instruments (including deferred financing costs written off and premiums paid), of Holdings or any Restricted Subsidiary, (ii) any Asset Disposition by Holdings or any Restricted Subsidiary, (iii) any non-cash income (or loss) related to currency gains or losses related to Indebtedness, intercompany balances and other balance sheet items and to Hedging Obligations pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging (formerly Financing Accounting Standards Board Statement No. 133) and its related pronouncements and interpretations (or any successor provision) and (iv) any non-cash expense, income or loss attributable to the movement in mark-to-market valuation of foreign currencies, Indebtedness or derivative instruments pursuant to GAAP,

(e) any ~~extraordinary~~, unusual and infrequent or non-recurring gain or loss (but excluding any impairment charges), in each case, less all fees and expenses relating thereto and any expenses, severance, relocation costs, curtailments or modifications to pension and post-retirement employee benefits plans, integration and other restructuring and business optimization costs, charges, reserves or expenses (including relating to acquisitions after the Closing Date), and one-time compensation charges together with any related provision for taxes, realized by Holdings, the Borrower or any Restricted Subsidiary,

(f) the cumulative effect of a change in accounting principles and changes as a result of adoption or modification of accounting policies during such period,

(g) any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations,

(h) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions or abandonments other than in the ordinary course of business, as determined in good faith by Holdings,

(i) (A) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, phantom equity, stock options, restricted stock, units or other rights to officers, directors, managers or employees and (B) non-cash income (loss) attributable to deferred compensation plans or trusts,

(j) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, recapitalization, Asset Disposition, issuance or repayment of Indebtedness, issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, and

(k) to the extent covered by insurance or indemnification and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is (i) not denied by the applicable carrier or indemnifying party in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), losses and expenses with respect to liability or casualty events or business interruption shall be excluded;

provided, further, that for purposes of calculating Consolidated Net Income solely as it relates to clause (iii) of Section 6.04(a), clauses (d)(ii) and (h) above shall not be applicable.

“Consolidated Tangible Assets” of Holdings as of any date means the total amount of assets of Holdings and its Restricted Subsidiaries (less applicable reserves) on a consolidated basis at the end of the fiscal quarter for which financial results have been reported immediately preceding such date, as determined in accordance with GAAP, less: (a) non-recourse mortgages secured by inventory, net of debt issuance costs, (b) liabilities from inventory not owned, net of debt issuance costs, (c) any deferred tax assets and any valuation allowance recorded with respect thereto, (d) Intangible Assets and (e) appropriate adjustments on account of minority interests of other Persons holding equity investments in Restricted Subsidiaries, in the case of each of clauses (a) through (e) above, as reflected on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date, with such *pro forma* adjustments to Consolidated Tangible Assets as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Consolidated Fixed Charge Coverage Ratio.”

“Consolidated Total Debt” of Holdings means, on any date of determination, the aggregate amount of Indebtedness of Holdings, the Borrower and Restricted Subsidiaries incurred under (without duplication): (x) Section 6.03(a) plus (y) Sections 6.03(b)(ii) and 6.03(b)(iii) plus (z) clauses (a), (c), (g), (i), (k), (n) and (u) of the definition of “Permitted Indebtedness” outstanding on the applicable date of determination. For purposes of calculating the Secured Debt Leverage Ratio, all amounts committed but not yet incurred under the Specified Existing Senior Lien Credit Facility (and any Specified Refinancing Indebtedness in respect thereof (or subsequently incurred Specified Refinancing Indebtedness with respect to any applicable prior Specified Refinancing Indebtedness)) shall be deemed to have been incurred.

“control” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Credit Facilities” means, with respect to Holdings, the Borrower or any of ~~its Restricted~~the ~~Subsidiaries~~Guarantors, one or more debt facilities or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that exchange, replace, refund, refinance, extend, renew, restate, amend, supplement or modify any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchanged, replacement, refunding, refinancing, extended, renewed, restated, amended, supplemented or modified facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 6.03) or adds Holdings, the Borrower or ~~Restricted~~the ~~Subsidiaries~~Guarantors as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

“Currency Agreement” of any Person means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in currency values. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute a Currency Agreement.

“Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

“Debtor Relief Laws” means Title 11 of the United States Code, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, examinership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning specified in Section 2.03(b)(iii).

“Default” means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

“Default Rate” means, with respect to any overdue Loan or interest, an interest rate equal to 2.00% per annum in excess of the interest rate otherwise applicable to such overdue Loan (or the Loan to which such overdue interest relates).

“Defaulting Lender” means, at any time, a Lender as to which the Administrative Agent has notified the Borrower that (a) such Lender has failed for two (2) or more Business Days to comply with its obligations under this Agreement to make a Loan (a “Lender Funding Obligation”) required to be funded hereunder, (b) such Lender has notified the Administrative Agent or Borrower in writing, that it will not comply with any such Lender Funding Obligation hereunder, or has defaulted on its Lender Funding Obligations under other loan agreements, credit agreements or other similar agreements in which it commits to extend credit generally or (c) such Lender has, for three (3) or more Business Days, failed to confirm in writing to the Borrower, in response to a written request of the Borrower (based on the reasonable belief that it may not fulfill its Lender Funding Obligations), that it will comply with its Lender Funding Obligations hereunder; provided, that any such Lender shall cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Borrower. The Administrative Agent or Borrower will promptly send to all parties hereto a copy of any notice to the Borrower or Administrative Agent, as applicable, provided for in this definition.

“Designation Amount” has the meaning specified under the definition of “Unrestricted Subsidiary.”

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Latest Maturity Date on the date of determination or (b) is convertible into or exchangeable or exercisable for (whether at the option of the issuer or the holder thereof) (i) debt securities or (ii) any Capital Stock referred to in (a) above, in each case, at any time prior to the Latest Maturity Date on the date of determination; provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require Holdings to repurchase or redeem such Capital Stock upon the occurrence of a change in control or asset disposition occurring prior to the Latest Maturity Date on the date of determination shall not constitute Disqualified Stock if the change in control or asset disposition provision applicable to such Capital Stock are no more favorable to such holders than the provisions of Section 6.07 or Section 6.09 (as applicable) and such Capital Stock specifically provides that Holdings will not repurchase or redeem any such Capital Stock pursuant to such provisions prior to Holdings’ repurchase of the Loans as are required pursuant to the provisions of Section 6.07 or Section 6.09 hereof (as applicable).

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

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person that meets the requirements to be an assignee under Section 9.07(b), provided, that under no circumstances shall (i) any Competitor be an assignee without the prior written consent of the Borrower and, (ii) subject to clauses (k) and (l) of Section 9.07, Holdings, the Borrower or any Affiliate thereof or a natural person, be an Eligible Assignee.

“Environmental Laws” has the meaning specified in Section 5.05.

“Equity Offering” means any public or private sale, after the Closing Date, of Qualified Stock of Holdings, other than (a) an issuance by or to any Subsidiary, (b) public offerings registered on Form S-4 or S-8 or any successor form thereto or (c) any issuance pursuant to employee benefit plans or otherwise in compensation to officers, directors or employees.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“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 7.01.

“Exchange” means the exchange by holders of Exchanged Existing Debt for the Initial Term Loans and cash pursuant to the ~~Exchange Agreement~~.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

~~“Exchange Agreement” means that certain Exchange Agreement, dated on or about the Closing Date, among the Borrower, Holding, other guarantors named therein, the other parties named therein and the holders named therein, relating to the Exchange.~~

~~“Exchange Documentation” means, collectively, the Exchange Agreement and all definitive documentation governing, or related to, the Exchange, this Agreement and the Exchanged Existing Debt, including all exchange agreements, consent agreements, indentures, security agreements, pledge agreements, certificates, instruments and other agreements.~~

“Exchanged Existing Debt” means \$162,996,000 aggregate principal amount of the term loans under the Existing Term Loan Agreement.

“Excluded Property” means (a) [reserved], (b) up to \$50.0 million of assets received in connection with Asset Dispositions and asset swaps or exchanges as permitted by clause (c) of the definition of “Permitted Investment”; provided that such assets are not of a character that would be Collateral and Holdings is not able to obtain a Lien on such assets in favor of the Administrative Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties after the use of reasonable efforts, (c) personal property where the cost of obtaining a security interest or perfection thereof exceeds its benefits (as reasonably determined by Holdings’ Board of Directors in a board resolution delivered to the Administrative Agent), (d) assets securing Purchase Money Indebtedness, Non-Recourse Indebtedness and Refinancing Non-Recourse Indebtedness to the extent the terms of such Indebtedness prohibit the incurrence of any other Liens thereon; provided that Holdings uses reasonable efforts to obtain Liens on the assets securing such Indebtedness, in favor of the Administrative Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties, that is junior to the Liens securing such Indebtedness and otherwise consistent with priorities set forth in the First Lien Intercreditor Agreement, (e) real property located outside the United States, (f) Unentitled Land, (g) equity interests in Unrestricted Subsidiaries, except for JV Holding Companies, (h) any property in a community under development with a dollar amount of investment as of the most recent month-end (as determined in accordance with GAAP) of less than \$2.0 million or with less than 10 lots remaining, (i) any assets or property excluded from the Collateral pursuant to clause (ii) of the proviso of Article 2 of the Security Agreement and (j) up to \$25.0 million of cash or cash equivalents that are pledged to secure obligations permitted to be secured pursuant to clause (d) of the definition of “Permitted Liens” if, after the use of reasonable efforts by Holdings to obtain a Lien on such cash or cash equivalents in favor of the Administrative Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties, the holders of the obligations secured by such cash and cash equivalents do not consent to the granting of such Liens.

~~“Excluded Subsidiary” means (a) each non-wholly owned Subsidiary and (b) each Subsidiary of Holdings (other than the Borrower) that has a book value of less than \$2.0 million, measured at the end of the most recently completed fiscal year for which financial statements have been provided as set forth under Section 6.12 (or if acquired or created subsequent to such delivery, measured at the most recent practicable date (or estimated in the reasonable judgment of Holdings)); provided that in each case, such Subsidiary has not guaranteed any other Applicable Debt of Holdings or the Borrower; provided, further, that in no event shall Excluded Subsidiaries comprise in the aggregate more than 2.0% of the Consolidated Tangible Assets, measured at the end of the most recently completed fiscal year for which financial statements have been provided as set forth under Section 6.12 hereof.~~

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Agent or Lender or required to be withheld or deducted from a payment to any Lender or an Agent, (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 Lender or Agent being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States 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 Term Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Term Commitment (other than pursuant to an assignment request by the Borrower under Section 3.07) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Term Commitment or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Lender's or Agent's failure to comply with Section 3.01(f) and (d) any withholding Taxes imposed under FATCA.

~~“Existing 8.000% Unsecured Notes” means the Borrower's 8.000% Senior Notes due 2027 issued pursuant to the Existing 8.000% Unsecured Notes Indenture.~~

~~“Existing 8.000% Unsecured Notes Indenture” means the Indenture, dated as of November 5, 2014, among the Borrower, the guarantors party thereto and Wilmington Trust, National Association, as trustee (as amended or supplemented from time to time).~~

“Existing 13.5%/5.0% Unsecured Notes” means the Borrower's 13.5% Senior Notes due 2026 and 5.0% Senior Notes due 2040, each (i) issued pursuant to the Existing 13.5%/5.0% Unsecured Notes Indenture and (ii) outstanding as of the Amendment No. 1 Effective Date immediately after giving effect to the transactions contemplated by the Amendment No. 1 Exchange Agreements.

“Existing 13.5%/5.0% Unsecured Notes Indenture” means the Indenture, dated as of February 1, 2018, among the Borrower, the guarantors named therein and Wilmington Trust, National Association, as trustee, governing the Existing 13.5% Unsecured Notes and the Existing 5.0% Unsecured Notes (as amended or supplemented from time to time in accordance with this Agreement).

~~“Existing 5.0% Unsecured Notes Exchange” means (a) the Borrower's offer to exchange, and subsequent exchange of, 164,860,000 aggregate principal amount of its Existing Secured Notes for a combination of cash, as applicable, and 1.75 Lien Notes pursuant to the terms and conditions set forth in the confidential offering memorandum and consent solicitation statement of the Borrower in respect of such offer and exchange, dated November 4, 2019 (as amended or supplemented from time to time), and (b) all payments made and securities issued in connection with the foregoing 5.0% Senior Notes due 2026 (i) issued pursuant to the Existing 13.5%/5.0% Unsecured Notes Indenture and (ii) outstanding as of the Amendment No. 1 Effective Date immediately after giving effect to the transactions contemplated by the Amendment No. 1 Exchange Agreements.~~

“Existing Revolving Senior Lien Credit Agreement Facility” means the credit facility under that certain \$125,000,000 Credit Agreement, dated as of October 31, 2019, as amended by the First Amendment dated as of November 27, 2019, the Second Amendment dated as of August 19, 2022, the Third Amendment dated as of September 25, 2023, and as further amended, restated, supplemented or modified from time to time in accordance with this Agreement, among the Borrower, Holdings, the other guarantors party thereto, the lenders party thereto and Wilmington Trust, National Association, as administrative agent.

~~“Existing Secured Notes” means the Borrower's 10.000% Senior Secured Notes due 2022 and the Borrower's 10.500% Senior Secured Notes due 2024, issued under the Existing Secured Notes Indenture.~~

~~“Existing Secured Notes Indenture” means the Indenture, dated as of July 27, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time), among the Borrower, Holdings and the other guarantors party thereto and the trustee named therein and the collateral agent named therein.~~

“Existing Term Loan Agreement” means that certain \$212,500,000 Credit Agreement, dated as of January 29, 2018, as amended by the First Amendment dated as of May 14, 2018, as amended by the Second Amendment dated as of October 31, 2019 and as further amended, restated, supplemented or otherwise modified from time to time, among the Borrower, Holdings, the guarantors party thereto, the lenders party thereto and Wilmington Trust, National Association, as administrative agent.

“Existing Unsecured Indebtedness” means (i) the Existing 13.5% Unsecured Notes and (ii) the Existing 5.0% Unsecured Notes, (ii) the obligations under the Existing Term Loan Agreement and (iii) the Existing 8.000% Unsecured Notes.

“Extended Term Loan Facility” means a facility providing for the Borrowing of Extended Term Loans.

“Extended Term Loans” shall have the meaning assigned to such term in Section 2.13(a)(ii).

“Extending Term Lender” shall have the meaning assigned to such term in Section 2.13(a)(ii).

“Extension” shall have the meaning specified in Section 2.13(a).

“Extension Offer” shall have the meaning specified in Section 2.13(a).

“Facility” means the Term Loan Facility.

“Fair Market Value” means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm’s-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by the Board of Directors of Holdings or a duly authorized committee thereof, as evidenced by a resolution of such Board of Directors or committee.

“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 with respect thereto or official administrative interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above), any intergovernmental agreements entered into to implement such Sections of the Code, and any laws, fiscal or regulatory legislation, rules, guidance notes and practices implementing the foregoing.

“Federal Funds Rate” means, for any day, the rate 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 shall be set forth on the Federal Reserve Bank of New York’s Website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the effective federal funds rate.

“Financing Lease Obligations” of any Person means the obligations of such Person that is required to be accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a financing or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“First Lien Collateral Agency Agreement” means the First Lien Collateral Agency Agreement dated as of October 31, 2019, ~~(as amended, restated, supplemented or otherwise modified from time to time (including by the First Lien Joinder and any other joinders thereto))~~, among the Borrower, Holdings and certain of their Subsidiaries, the Administrative Agent, the 1.125 Lien Collateral Agent ~~(as defined therein)~~, the 1.25 Lien Collateral Agent ~~(as defined therein)~~, the 1.5 Lien Collateral Agent ~~(as defined therein)~~, the Joint First Lien Collateral Agent and any other representative of the holders of any other Obligations permitted to be incurred and secured under this Agreement, ~~as may be amended, restated, supplemented or otherwise modified from time to time (including by the First Lien CAA/ICA Joinder and other joinders thereto)~~.

“First Lien CAA/ICA Joinder” means the joinder, dated as of the Closing Date, to the First Lien Collateral Agency Agreement and the First Lien Intercreditor Agreement, among Wilmington Trust, National Association, in its capacities as Administrative Agent and the 1.75 Pari Passu Lien Collateral Agent, with receipt acknowledged by the other first lien representatives and first lien collateral agents parties to the First Lien Collateral Agency Agreement and the First Lien Intercreditor Agreement.

“First Lien Intercreditor Agreement” means the First Lien Intercreditor Agreement, dated as of October 31, 2019, ~~(as amended, restated, supplemented or otherwise modified from time to time (including by the First Lien Joinder and any other joinders thereto))~~, among the Borrower, ~~Holdings and certain of their Subsidiaries, the First~~the Guarantors, Wilmington Trust, National Association, in its capacity as Collateral Agent hereunder, ~~the 1.125 Lien Trustee, the 1.125 Lien Collateral Agents (as defined therein), the First 1.25 Lien Representatives (as defined therein); Trustee, the 1.25 Lien Collateral Agent and~~ the Joint First Lien Collateral Agent and any other representative of the holders of any other Obligations permitted to be incurred and secured under this Agreement, ~~as may be amended, restated, supplemented or otherwise modified from time to time (including by the First Lien ICA/ICA Joinder and other joinders thereto)~~.

“First Lien Joinder” means the Joinder, dated as of October 5, 2023, to the First Lien Collateral Agency Agreement and the First Lien Intercreditor Agreement, among Wilmington Trust, National Association, in its capacities as set forth therein, with receipt acknowledged by the other first lien representatives and first lien collateral agents parties to the First Lien Collateral Agency Agreement and the First Lien Intercreditor Agreement.

“Four Quarter Period” has the meaning specified in the definition of “Consolidated Fixed Charge Coverage Ratio”.

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

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect from time to time.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, 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 body exercising such powers or functions).

“Guarantee” means the guarantee of the Loan Obligations by each Guarantor under this Agreement.

“guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part; provided, that the term “guarantee” does not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Guarantors” has the meaning specified in the introductory paragraph to this Agreement.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Interest Protection Agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, Currency Agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

“Historical Financial Statements” has the meaning specified in [Section 5.07](#).

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

[“Incremental Amendment” has the meaning specified in Section 2.16.](#)

[“Incremental Effective Date” has the meaning specified in Section 2.16.](#)

[“Incremental Lenders” has the meaning specified in Section 2.16.](#)

[“Incremental Term Loan Facility” means a facility providing for the Borrowing of Incremental Term Loans.](#)

[“Incremental Term Loans” has the meaning specified in Section 2.16.](#)

“incurrence” has the meaning specified in [Section 6.03\(a\)](#) hereof.

“Indebtedness” of any Person means, without duplication,

(a) any liability of such Person (i) for borrowed money or under any reimbursement obligation relating to a letter of credit or other similar instruments (other than standby letters of credit or similar instruments issued for the benefit of, or surety, performance, completion or payment bonds, earnest money notes or similar purpose undertakings or indemnifications issued by, such Person in the ordinary course of business), (ii) evidenced by a bond, note, debenture or similar instrument (including a purchase money obligation) given in connection with the acquisition of any businesses, properties or assets of any kind or with services incurred in connection with capital expenditures (other than any obligation to pay a contingent purchase price which, as of the date of incurrence thereof, is not required to be recorded as a liability in accordance with GAAP), or (iii) in respect of Financing Lease Obligations (to the extent of the Attributable Debt in respect thereof),

(b) any Indebtedness of others that such Person has guaranteed to the extent of the guarantee; provided, however, that Indebtedness of Holdings and its Restricted Subsidiaries will not include the obligations of Holdings or a Restricted Subsidiary under warehouse lines of credit of Mortgage Subsidiaries to repurchase mortgages at prices no greater than 98% of the principal amount thereof, and upon any such purchase the excess, if any, of the purchase price thereof over the Fair Market Value of the mortgages acquired, will constitute Restricted Payments subject to [Section 6.04](#) hereof,

(c) to the extent not otherwise included, the obligations of such Person under Hedging Obligations to the extent recorded as liabilities not constituting Interest Incurred, net of amounts recorded as assets in respect of such obligations, in accordance with GAAP, and

(d) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;

provided, that Indebtedness shall not include accounts payable, liabilities to trade creditors of such Person or other accrued expenses arising in the ordinary course of business or completion guarantees entered into in the ordinary course of business. The amount of Indebtedness of any Person at any date shall be (i) the outstanding balance at such date of all unconditional obligations as described above, net of any unamortized discount to be accounted for as Interest Expense, in accordance with GAAP, (ii) the maximum liability of such Person for any contingent obligations under clause (a) of this definition at such date, net of an unamortized discount to be accounted for as Interest Expense in accordance with GAAP, (iii) in the case of clause (c) above, zero, if permitted under clause (f) of the definition of “Permitted Indebtedness” or, otherwise, the net termination amount payable in respect thereof, and (iv) in the case of clause (d) above, the lesser of (x) the fair market value of any asset subject to a Lien securing the Indebtedness of others on the date that the Lien attaches and (y) the amount of the Indebtedness secured.

For the avoidance of doubt, obligations of any Person under a Permitted Bond Hedge transaction or a Permitted Warrant transaction shall be deemed not to constitute Indebtedness.

“Indemnified Liabilities” has the meaning specified in Section 9.05.

“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 9.05.

“Initial Term Commitment” means, as to each Initial Term Lender, (i) the outstanding principal amount plus accrued and unpaid interest of such Closing Date Exchanged Existing Debt exchanged for the principal amount of the Initial Term Loans, as set forth opposite such Initial Term Lender’s name in Schedule 2.01 under the caption “Initial Term Commitment” ~~—The aggregate principal amount of the Initial and (ii) such Lender’s Amendment No. 1 Term Commitments as of the Closing Date is \$81,498,000.~~

“Initial Term Lenders” means ~~the, at any time, any~~ Lenders ~~listed on Schedule 2.01~~ that has an Initial Term Commitment or an Initial Term Loan at such time.

“Initial Term Loan” ~~has the meaning specified in~~ means a Loan made pursuant to Section 2.01(a) or (b).

“Initial Term Loan Facility” means the facility providing for the incurrence of Initial Term Loans.

“Intangible Assets” of Holdings means all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items (other than any deferred tax assets) which would be treated as intangibles on the consolidated balance sheet of Holdings and its Restricted Subsidiaries prepared in accordance with GAAP.

“Intellectual Property Security Agreements” has the meaning set forth in the Security Agreement.

“Intercreditor Agreements” means, collectively (a) the First Lien Intercreditor Agreement and (b) the Junior Lien Intercreditor Agreement.

“Interest Expense” of any Person for any period means, without duplication, the aggregate amount of (a) interest which, in conformity with GAAP, would be set opposite the caption “interest expense” or any like caption on an income statement for such Person (including imputed interest included in Financing Lease Obligations, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, the net costs (but reduced by net gains) associated with Currency Agreements and Interest Protection Agreements, amortization of other financing fees and expenses, the interest portion of any deferred payment obligation, amortization of discount or premium, if any, and all other noncash interest expense (other than interest and other charges amortized to cost of sales)), and (b) all interest actually paid by Holdings or a Restricted Subsidiary under any guarantee of Indebtedness (including a guarantee of principal, interest or any combination thereof) of any Person other than Holdings, the Borrower or any Restricted Subsidiary during such period; provided, that Interest Expense shall exclude any expense associated with the complete write-off of financing fees and expenses in connection with the repayment of any Indebtedness.

“Interest Incurred” of any Person for any period means, without duplication, the aggregate amount of (a) Interest Expense and (b) all capitalized interest and amortized debt issuance costs.

“Interest Payment Date” means, as to each Loan, (a) the last Business Day of each January, April, July and October to occur while such Loan is outstanding, commencing with the first such Interest Payment Date to occur immediately after the Closing Date, (b) each date of any mandatory repayment made in respect thereof prior to the Termination Date of such Loan and (c) the Maturity Date of such Loan.

“Interest Protection Agreement” of any Person means any interest rate swap agreement, interest rate collar agreement, option or futures contract or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in interest rates with respect to Indebtedness permitted to be incurred under this Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute an Interest Protection Agreement.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“Investments” of any Person means (a) all investments by such Person in any other Person in the form of loans, advances or capital contributions, (b) all guarantees of Indebtedness of any other Person by such Person, (c) all purchases (or other acquisitions for consideration) by such Person of Indebtedness, Capital Stock or other securities of any other Person and (d) all other items that would be classified as investments in any other Person (including purchases of assets outside the ordinary course of business) on a balance sheet of such Person prepared in accordance with GAAP.

“IRS” means the United States Internal Revenue Service.

“Joint First Lien Collateral Agent” means Wilmington Trust, National Association, in its capacity as Joint First Lien Collateral Agent under the First Lien Collateral Agency Agreement.

“Junior Lien Indebtedness” has the meaning specified in Section 6.20.

“Junior Lien Intercreditor Agreement” means ~~the Second Amended and Restated Intercreditor Agreement, dated as of October 31, 2019, among the Borrower, Holdings, the other grantors party from time to time thereto, the Administrative Agent, the other Senior Representatives, the Senior Collateral Agents, the Junior Representatives, the Junior Collateral Agents, the Mortgage Tax Collateral Agent (in each case to the extent not defined herein, as defined therein) and the other parties thereto, as may be further amended, restated, supplemented or otherwise modified from time to time (including by the Junior Lien ICA Joinder and other joinders thereto)~~ any intercreditor agreement setting forth the relevant priority of Liens securing the Obligations subject to the First Lien Intercreditor Agreement, on the one hand, and the Second Lien Obligations (as defined therein (or the equivalent term therein)), on the other hand, which shall be on substantially the same terms as the First Lien Intercreditor Agreement (with the Loan Obligations being treated as senior priority obligations under such intercreditor agreement), including with respect to the release of Guarantees and Collateral (or on terms not materially less favorable to the Lenders as established by the Officer’s Certificate delivered pursuant to the terms of Section 8.08(d)), in a form reasonably satisfactory to the Borrower, the Guarantors and Wilmington Trust, National Association, in its capacities as Administrative Agent and 1.75 Pari Passu Lien Collateral Agent.

“Junior Lien ICA Joinder” means the joinder, dated as of the Closing Date, to the ~~Junior Lien~~ Second Amended and Restated Intercreditor Agreement, dated as of October 31, 2019, among the Borrower, Holdings, the other grantors party thereto, Wilmington Trust, National Association in its capacities as Administrative Agent the 1.75 Pari Passu Lien Collateral Agent and in the other capacities set forth therein and the other parties thereto.

“JV Holding Company” means a Subsidiary of JV Holdings, the only material asset of which constitutes Capital Stock of one or more joint ventures owned on the Closing Date or Permitted Joint Ventures in existence on the Closing Date or acquired or formed after the Closing Date; provided that neither JV Holdings nor K. Hovnanian JV Services Company, L.L.C. shall be deemed a JV Holding Company.

“JV Holdings” means K. Hovnanian JV Holdings, L.L.C.

“L/C Collateral” means cash and cash equivalents that secure obligations permitted to be secured pursuant to clause (d) of the definition of “Permitted Liens”.

“Land Banking Collateral Sales” has the meaning specified in the definition of “Asset Disposition”.

“Land Banking Transaction” means an arrangement relating to Property now owned or hereafter acquired whereby Holdings, the Borrower or a Restricted Subsidiary sells such Property to a Person (other than Holdings, the Borrower or a Restricted Subsidiary) and Holdings, the Borrower or a Restricted Subsidiary, as applicable, has an option to purchase such Property back on a specified schedule.

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date or expiration date applicable to any Loan or Term Commitment hereunder at such time, as extended in accordance with this Agreement from time to time.

“Laws” means, collectively, all applicable international, foreign, Federal, state, commonwealth 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.

“Lender” has the meaning specified in the introductory paragraph of this Agreement.

“Lender Funding Obligation” has the meaning specified in the definition of “Defaulting Lender.”

“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 the Borrower and the Administrative Agent.

“Lien” means, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this definition, a Person shall be deemed to own, subject to a Lien, any Property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such Property.

“Loan” means an extension of credit by a Lender to the Borrower in the form of a Term Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) the Agent Fee Letter (for purposes of [Section 9.05](#) only), (e) each other document, instrument or agreement entered into by a Loan Party for the benefit of any Agent or any Lender in connection with the foregoing ~~and~~, (f) [Amendment No. 1 and \(g\)](#) any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Notice” means a notice of a Borrowing delivered pursuant to [Section 2.02\(a\)](#), which, if in writing, shall be substantially in the form of [Exhibit A-1](#).

“Loan 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, 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 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 generality of the foregoing, the Loan Obligations of the Loan Parties under the Loan Documents include the obligation to pay principal, interest, charges, expenses, fees, Attorney Costs indemnities and other amounts payable by any Loan Party under any Loan Document.

“Loan Parties” means, collectively, Holdings, the Borrower and each Subsidiary Guarantor.

[“Majority Lenders” of any Class, means those Lenders which would constitute the Required Lenders under, and as defined in, this Agreement if all outstanding Loan Obligations of the other Classes under this Agreement were repaid in full and any Term Commitments with respect to such other Classes were terminated.](#)

“Make-Whole Premium” means, as of any date of determination, an amount equal to the excess, if any, of (a) the present value as of such prepayment date of (i) the principal amount of such Loans being prepaid plus the Prepayment Premium that would be payable in connection with a prepayment of such Loans occurring on November 15, 2021 plus (ii) all interest that would have accrued on the principal amount of such Loans being prepaid from such date through November 15, 2021 (excluding any accrued but unpaid interest to such prepayment date), in each case computed using a discount rate equal to the Treasury Rate (determined as of such prepayment date) plus 0.50%, over (b) the principal amount of such Loans being prepaid.

“Marketable Securities” means (a) equity securities that are listed on a national securities exchange and (b) debt securities that are rated by a nationally recognized rating agency, listed on a national securities exchange or covered by at least two reputable market makers.

“Material Adverse Effect” has the meaning specified in Section 5.01.

“Material Intellectual Property” means any intellectual property that is material to the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole (in the reasonable determination of the Borrower in good faith).

“Maturity Date” means with respect to the Initial Term Loan Facility, January 31, 2028; provided that the reference to Maturity Date (i) with respect to Refinancing Term Loans shall be the final maturity date as specified in the applicable Refinancing Term Loan Amendment ~~and~~, (ii) with respect to Extended Term Loans shall be the final maturity date as specified in the applicable Extension Offer and (iii) with respect to Incremental Term Loans shall be the final maturity date as specified in the applicable Incremental Amendment.

“Maturity/Weighted Average Life Excluded Amount” means (a) \$200.0 million less (b) the aggregate outstanding principal amount of Indebtedness incurred utilizing the Maturity/Weighted Average Life Excluded Amount.

“Maximum Rate” has the meaning specified in Section 9.10.

“Minimum Extension Condition” shall have the meaning specified in Section 2.13(b).

“Moody’s” means Moody’s Investors Service, Inc. or any successor to its debt rating business.

“Mortgage Subsidiary” means any Subsidiary of Holdings substantially all of whose operations consist of the mortgage lending business.

“Most Recent Fiscal Quarter” means the most recently completed fiscal quarter for which financial statements have been provided pursuant to Section 6.12 hereof.

“Net Cash Proceeds” means i) with respect to an Asset Disposition, payments received in cash (including any such payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise (including any cash received upon sale or disposition of such note or receivable), but only as and when received), excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the Property disposed of in such Asset Disposition, or received in any other non-cash form unless and until such non-cash consideration is converted into cash therefrom, in each case, net of all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all federal, state and local taxes required to be accrued as a liability under GAAP as a consequence of such Asset Disposition, and in each case net of a reasonable reserve for the after-tax cost of any indemnification or other payments (fixed and contingent) attributable to the seller’s indemnities or other obligations to the purchaser undertaken by Holdings, the Borrower or any of its Restricted Subsidiaries in connection with such Asset Disposition, and net of all payments made on any Indebtedness which is secured by or relates to such Property (other than Indebtedness secured by Liens on the Collateral) in accordance with the terms of any Lien or agreement upon or with respect to such Property or which such Indebtedness must by its terms or by applicable Law be repaid out of the proceeds from such Asset Disposition, and net of all contractually required distributions and payments made to minority interest holders in Restricted Subsidiaries or joint ventures as a result of such Asset Disposition; and

ii) with respect to the incurrence or issuance of any Indebtedness by Holdings, the Borrower or any Restricted Subsidiary meeting the definition of Other Prepayment Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees, commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the applicable party in connection with such incurrence or issuance.

“New 1.125 Lien Basket Debt” has the meaning specified in clause (a)(ii) of the definition of “Permitted Indebtedness”.

“New 1.25 Lien Basket Debt” has the meaning specified in clause (a)(iii) of the definition of “Permitted Indebtedness”.

“New 1.75 Lien Basket Debt” has the meaning specified in clause (i) of the definition of “Permitted Indebtedness”.

“New Secured Notes” means, collectively, the 1.125 Lien Notes; and the 1.25 Lien Notes; ~~the 1.5 Lien Notes and the 1.75 Lien Notes~~.

“Non-Defaulting Lender” means, at any time, a Lender that is not a Defaulting Lender.

“Non-Recourse Indebtedness” with respect to any Person means Indebtedness of such Person for which (a) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific property, including for the avoidance of doubt, assets directly related thereto or derived therefrom, identified in the instruments evidencing or securing such Indebtedness or other property of such Person financed pursuant to the Credit Facility of such Person under which such Indebtedness was incurred (provided that the aggregate principal amount of the total Indebtedness shall not exceed the purchase price or cost (including financing costs) of the properties financed thereby), (b) such properties were acquired (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property), constructed or improved with the proceeds of such Indebtedness or such Indebtedness was incurred within 365 days after the acquisition (directly or indirectly, including through the purchase of Capital Stock of the Person owning such property) or completion of such construction or improvement and (c) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness. Indebtedness which is otherwise Non-Recourse Indebtedness will not lose its character as Non-Recourse Indebtedness because there is recourse to the borrower, any guarantor or any other Person for (i) environmental warranties, covenants and indemnities, (ii) indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, deposits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics’ liens, breach of separateness covenants, and other customary exceptions, (iii) in the case of the borrower thereof only, other obligations in respect of such Indebtedness that are payable solely as a result of a voluntary or collusive non-voluntary bankruptcy filing (or similar filing or action) by such borrower or (iv) similar customary “bad-boy” guarantees.

“Non-Recourse Indebtedness Amount” shall have the meaning specified in Section 6.03(b).

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

“Note” means a Term Note.

“Obligations” means with respect to any Indebtedness, all obligations (whether in existence on the Closing Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration, upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest, penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Indebtedness, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar case or proceeding at the contract rate (including any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

“OFAC” has the meaning specified in Section 5.11.

“Officer’s Certificate,” when used with respect to the Borrower or Holdings, means a certificate signed by the chairman of the Board of Directors, the president, chief executive officer, any vice president, the chief financial officer, the treasurer, any assistant treasurer, the controller, any assistant controller, the secretary or any assistant secretary of the Borrower or Holdings, as the case may be.

“Opinion of Counsel” means a written opinion signed by legal counsel of the Borrower or Holdings, who may be an employee of, or counsel to, the Borrower or Holdings, and who shall be reasonably satisfactory to the Administrative Agent.

“Other Connection Taxes” means, with respect to any Lender or Agent, Taxes imposed as a result of a present or former connection between such Lender or Agent and the jurisdiction imposing such Tax (other than connections arising from such Lender or Agent 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 Prepayment Event” means the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.03 (other than Refinancing Term Loans or any Refinancing Indebtedness which Refinances the Loans), or permitted by the Required Lenders pursuant to Section 9.01.

“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 3.07).

“Outstanding Amount” means, with respect to any Term Loans on any date of determination, the aggregate outstanding principal amount thereof on such date, after giving effect to any deemed incurrence, Borrowings, prepayments or repayments of Term Loans, as the case may be, occurring on such date.

“Participant” has the meaning specified in Section 9.07(e).

“Participant Register” has the meaning specified in Section 9.07(e).

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into Law October 26, 2001)).

“Pari Secured Debt Obligations” ~~has the meaning ascribed to it in subclause (i)(f) of the definition of “Permitted Liens”~~ means any secured indebtedness that has equal lien priority relative to the Liens securing the Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements.

“Perfection Certificate” has the meaning set forth in the Security Agreement.

“Perfected Collateral” means the aggregate amount, at the time of determination, of:

(a) Cash Equivalents of Holdings, the Borrower and Restricted Subsidiaries to the extent the Liens thereon securing the Loan Obligations have been perfected pursuant to control agreements naming the Joint First Lien Collateral Agent as secured party;

(b) the book value (as of the last day of the Most Recent Fiscal Quarter) of any inventory constituting Collateral (to the extent the Liens securing such Collateral have been perfected), less the aggregate principal amount of any Non-Recourse Indebtedness, Refinancing Non-Recourse Indebtedness and Purchase Money Indebtedness (as of the last day of the Most Recent Fiscal Quarter) secured by Liens on such inventory that are senior or pari passu in priority with the Notes; and

the book value (as of the last day of the Most Recent Fiscal Quarter) of the Capital Stock in any JV Holding Company that is pledged as Collateral (to the extent the Liens securing such Collateral have been perfected).

“Permitted Bond Hedge” means any call or capped call option (or substantively equivalent derivative transaction) on Holdings’ Capital Stock purchased by Holdings, the Borrower or any Restricted Subsidiary in connection with the issuance of any Permitted Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge, less the proceeds received by Holdings, the Borrower or the Restricted Subsidiaries from the sale of any related Permitted Warrant, does not exceed the net proceeds received by Holdings, the Borrower or the Restricted Subsidiaries from the sale of such Permitted Convertible Indebtedness issued in connection with the Permitted Bond Hedge.

“Permitted Convertible Indebtedness” means Indebtedness of Holdings, the Borrower or any Restricted Subsidiary permitted to be incurred under the terms of this Agreement that is either (a) convertible or exchangeable into Capital Stock of Holdings (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such Capital Stock) or (b) sold as units with call options, warrants or rights to purchase (or substantively equivalent derivative transactions) that are exercisable for Capital Stock of Holdings and/or cash (in an amount determined by reference to the price of such Capital Stock).

“Permitted Convertible Indebtedness Call Transaction” means any Permitted Bond Hedge and any Permitted Warrant.

“Permitted Hovnanian Holders” means, collectively, Ara K. Hovnanian, the members of his immediate family and the members of the immediate family of the late Kevork S. Hovnanian, the respective estates, spouses, heirs, ancestors, lineal descendants, legatees and legal representatives of any of the foregoing and the trustee of any *bona fide* trust of which one or more of the foregoing are the sole beneficiaries or the grantors thereof, or any entity of which any of the foregoing, individually or collectively, beneficially own more than 50% of the Common Equity. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Agreement (or would result in a Change of Control Offer in the absence of the waiver of such requirement by Lenders in accordance with this Agreement) will thereafter constitute Permitted Hovnanian Holders.

“Permitted Indebtedness” means:

(a) Indebtedness under:

(i) ~~the Specified Credit Facility (and the guarantees thereof), in an aggregate amount outstanding at any one time and at the stated maturity thereof not to exceed \$125.0 million;~~

(ii) (x) the ~~1.125 Existing Senior Lien Notes-Credit Facility~~ (and the ~~1.125 Lien Guarantees~~ and (y) to the extent the ~~1.25 Lien Notes are no longer outstanding, Credit Facilities, in an aggregate principal amount outstanding at any one time thereof, which shall not include any guaranty by any Person that is not a Guarantor) and (y) any Specified Refinancing Indebtedness in respect thereof (including for the purposes of determining amounts outstanding under this clause (a)(ii), any Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (a)(ii) (and any subsequently incurred Specified Refinancing Indebtedness with respect to Specified Refinancing Indebtedness included in this clause (a)(ii) or Credit Facilities that otherwise meet the definition of Specified Replacement Facility, in an aggregate amount outstanding at any one time not to exceed \$125.0 million; provided that, for purposes of determining calculating the amounts of Indebtedness deemed outstanding under this clause (a)(ii)) not to exceed \$350.0 million (less any amounts of 1.125 Lien Notes repaid or repurchased pursuant to the mandatory prepayment provisions set forth in Sections 4.10 and 4.12 of the 1.125 Lien Indenture or similar provisions with respect to any (A)), all amounts committed but not yet incurred under the Existing Senior Lien Credit Facility, any such Specified Refinancing Indebtedness in respect thereof or (B) any such Credit Facilities); (such amount, the “Undrawn Amount”) shall be deemed to have been incurred;~~

(iii) (x) the ~~1.25 Lien Notes and the 1.25 Lien Guarantees~~ and (y) to the extent the ~~1.25 Lien Notes are no longer outstanding, Indebtedness incurred under any~~ Credit Facilities, in an aggregate principal amount outstanding at any one time (including for the purposes of determining amounts outstanding under this clause (a)(iii), ~~any~~ the ~~1.125 Lien Notes and the 1.125 Lien Guarantees thereof and any Specified Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (a)(iii) (and any subsequently incurred Specified Refinancing Indebtedness with respect to Specified Refinancing Indebtedness included in this clause (a)(iii) for purposes of determining amounts outstanding under this clause (a)(iii))~~) not to exceed \$282.4 million (less any amounts of ~~1.25 Lien Notes repaid or repurchased pursuant to the mandatory prepayment provisions set forth in Sections 4.10 and 4.12 of the 1.25 Lien Indenture or similar provisions with respect to any (A) Refinancing Indebtedness in respect thereof or (B) any such Credit Facilities);~~ 225.0 million (the “1.125 Lien Fixed Debt Cap”); provided that (x) any such Indebtedness incurred under this clause (a)(ii) after the Amendment No. 1 Effective Date that is not Specified Refinancing Indebtedness (the “New 1.125 Lien Basket Debt”) (A) shall mature no earlier than 91 days after the maturity date of the Loans, (B) shall have a Weighted Average Life to Maturity at the time such Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Loans and (C) to the extent such Indebtedness is secured by any assets other than the Collateral, Liens on such assets shall be granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations and (y) the 1.125 Lien Fixed Debt Cap shall be subject to Section 6.03(k);

(iv) ~~the 1.5 Lien Obligations and the 1.5 Lien Guarantees~~ Indebtedness incurred under any Credit Facilities in an aggregate principal amount outstanding at any one time (including for the purposes of determining amounts outstanding under this clause (a)(iv), ~~any~~ ~~iii~~), the ~~1.25 Lien Notes and the 1.25 Lien Guarantees thereof and any Specified Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (a)(iv) (and any subsequently incurred Specified Refinancing Indebtedness with respect to Specified Refinancing Indebtedness included in this clause (a)(iv) for purposes of determining amounts outstanding under this clause (a)(iv))~~) not to exceed (x) \$168.0 million (less any amounts of ~~1.5 Lien Notes repaid or repurchased pursuant to Sections 4.10 and 4.12 of the 1.5 Lien Indenture, pursuant to the mandatory prepayment provisions similar to those set forth in Sections 4.10 and 4.12 of the 1.5 Lien Indenture, in the indenture(s) governing the 1.5 Lien Obligations or similar provisions with respect to any Refinancing Indebtedness in respect thereof);~~ 430.0 million (this clause (x), the “1.25 Lien Fixed Debt Cap”) plus (y) an aggregate principal amount of Side Letter Exchanged Indebtedness not to exceed \$150.0 million; provided that (x) any such Indebtedness incurred under this clause (a)(iii) after the Amendment No. 1 Effective Date that is not Specified Refinancing Indebtedness or Side Letter Exchanged Indebtedness (the “New 1.25 Lien Basket Debt”) (A) shall mature no earlier than 91 days after the maturity date of the Loans, (B) shall have a Weighted Average Life to Maturity at the time such Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Loans and (C) to the extent such Indebtedness is secured by any assets other than the Collateral, Liens on such assets shall be granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations and (y) the 1.25 Lien Fixed Debt Cap shall be subject to Section 6.03(k);

(b) [Reserved];

(c) Indebtedness outstanding on the Closing Date, excluding Indebtedness constituting Permitted Indebtedness pursuant to clauses (a), (d) through (s), and (u) of this definition, which shall be deemed to be incurred pursuant to such clauses;

(d) Indebtedness in respect of obligations (other than obligations constituting debt for borrowed money) of Holdings and its Subsidiaries to the trustees under indentures for debt securities;

(e) intercompany debt obligations of (i) Holdings to the Borrower, (ii) the Borrower to Holdings, (iii) Holdings or the Borrower to any Subsidiary Guarantor and (iv) any Restricted Subsidiary to Holdings or the Borrower or any other Subsidiary Guarantor; provided, however, that any Indebtedness of any Subsidiary Guarantor or the Borrower or Holdings owed to any Subsidiary Guarantor or the Borrower that ceases to be a Subsidiary Guarantor shall be deemed to be incurred and shall be treated as an incurrence for purposes of Section 6.03 at the time the Subsidiary Guarantor in question ceases to be a Subsidiary Guarantor;

(f) Indebtedness of Holdings or the Borrower or any Subsidiary Guarantor under Hedging Obligations, in the case of any Currency Agreements or Interest Protection Agreements in a notional amount no greater than the payments due (at the time the related Currency Agreement or Interest Protection Agreement is entered into) with respect to the Indebtedness or currency being hedged, to the extent entered into in the ordinary course of business and not for speculative purposes;

(g) Purchase Money Indebtedness and Financing Lease Obligations entered into in the ordinary course of business in an aggregate principal amount (including for purposes of determining amounts outstanding under this clause (g), any Refinancing Indebtedness in respect thereof (and any subsequently incurred Refinancing Indebtedness with respect to Refinancing Indebtedness included in this clause (g) for purposes of determining amounts outstanding under this clause (g))) at any one time outstanding not to exceed \$30.0 million;

(h) obligations for, pledge of assets in respect of, and guaranties of, bond financings of political subdivisions or enterprises thereof in the ordinary course of business;

(i) Indebtedness incurred under any Credit Facilities (~~including the Term Loans~~) in an aggregate principal amount outstanding ~~under this clause (i)~~ at any one time (including for the purposes of determining amounts outstanding under this clause (i), the ~~1.75 Lien Notes~~Initial Term Loans (and ~~the Guarantees thereof~~, ~~any additional 1.75 Lien Notes (and guarantees thereof)~~ and any Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (i) (and any subsequently incurred Refinancing Indebtedness with respect to Refinancing Indebtedness included in this clause (i) for purposes of determining amounts outstanding under this clause (i))) not to exceed ~~\$240.0 million (less any amounts of 1.75 Lien Notes repaid or repurchased pursuant to Sections 4.10 and 4.12 of the 1.75 Lien Indenture and pursuant to similar mandatory prepayment provisions with respect to (A) any Refinancing Indebtedness or (B) any such Credit Facilities);~~175.0 million (the "1.75 Lien Fixed Debt Cap"); provided that, (x) any such Indebtedness incurred under this clause (i) after the Amendment No. 1 Effective Date that is not Refinancing Indebtedness (the "New 1.75 Lien Basket Debt") (A) shall mature no earlier than 91 days after the maturity date of the Loans, (B) shall have a Weighted Average Life to Maturity at the time such Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Loans and (C) to the extent such Indebtedness is secured by any assets other than the Collateral, Liens on such assets shall be granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations and (y) the 1.75 Lien Fixed Debt Cap shall be subject to Section 6.03(k).

(j) Indebtedness under warehouse lines of credit, repurchase agreements and Indebtedness secured only by mortgage loans and related assets of mortgage lending Subsidiaries in the ordinary course of a mortgage lending business;

(k) Indebtedness ~~under (x) Existing Unsecured Indebtedness (and guarantees thereof) and (y) to the extent the Existing Unsecured Indebtedness is no longer outstanding, that satisfies the Required Debt Terms and is incurred under any~~ Credit Facilities, in an aggregate principal amount outstanding at any one time (including for purposes of determining amounts outstanding under this clause (k), ~~any the Existing Unsecured Indebtedness (and the guarantees thereof, which shall not include any guarantee by a Person that is not a Guarantor) and any~~ Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (k) (and any subsequently incurred Refinancing Indebtedness with respect to Refinancing Indebtedness included in this clause (k) for purposes of determining amounts outstanding under this clause (k))) not to exceed \$247.0 million; provided that, at the option of the Borrower, Indebtedness under this clause (k) in an aggregate principal amount up to the available Maturity/Weighted Average Life Excluded Amount may be incurred without regard to the Required Debt Terms;

(l) obligations in respect of self-insurance, performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by Holdings or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business;

(m) [reserved];

(n) Indebtedness ~~under (x) the Second Lien Obligations (and guarantees thereof) and (y) to the extent the Second Lien Obligations are no longer outstanding, that satisfies the Required Debt Terms and is incurred under any~~ Credit Facilities, in an aggregate principal amount outstanding at any one time (including for purposes of determining amounts outstanding under this clause (n), any Refinancing Indebtedness in respect of Indebtedness incurred or deemed incurred under this clause (n) (and any subsequently incurred Refinancing Indebtedness with respect to Refinancing Indebtedness included in this clause (n) for purposes of determining amounts outstanding under this clause (n))) not to exceed ~~\$266.0 million;~~225.0 million; provided that, at the option of the Borrower, Indebtedness under this clause (n) in an aggregate principal amount up to the available Maturity/Weighted Average Life Excluded Amount may be incurred without regard to the Required Debt Terms;

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(p) Indebtedness of Holdings or any Restricted Subsidiary supported by a letter of credit (which letter of credit is incurred pursuant to another clause hereof (other than clause (l) of this definition)), in a principal amount not in excess of the stated amount of such letter of credit;

(q) Indebtedness of Holdings or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take or pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(r) Indebtedness of Holdings or any of its Restricted Subsidiaries in respect of Cash Management Services;

(s) obligations (other than Indebtedness for borrowed money) of Holdings or any of its Restricted Subsidiaries under an agreement with any governmental authority, quasi-governmental entity, utility, adjoining (or common master plan) landowner or seller of real property, in each case entered into in the ordinary course of business in connection with the acquisition of real property, to entitle, develop or construct infrastructure thereupon;

(t) the incurrence by Holdings or any Restricted Subsidiary of Indebtedness deemed to exist pursuant to the terms of a joint venture agreement as a result of a failure of Holdings or such Restricted Subsidiary to make a required capital contribution therein; provided that the only recourse on such Indebtedness is limited to Holdings' or such Restricted Subsidiary's equity interests in the related joint venture; and

(u) Indebtedness of Holdings, the Borrower or a Subsidiary Guarantor which ~~;~~ (i) satisfies the Required Debt Terms and (ii) together with all other Indebtedness under this clause (u), does not exceed \$75.0 million aggregate principal amount outstanding at any one time (including for purposes of determining amounts outstanding under this clause (u), any Refinancing Indebtedness in respect thereof (or of such Refinancing Indebtedness), which Refinancing Indebtedness shall be deemed to have been incurred under this clause (u)); provided that, at the option of the Borrower, Indebtedness under this clause (u) in an aggregate principal amount up to the available Maturity/Weighted Average Life Excluded Amount may be incurred without regard to the Required Debt Terms.

“Permitted Investment” means:

(a) Cash Equivalents;

(b) any Investment in Holdings, the Borrower or any Subsidiary Guarantor or any Person that becomes a Subsidiary Guarantor as a result of such Investment or that is consolidated or merged with or into, or transfers all or substantially all of the assets of it or an operating unit or line of business to, Holdings or a Subsidiary Guarantor;

(c) any receivables, loans or other consideration taken by Holdings, the Borrower or any Restricted Subsidiary in connection with any asset sale otherwise permitted by this Agreement; provided that non-cash consideration received in an Asset Disposition or an exchange or swap of assets shall be pledged as Collateral under the Collateral Documents to the extent the assets subject to such Asset Disposition or exchange or swap of assets constituted Collateral, with the Lien on such Collateral securing the Loans being of the same priority with respect to the Loans as the Lien on the assets disposed of; provided, further, that notwithstanding the foregoing clause, if such assets are not of a character that would be Collateral and Holdings is not able to obtain a Lien on such assets in favor of the Administrative Agent for the benefit of the Secured Parties after the use of reasonable efforts, up to an aggregate of \$50.0 million of (i) non-cash consideration and consideration received as referred to in Section 6.07(b), (ii) assets invested pursuant to Section 2.03(a)(vi) and (iii) assets received pursuant to clause (d) under the definition of “Asset Disposition” may be designated by Holdings or the Borrower as Excluded Property not required to be pledged as Collateral;

(d) Investments received in connection with any bankruptcy or reorganization proceeding, or as a result of foreclosure, perfection or enforcement of any Lien or any judgment or settlement of any Person in exchange for or satisfaction of Indebtedness or other obligations or other property received from such Person, or for other liabilities or obligations of such Person created, in accordance with the terms of this Agreement;

(e) Investments in Hedging Obligations described in the definition of “Permitted Indebtedness”;

(f) any loan or advance to an executive officer, director or employee of Holdings or any Restricted Subsidiary made in the ordinary course of business or in accordance with past practice; provided, however, that any such loan or advance exceeding \$1.0 million shall have been approved by the Board of Directors of Holdings or a committee thereof consisting of disinterested members;

- (g) Investments in interests in issuances of collateralized mortgage obligations, mortgages, mortgage loan servicing, or other mortgage related assets;
- (h) obligations of Holdings or a Restricted Subsidiary under warehouse lines of credit of Mortgage Subsidiaries to repurchase mortgages;
- (i) Investments in an aggregate amount at any time outstanding not to exceed the greater of (i) \$20.0 million and (ii) 1.4% of Consolidated Tangible Assets (measured at the time made and without giving effect to subsequent changes in value);
- (j) Guarantees issued in accordance with [Section 6.03](#);
- (k) Investments in existence on the Closing Date (other than Restricted Payments described in Section 6.04(b)(xii)) not otherwise constituting Permitted Investments pursuant to clause (b) above;
- (l) Permitted Bond Hedges which constitute Investments;
- (m) extensions of trade credit and credit in connection with the sale of land owned by Holdings or a Restricted Subsidiary which is zoned by the applicable governmental authority having jurisdiction for construction and use as a detached or attached (including town homes or condominium) single-family house (but excluding mobile homes), or the sale of a detached or attached (including town homes or condominium) single-family house (but excluding mobile homes) owned by Holdings or a Restricted Subsidiary which is completed or for which there has been a start of construction and which has been or is being constructed on any such land;
- (n) obligations (but not payments thereon) with respect to homeowners association obligations, community facility district bonds, metro district bonds, mello-ros bonds and subdivision improvement bonds and similar bonding requirements arising in the ordinary course of business of a homebuilder;
- (o) guarantee obligations, including completion guarantee or indemnification obligations (other than for the payment of borrowed money) entered into in the ordinary course of business and incurred for the benefit of any adjoining landowner, lender, seller of real property or municipal government authority (or enterprises thereof) in connection with the acquisition, construction, subdivision, entitlement and development of real property;
- (p) Investments the payment for which consists of Qualified Stock of Holdings; provided that such Qualified Stock will not increase the amount available for Restricted Payments under [clause \(iii\) of Section 6.04\(a\)](#);
- (q) advances, loans or extensions of trade credit in the ordinary course of business by Holdings or any of the Restricted Subsidiaries;
- (r) intercompany current liabilities owed by or to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of Holdings and its Subsidiaries [in connection with the wind-up, roll-off and/or closure of any property described in clause \(h\) of the definition of "Excluded Property"](#); and
- (s) insurance, lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business.

"Permitted Joint Venture" means any joint venture between the Borrower, Holdings or any of its Subsidiaries, on the one hand, and any other person that is not an affiliate of Holdings, on the other; provided that (i) such joint venture is solely engaged in the business of the development, construction and sale of homes and has no assets, liabilities or operations other than those reasonably related to such business, and (ii) such Person owns no Capital Stock or other equity interests in, ~~or Indebtedness of,~~ Holdings or any of its Restricted Subsidiaries and [owns no Indebtedness \(except in the case Holdings, any Applicable Debt that constitutes "capital markets" or bank lending Indebtedness\) and](#) makes no Investments in Holdings or any of its Restricted Subsidiaries.

"Permitted Liens" means

- (a) Liens for taxes, assessments or governmental or quasi-governmental charges or claims that (i) are not yet delinquent for a period of more than 30 days, (ii) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP, if required, or (iii) encumber solely property abandoned or in the process of being abandoned;

(b) statutory Liens of landlords and carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's or other Liens imposed by law and arising in the ordinary course of business and with respect to amounts that, to the extent applicable, either (i) are not yet delinquent for a period of more than 30 days or (ii) are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established or other provisions have been made in accordance with GAAP, if required;

(c) Liens (other than any Lien imposed by the Employer Retirement Income Security Act of 1974, as amended) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or similar legislation or other insurance related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety, stay, customs or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, performance and return-of-money bonds and other similar obligations (including letters of credit issued in lieu of any such bonds or to support the issuance thereof and including those to secure health, safety and environmental obligations);

(d) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, development obligations, progress payments, government contracts, utility services, developer's or other obligations to make on-site or off-site improvements and other obligations of like nature (exclusive of obligations for the payment of borrowed money but including the items referred to in the parenthetical in clause (a)(i) of the definition of "Indebtedness"), in each case incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries;

(e) attachment or judgment Liens not giving rise to a Default or an Event of Default;

(f) easements, dedications, assessment district or similar Liens in connection with municipal or special district financing, rights-of-way, restrictions, reservations and other similar charges, burdens, and other similar charges or encumbrances not materially interfering with the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries;

(g) zoning restrictions, licenses, restrictions on the use of real property or minor irregularities in title thereto, which do not materially impair the use of such real property in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries;

(h) Liens securing Indebtedness incurred pursuant to clause (j) of the definition of "Permitted Indebtedness";

(i) Liens on the Collateral securing:

~~(a) Indebtedness incurred or deemed incurred under clause (a)(i) of the definition of "Permitted Indebtedness"; provided that the Liens incurred pursuant to this clause (i)(a) may secure Senior Priority Lien Obligations;~~

~~(b) [Reserved];~~

~~(c) (i) Indebtedness incurred or deemed incurred under clause (a)(ii), (a)(iii) or (a)(iv) of the definition of "Permitted Indebtedness" and (ii) any Refinancing Indebtedness in respect thereof (and any subsequently incurred Refinancing Indebtedness in respect of any such Refinancing Indebtedness); provided that the Liens incurred pursuant to this clause (i)(c) may secure Senior Priority Lien Obligations;~~

~~(d) (i) Indebtedness incurred or deemed incurred under clauses (a)(i), (a)(ii) and (a)(iii) of the definition of "Permitted Indebtedness" and (ii) any Specified Refinancing Indebtedness in respect thereof (and any subsequently incurred Specified Refinancing Indebtedness in respect of any such Specified Refinancing Indebtedness); provided that, at the option of the Borrower, such Liens incurred pursuant to this clause (i)(d) shall rank (1) constitute Senior Priority Lien Obligations or (2) rank equal to or junior to the Liens securing the 1.75 Lien Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (in the case of any junior Liens, with the 1.75 Lien Loan Obligations being treated as senior priority obligations thereunder); as applicable;~~

~~(e) [Reserved];~~

(fc) ~~(i)~~ Indebtedness incurred or deemed incurred under clause (i) of the definition of “Permitted Indebtedness”; ~~including the 1.75 Lien Obligations, and (ii) any Refinancing Indebtedness in respect thereof (and any subsequently incurred Refinancing Indebtedness in respect of any such Refinancing Indebtedness) (Indebtedness so secured under clauses (f)(i) and (ii), collectively, the “Pari Secured Debt Obligations”);~~ provided that the Liens incurred pursuant to this clause (i)(fc) shall rank equal to or junior to the Liens securing the Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (in the case of any junior Liens, with the Loan Obligations being treated as senior priority obligations thereunder), as applicable; ~~and~~

(gd) any other Indebtedness (including Refinancing Indebtedness or Specified Refinancing Indebtedness) permitted to be incurred under this Agreement in an aggregate amount at any time outstanding not to exceed \$~~410.0~~325.0 million; provided that the Liens securing any such Indebtedness incurred pursuant to this clause (i)(gd) shall rank junior to the Liens on the Collateral securing the ~~1.75 Lien Loan~~ Obligations ~~(or if no longer outstanding, the Refinancing Indebtedness in respect thereof (or of such Refinancing Indebtedness))~~ pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (with the ~~1.75 Lien Loan~~ Obligations being treated as senior priority obligations thereunder), as applicable; and

(e) Incremental Term Loans and any Refinancing Indebtedness in respect thereof (and any subsequently incurred Refinancing Indebtedness in respect of such Refinancing Indebtedness); provided that the Liens incurred pursuant to this clause (i)(e) shall rank equal to or junior to the Liens securing the Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (in the case of any junior Liens, with the Loan Obligations being treated as senior priority obligations thereunder), as applicable;

(j) Liens securing Non-Recourse Indebtedness and Refinancing Non-Recourse Indebtedness of Holdings, the Borrower or any Restricted Subsidiary; provided, that such Liens apply only to (i) the property financed, constructed or improved out of the net proceeds of ~~the such~~ Non-Recourse Indebtedness ~~within 365 days after the incurrence of the Non-Recourse Indebtedness~~, and, including for the avoidance of doubt, assets directly related thereto or derived therefrom or other property of Holdings, the Borrower or any Restricted Subsidiary financed pursuant to the Credit Facility of such person under which the Non-Recourse Indebtedness or Refinancing Non-Recourse Indebtedness was incurred, or (ii) licenses, permits, authorizations, consent forms or contracts related to the acquisition, development, use or improvement of such property; provided, that Holdings uses reasonable efforts to obtain Liens on the assets securing such Indebtedness, in favor of the Administrative Agent for the benefit of the Secured Parties, that is junior to the Liens securing such Indebtedness and otherwise consistent with priorities set forth in the First Lien Intercreditor Agreement;

(k) Liens securing Purchase Money Indebtedness (and any Refinancing Indebtedness in respect thereof); provided, that such Liens apply only to (i) the property financed, designed, installed, constructed, leased or improved with the proceeds of such Purchase Money ~~Indebtedness within 365 days after the incurrence of such Purchase Money~~ Indebtedness, and, including for the avoidance of doubt, assets directly related thereto or derived therefrom or other property of Holdings, the Borrower or any Restricted Subsidiary financed pursuant to the Credit Facility of such person under which the Purchase Money Indebtedness was incurred, or (ii) licenses, permits, authorizations, consent forms or contracts related to the acquisition, development, use or improvement of such property;

(l) Liens on property or assets of Holdings, the Borrower or any Subsidiary Guarantor securing Indebtedness of Holdings, the Borrower or any Subsidiary Guarantor owing to Holdings, the Borrower or one or more Subsidiary Guarantors;

(m) leases, subleases, licenses or sublicenses (including of intellectual property) granted to others not materially interfering with the ordinary course of business of Holdings and the Restricted Subsidiaries;

(n) Financing Lease Obligations; provided, that such Liens apply only to the Property acquired and the related Indebtedness is incurred within 365 days after the acquisition of such Property;

(o) any right of first refusal, right of first offer, option, contract or other agreement to sell an asset; provided that such sale is not otherwise prohibited under this Agreement;

(p) any right of a lender or lenders to which Holdings, the Borrower or a Restricted Subsidiary may be indebted to offset against, or appropriate and apply to the payment of such, Indebtedness and any and all balances, credits, deposits, accounts or money of Holdings, the Borrower or a Restricted Subsidiary with or held by such lender or lenders or its Affiliates;

- (q) any pledge or deposit of cash or property in conjunction with obtaining surety, performance, completion or payment bonds and letters of credit or other similar instruments or providing earnest money obligations, escrows or similar purpose undertakings or indemnifications in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries;
- (r) Liens for homeowner, condominium, property owner association developments and similar fees, assessments and other payments;
- (s) Liens securing Refinancing Indebtedness (except Liens securing Refinancing Indebtedness in respect of Indebtedness secured pursuant to clauses (i) or (qq) under this definition); provided, that such Liens extend only to the assets securing the Indebtedness being refinanced and have the same or junior priority as the initial Liens;
- (t) Liens incurred in the ordinary course of business as security for the obligations of Holdings, the Borrower and the Restricted Subsidiaries with respect to indemnification in respect of title insurance providers;
- (u) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with Holdings or any Subsidiary of Holdings or becomes a Subsidiary of Holdings; provided, that such Liens were in existence prior to the contemplation of such merger or consolidation or acquisition and do not extend to any assets other than those of the Person merged into or consolidated with Holdings or the Subsidiary or acquired by Holdings or its Subsidiaries;
- (v) Liens on property existing at the time of acquisition thereof by Holdings or any Subsidiary of Holdings, provided, that such Liens were in existence prior to the contemplation of such acquisition;
- (w) Liens existing on the Closing Date (other than Liens securing Obligations under Indebtedness secured pursuant to clause (i) under this definition) and any extensions, renewals, refinancings or replacements thereof;
- (x) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (y) pledges, deposits and other Liens existing under, or required to be made in connection with, (i) earnest money obligations, escrows or similar purpose undertakings or indemnifications in connection with any purchase and sale agreement, (ii) development agreements or other contracts entered into with governmental authorities (or an entity sponsored by a governmental authority) in connection with the entitlement of real property or (iii) agreements for the funding of infrastructure, including in respect of the issuance of community facility district bonds, metro district bonds, subdivision improvement bonds and similar bonding requirements arising in the ordinary course of business of a homebuilder;
- (z) Liens securing obligations of Holdings or any Restricted Subsidiary to any third party in connection with any option, repurchase right or right of first refusal to purchase real property granted to the master developer or the seller of real property that arises as a result of the non-use or non-development of such real property by Holdings or any Restricted Subsidiary and joint development agreements with third parties to perform and/or pay for or reimburse the costs of construction and/or development related to or benefiting property (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom) of Holdings or any Restricted Subsidiary and property belonging to such third parties, in each case entered into in the ordinary course of business; provided that such Liens do not at any time encumber any property, other than the property (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom) financed by such Indebtedness and the proceeds and products thereof;
- (aa) Liens securing Hedging Obligations and Cash Management Services permitted to be incurred under this Agreement, so long as the related Indebtedness is, and is permitted under this Agreement to be, secured by a Lien on the same property securing such Hedging Obligations or Cash Management Services;
- (bb) Liens arising from Uniform Commercial Code (or equivalent statute) financing statement filings regarding operating leases or consignments entered into by Holdings or any Restricted Subsidiary in the ordinary course of business;
- (cc) Liens in favor of the Borrower or any other Loan Party;
- (dd) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;
- (ee) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(ff) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection, and (ii) in favor of banking or other financial institutions or electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(gg) the rights reserved or vested in any Person by the terms of any lease, license, grant or permit held by Holdings or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(hh) restrictive covenants affecting the use to which real property may be put; provided that the covenants are complied with;

(ii) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(jj) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(kk) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Holdings or any Restricted Subsidiary in the ordinary course of business;

(ll) Liens on the equity interests of a Mortgage Subsidiary securing Indebtedness of the type set forth under clause (j) of the definition of "Permitted Indebtedness";

(mm) [Reserved];

(nn) any encumbrance or restriction (including put and call arrangements) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement, to the extent that such encumbrance or restriction does not secure Indebtedness;

(oo) Liens on property or assets used to defease or to irrevocably satisfy and discharge Indebtedness; provided that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

(pp) easements, rights-of-way, dedications, covenants, conditions, restrictions, reservations and assessment district or similar Liens in connection with municipal or special district financing, agreements with adjoining landowners or state or local government authorities, quasi-governmental entities or utilities and other similar charges or encumbrances incurred in the ordinary course of business and which do not, in the aggregate, materially interfere with the ordinary course of business of Holdings and its Subsidiaries; and

(qq) Liens securing obligations not to exceed \$25.0 million at any one time outstanding; provided that any Liens on the Collateral securing any Indebtedness (or Obligations in respect thereof) incurred pursuant to this clause (qq) shall rank junior to the Liens securing the ~~1-75 LienLoan~~ Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (with the ~~1-75 LienLoan~~ Obligations being treated as senior priority obligations thereunder), as applicable.

For purposes of determining compliance with this definition of "Permitted Liens", (x) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category) and (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Borrower shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition.

"Permitted Warrant" means any call option on, warrant or right to purchase (or substantively equivalent derivative transaction) Holdings' Capital Stock sold by Holdings, the Borrower or any Restricted Subsidiary substantially concurrently with any purchase by Holdings, the Borrower or any Restricted Subsidiary of a related Permitted Bond Hedge.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Pledge” has the meaning specified in Section 9.07(i).

“Pledge Agreement” means the 1.75 Lien Pledge Agreement among the Borrower, the other Grantors named therein and Wilmington Trust, National Association in its capacities as the 1.75 Pari Passu Lien Collateral Agent and the Joint First Lien Collateral Agent, dated as of the Closing Date, which shall be substantially in the form of Exhibit J-2.

“Pledgee” has the meaning specified in Section 9.07(i).

“Pledging Lender” has the meaning specified in Section 9.07(i).

“Preferred Stock” of any Person means all Capital Stock of such Person which has a preference in liquidation or with respect to the payment of dividends.

“Prepay”, “Prepaid” and “Prepayment” have the meanings specified in Section 6.20 hereof.

“Prepayment Builder Amount” means, immediately before consummating a Prepayment under Section 6.20(a)(iv), an amount equal to (x) the sum of (a) \$24.0 million and (b) 30% of the increase in Perfected Collateral from and including (taken as one accounting period) November 1, 2019 and ending on the last day of Holdings’ fiscal quarter immediately preceding the date of such Prepayment minus (y) the aggregate amount of Prepayments made pursuant to Section 6.20(a)(iv) since October 31, 2019.

“Prepayment Indebtedness” has the meaning specified in Section 6.20 hereof.

“Prepayment Notice” has the meaning specified in Section 2.03(a)(i), which shall be substantially in the form of Exhibit A-2.

“Prepayment Premium” means, with respect to the payment or repayment of any Loan pursuant to Section 2.03 or Section 2.14, (a) prior to November 15, 2021, an amount equal to the Make-Whole Premium, (b) on or after November 15, 2021 and prior to November 15, 2022, an amount equal to the principal amount of the Loans prepaid or repaid multiplied by 5.00% (b) on or after November 15, 2022 and prior to November 15, 2023, an amount equal to the principal amount of the Loans prepaid or repaid multiplied by 2.50% and (c) on or after November 15, 2023, 0.00%.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Commitments of such Lender under the applicable Facility or Facilities or the Outstanding Amount of such Lender’s Term Loans under such Facility at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities or the aggregate Outstanding Amount of all Term Loans under such Facility at such time.

“Property” of any Person means all types of real, personal, tangible, intangible or mixed property owned by such Person, whether or not included in the most recent consolidated balance sheet of such Person and its Subsidiaries under GAAP.

“Public Filings” means Holding’s annual report on Form 10-K for the fiscal year ended October 31, ~~2018~~2023, each subsequently filed quarterly report on Form 10-Q and current report on Form 8-K (other than Items 2.02 and 7.01) and all other documents filed by Holdings with the Securities and Exchange Commission since November 1, ~~2018~~2023 under Section 13(a), 13(c), 14 and 15(d) of the Exchange Act on or prior to the Closing Amendment No. 1 Effective Date (other than Items 2.02 and 7.01 of a Form 8-K).

“Purchase Money Indebtedness” means Indebtedness of Holdings, the Borrower or any Restricted Subsidiary incurred for the purpose of financing all or any part of the purchase price, or the cost of design, installation, construction, lease or improvement, of any property to be used in the business of Holdings, the Borrower and the Restricted Subsidiaries; provided, however, that (a) the aggregate principal amount of such Indebtedness shall not exceed such purchase price or cost (including financing costs) and (b) such Indebtedness shall be incurred no later than 365 days after the acquisition of such property or completion of such design, installation, construction, lease or improvement.

“Purchasing Borrower Party” means Holdings or any subsidiary of Holdings.

“Qualified Stock” means Capital Stock of Holdings other than Disqualified Stock.

“Rating Agency” means a statistical rating agency or agencies, as the case may be, nationally recognized in the United States and selected by Holdings (as certified by a resolution of the Board of Directors of Holdings) which shall be substituted for S&P or Moody’s, or both, as the case may be.

“Real Estate Business” means homebuilding, housing construction, real estate development or construction and the sale of homes and related real estate activities, including the provision of mortgage financing or title insurance.

“Refinance” has the meaning specified in Section 2.14.

“Refinancing Effective Date” has the meaning specified in Section 2.14.

“Refinancing Indebtedness” means Indebtedness ~~(to the extent not Permitted Indebtedness)~~ that refunds, refinances or extends any Indebtedness of Holdings, the Borrower or any Restricted Subsidiary ~~(excluding Non-Recourse Indebtedness or Permitted Indebtedness described under clauses (dc), (eg), (fi), (hk), (jn), (l), and (o) through (tu) of the definition thereof)~~ of “Permitted Indebtedness” or under Sections 6.03(a), 6.03(b)(i), 6.03(b)(ii) and 6.03(b)(v), but only to the extent that:

(a) the Refinancing Indebtedness is subordinated, if at all, to the Loans or the Guarantees, as the case may be, to the same extent as the Indebtedness being refunded, refinanced or extended;

(b) the Refinancing Indebtedness is scheduled to mature either (x) other than in the case of the Existing 13.5% Unsecured Notes, no earlier than the Indebtedness being refunded, refinanced or extended or (y) no earlier than 91 days after the maturity date of the Loans;

(c) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Loans has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Indebtedness being refunded, refinanced or extended that is scheduled to mature on or prior to the maturity date of the Loans;

(d) such Refinancing Indebtedness is in an aggregate principal amount that is equal to or less than the aggregate principal amount then outstanding under the Indebtedness being refunded, refinanced or extended (plus all accrued interest thereon and the amount of any premiums (including tender premiums) and fees, costs and expenses incurred in connection with the refinancing thereof);

(e) such Refinancing Indebtedness, if secured, is (x) secured only by Permitted Liens (other than Liens permitted solely under clause (s) of the definition of “Permitted Liens”) at the time of such refinancing, refunding or ~~replacement~~extension (it being understood that secured Indebtedness may be refinanced with unsecured Indebtedness and unsecured Indebtedness may be refinanced with secured Indebtedness) and (y) to the extent the Refinancing Indebtedness being refunded, refinanced or extended was not secured by any assets other than the Collateral, ~~such Refinancing Indebtedness is not secured by any assets other than the Collateral; and Liens on such assets shall be granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations with such priorities as required pursuant to the definition of “Permitted Liens”;~~ and

(f) such Refinancing Indebtedness may not be incurred or guaranteed by any Person that is not the Borrower or a Guarantor hereunder unless such Person becomes a Guarantor hereunder;

provided, that for purposes of determining the principal amount outstanding under clauses ~~(a), (g), (i), (k), (n) and (u)~~ of the definition of “Permitted Indebtedness” ~~and (including, for the avoidance of doubt, the 1.75 Lien Fixed Debt Cap and the Senior/Pari Passu Priority Lien Fixed Debt Cap), clauses (i)(b), (i)(c), (i)(d), (k) and (qq)~~ of “Permitted Liens” and Section 6.03(k), the principal amount referred to in such clauses shall be calculated excluding any principal amount that was incurred in respect of amounts set forth in the parenthetical in clause (d) of this definition and such principal amount shall nonetheless be permitted under such clauses.

“Refinancing Term Lender” has the meaning specified in Section 2.14(b).

“Refinancing Term Loan Amendment” has the meaning specified in Section 2.14(c).

“Refinancing Term Loan Facility” means a facility providing for the Borrowing of Refinancing Term Loans.

“Refinancing Term Loan Series” has the meaning specified in Section 2.14(b).

“Refinancing Term Loans” has the meaning specified in Section 2.14(a).

“Refinancing Non-Recourse Indebtedness” has the meaning specified in Section 6.03(b).

“Register” has the meaning specified in Section 9.07(c).

“Related Indemnitee” has the meaning specified in Section 9.05.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the environment, or into, from or through any structure or facility.

“repayment” has the meaning specified in the definition of “Consolidated Fixed Charge Coverage Ratio”.

“Required Debt Terms” means the applicable Indebtedness complies with the following:

(a) such Indebtedness is scheduled to mature no earlier than 91 days after the maturity date of the Loans;

(b) such Indebtedness has a Weighted Average Life to Maturity at the time such Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Loans; and

(c) such Indebtedness may not be incurred or guaranteed by any Person that is not a Borrower or a Guarantor hereunder unless such Person becomes a Guarantor hereunder.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Aggregate Exposure of all Lenders on such date; provided, that the Aggregate Exposure of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Payment Date” has the meaning specified in Section 2.03(a)(iv).

“Required Prepayment Amount” has the meaning specified in Section 2.03(a)(iv).

“Reserved Indebtedness Amount” has the meaning specified in Section 6.03(i).

“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, executive vice president, vice president, chief financial officer, chief accounting officer, treasurer, assistant treasurer, controller or other similar officer of a Loan Party or, in the case of any foreign Subsidiary, any duly appointed authorized signatory or any director or managing member of such Person and, as to any document delivered on the Closing Date, any secretary or assistant secretary. 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. With respect to the Administrative Agent, “Responsible Officer” shall mean any officer, including any vice president, assistant vice president, trust officer or any other officer of the Administrative Agent customarily performing functions similar to those performed by any of the above designated officers, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject, in each case, having direct responsibility for the administration of this Agreement.

“Restricted Investment” means any Investment other than a Permitted Investment.

“Restricted Payment” means any of the following:

- (a) the declaration or payment of any dividend or any other distribution on Capital Stock of Holdings, the Borrower or any Restricted Subsidiary or any payment made to the direct or indirect holders (in their capacities as such) of Capital Stock of Holdings, the Borrower or any Restricted Subsidiary (other than (i) dividends or distributions payable solely in Qualified Stock and (ii) in the case of the Borrower or Restricted Subsidiaries, dividends or distributions payable to Holdings, the Borrower or a Restricted Subsidiary);
- (b) the purchase, redemption or other acquisition or retirement for value of any Capital Stock of Holdings, the Borrower or any Restricted Subsidiary (other than a payment made to Holdings, the Borrower or any Restricted Subsidiary); and
- (c) any Investment (other than any Permitted Investment), including any Investment in an Unrestricted Subsidiary (including by the designation of a Subsidiary of Holdings as an Unrestricted Subsidiary).

“Restricted Subsidiary” means any Subsidiary of Holdings which is not an Unrestricted Subsidiary.

“Rule 144A” means Rule 144A under the Securities Act.

“S&P” means S&P Global Ratings, a division of S&P Global, Inc., and its successors.

“Sanctioned Territory” has the meaning specified in Section 5.11(a).

“Sanctions” has the meaning specified in Section 5.11(a).

“SDN List” has the meaning specified in Section 5.11(a).

“Second Commitment” has the meaning specified in Section 2.03(a)(vi).

~~“Second Lien Indebtedness” means (a) the Existing Secured Notes and (b) all other Indebtedness of Holdings, the Borrower or any Restricted Subsidiary secured by Liens on the Collateral that are equal in priority to the Liens on the Collateral securing the Existing Secured Notes and guarantees thereof on a second-lien basis.~~

~~“Second Lien Obligations” means the Second Lien Indebtedness and all Obligations in respect thereof.~~

“Secured Debt Leverage Ratio” means, as of any date of determination, the ratio of (x) Consolidated Total Debt that is secured by a Lien (which shall include Non-Recourse Indebtedness regardless of whether such Non-Recourse Indebtedness is secured by a Lien) to (y) Consolidated Cash Flow Available for Fixed Charges for the Four Quarter Period for which financial results have been reported immediately preceding the determination date, with such pro forma adjustments to Consolidated Total Debt and Consolidated Cash Flow Available for Fixed Charges as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of “Consolidated Fixed Charge Coverage Ratio.”

“Secured Indebtedness” means any Indebtedness of Holdings or any of its Restricted Subsidiaries secured by a Lien on the Collateral and subject to the Intercreditor Agreements.

“Secured Obligations” means all Secured Indebtedness and all Obligations in respect thereof.

“Secured Parties” means, collectively, the Administrative Agent, the Joint First Lien Collateral Agent, the 1.75 Pari Passu Lien Collateral Agent, the Lenders, the Supplemental Administrative Agent, if any, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 8.05.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Security Agreement” means the 1.75 Lien Security Agreement among the Borrower, the other Grantors named therein and Wilmington Trust, National Association in its capacities as Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent, the Joint First Lien Collateral Agent and in the other capacities set forth therein, dated as of the Closing Date, which shall be substantially in the form of Exhibit J-1.

~~“Senior Credit Facility” means the credit facility issued under the Existing Revolving Credit Agreement, as amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time hereafter, including any such amendment, restatement, supplement, replacement, refinancing or other modification that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (to the extent such increase in borrowings is permitted under Section 6.03 hereof) or adds Holdings, the Borrower or Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders; provided that any amendment, restatement, supplement, replacement, refinancing or other modification of a Senior Credit Facility must comply with the last proviso in the definition of “Specified Credit Facility”.~~

“Senior/Pari Passu Priority Lien Fixed Debt Cap” means the sum of the 1.125 Lien Fixed Debt Cap, the 1.25 Lien Fixed Debt Cap and the 1.75 Lien Fixed Debt Cap.

“Senior Priority Lien Obligations” means all Indebtedness secured by Liens on the Collateral that are senior in priority to the Liens on the Collateral securing the Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreement (regardless of any priority level among such Senior Priority Lien Obligations), including the Existing Senior Lien Credit Facility and the New Secured Notes ~~(other than the 1.75 Lien Notes)~~.

“Side Letter” means the letter agreement described in the Current Report on Form 8-K filed by Holdings with the Commission on September 25, 2023 (the “2023 8-K”) among Holdings, the Borrower and the Side Letter Specified Persons, a copy of which has not been shared with the Lenders or any of their Affiliates. According to such 2023 8-K, such letter agreement provides that the Side Letter Specified Persons may, at their option from time to time, exchange Specified Junior Debt into a principal amount of 1.25 Lien Notes not to exceed \$150.0 million in the aggregate (the “Side Letter Maximum Amount”) (any such 1.25 Lien Notes (and the related 1.25 Lien Guarantees) issued in exchange for Specified Junior Debt pursuant to such letter agreement, “Side Letter Exchanged Indebtedness”) and, in any such exchange, the Borrower will be required to issue a principal amount of 1.25 Lien Notes equal to (i) the price at which such Side Letter Specified Persons acquired such Specified Junior Debt (the “Specified Person Purchase Price”), plus (ii) 20% of the difference between the principal amount of such Specified Junior Debt and the Specified Person Purchase Price (such sum, the “Company Acquisition Price”); provided that (i) the Company Acquisition Price shall be reduced, if applicable, such that the per annum interest expense on the applicable issuance of the Side Letter Exchanged Indebtedness does not exceed the per annum interest expense on the applicable Specified Junior Debt being exchanged and (ii) the Borrower shall have the option to purchase such Specified Junior Debt in cash at the Company Acquisition Price in lieu of consummating any such exchange.

“Side Letter Exchanged Indebtedness” has the meaning set forth in the definition of “Side Letter”.

“Side Letter Exchanged Incurrence Date” has the meaning specified in Section 2.03(a)(iv).

“Side Letter Maximum Amount” has the meaning set forth in the definition of “Side Letter”.

“Side Letter Specified Persons” means the persons named as such in the 2023 8-K.

“Significant Subsidiary” means any Subsidiary of Holdings which would constitute a “significant subsidiary” as defined in Rule 1-02(w)(1) or (2) of Regulation S-X under the Securities Act and the Exchange Act as in effect on the Closing Date.

~~“Specified Credit Facility” means the Senior Credit Facility and, with respect to the Borrower, Holdings or any of its Subsidiary Guarantors, one or more debt facilities (including, without limitation, commercial paper facilities (including indentures)) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, guarantees, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures, credit facilities or commercial paper facilities that exchange, replace, refund, refinance, extend, renew, restate, amend, supplement or modify any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchanged, replacement, refunding, refinancing, extended, renewed, restated, amended, supplemented or modified facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 6.02 hereof) or adds the Borrower, Holdings or Subsidiary Guarantors as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender, holder, beneficial owner or group of lenders, holder or beneficial owners; provided, further, that the amount of any payment made pursuant to prepayment penalty, make-whole or applicable premium of any kind shall be taken into account in determining the aggregate principal amount outstanding under any such Specified Credit Facility.~~

~~“Specified Transactions” shall mean (1) the consummation of the Existing Notes Exchange, (2) the entry into and effectiveness of this Agreement and the incurrence of the Initial Term Loans and (3) the consummation of the Exchange.~~

“Simultaneous Transaction” means the occurrence of integrated transactions in which (i) first, a repayment, prepayment or redemption of any Permitted Indebtedness incurred under clause (a)(ii) or (a)(iii) of the definition thereof occurs (the amount of such repayment, prepayment or redemption, the “Simultaneous Transaction Redemption Amount”) and (ii) second, Side Letter Exchanged Indebtedness (other than in connection with the exchange of Term Loans) is issued pursuant to the Side Letter.

“Simultaneous Transaction Redemption Amount” has the meaning set forth in the definition of “Simultaneous Transaction”.

“Specified Aggregate Prepayment Condition” has the meaning set forth in Section 2.03(a)(iv).

“Specified Condition Event” means each occasion on which (x) Side Letter Exchanged Indebtedness is incurred (other than in connection with the exchange of Term Loans) and (y) either (i) no prepayment of Initial Term Loans is made pursuant to Section 2.03(a)(iv) or (ii) a prepayment of Initial Term Loans is made pursuant to Section 2.03(a)(iv) in an amount that is less than the Required Prepayment Amount, in each case of this clause (y), as a result of the application of the Specified Conditions.

“Specified Conditions” has the meaning set forth in Section 2.03(a)(iv).

“Specified Condition Notice” has the meaning set forth in Section 2.03(a)(iv).

“Specified Indebtedness” means the 1.125 Lien Notes, the 1.25 Lien Notes, the Existing Senior Lien Credit Facility, the Existing 13.5% Unsecured Notes and the Existing 5.0% Unsecured Notes, and any Refinancing Indebtedness or Specified Refinancing Indebtedness in respect thereof.

“Specified Junior Debt” means (i) Junior Lien Indebtedness, Existing Unsecured Indebtedness and Subordinated Indebtedness (each as defined in the 1.25 Lien Indenture as in effect on the Amendment No. 1 Effective Date) and (ii) Prepayment Indebtedness (as defined in the 1.25 Lien Notes Indenture as in effect on the Amendment No. 1 Effective Date) in respect thereof and/or any other Indebtedness incurred in compliance with Section 4.16 of the 1.25 Lien Notes Indenture (as in effect on the Amendment No. 1 Effective Date).

“Specified Liquidity” means, as of the applicable Side Letter Exchanged Indebtedness Incurrence Date, the sum of (i) unrestricted cash and cash equivalents of Holdings and its Restricted Subsidiaries (determined in accordance with GAAP) as shown under “Homebuilding” on Holdings’ balance sheet, (ii) restricted cash and cash equivalents of Holdings and its Restricted Subsidiaries (determined in accordance with GAAP) as shown under “Homebuilding” on Holdings’ balance sheet, that is required to cash collateralize letters of credit and (iii) the Undrawn Amount; provided, that, in connection with the issuance of Side Letter Exchanged Indebtedness as part of a Simultaneous Transaction, the applicable Simultaneous Transaction Redemption Amount will be included in the calculation of Specified Liquidity.

“Specified Liquidity Condition” has the meaning set forth in Section 2.03(a)(iv).

“Specified Person Purchase Price” has the meaning assigned to such term in the definition of “Side Letter”.

“Specified Refinancing Indebtedness” means Indebtedness that refunds, refinances or extends any Indebtedness of Holdings, the Borrower or any Subsidiary Guarantor incurred under clause (a) of the definition of “Permitted Indebtedness”; but only to the extent that:

(a) such Specified Refinancing Indebtedness is scheduled to mature no earlier than the Indebtedness being refunded, refinanced or extended;

(b) such Specified Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Specified Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being refunded, refinanced or extended;

(c) such Specified Refinancing Indebtedness is in an aggregate principal amount that is equal to or less than the aggregate principal amount then outstanding under the Indebtedness being refunded, refinanced or extended (plus all accrued interest thereon and the amount of any premiums (including tender premiums) and fees, costs and expenses incurred in connection with the refinancing thereof);

(d) (x) such Specified Refinancing Indebtedness, if secured, is secured only by Permitted Liens at the time of such refinancing, refunding or extension and (y) to the extent such Specified Refinancing Indebtedness is secured by any assets other than the Collateral, Liens on such assets shall be granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations;

(e) such Specified Refinancing Indebtedness may not be incurred or guaranteed by any Person that is not the Borrower or a Guarantor hereunder unless such Person becomes a Guarantor hereunder; and

(f) with respect to Specified Refinancing Indebtedness that refunds, refinances or extends Permitted Indebtedness described under clause (a)(i) of the definition thereof, such Specified Refinancing Indebtedness shall be in the form of a revolving credit facility; provided, that, to the extent the Borrower is unable to obtain a refunding, refinancing or extension of all or any portion of such Permitted Indebtedness in the form of a revolving credit facility after using bona fide efforts (as determined by Holdings), the Borrower may obtain Specified Refinancing Indebtedness in the form one or more term loan facilities or other debt facilities, including under an indenture (such facility, a “Specified Replacement Facility”);

provided, that for purposes of determining the principal amount outstanding under clause (a) of the definition of “Permitted Indebtedness” (including, for the avoidance of doubt, the 1.125 Lien Fixed Debt Cap, the 1.25 Lien Fixed Debt Cap and the Senior/Pari Passu Priority Lien Fixed Debt Cap), clause (i)(a) of “Permitted Liens” and Section 6.03(k), the principal amount referred to in such clauses shall be calculated excluding any principal amount that was incurred in respect of amounts set forth in the parenthetical in clause (c) of this definition and such principal amount shall nonetheless be permitted under such clauses.

“Specified Replacement Facility” has the meaning set forth in the definition of “Specified Refinancing Indebtedness”.

“Specified Senior Lien Document” means the 1.125 Lien Notes Indenture, the 1.25 Lien Notes Indenture and the Existing Senior Lien Credit Facility.

“Specified Senior Lien Indebtedness” means any Indebtedness outstanding under a Specified Senior Lien Document.

“Subordinated Indebtedness” means Indebtedness subordinated in right of payment to the Loans pursuant to a written agreement.

“Subsidiary” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is at the time directly or indirectly owned or controlled by such Person.

“Subsidiary Guarantor” has the meaning specified in the introductory paragraph to this Agreement. Each Subsidiary Guarantor as of the Closing Date is listed on Schedule 10.01.

“Successor” has the meaning specified in Section 6.11(i).

“Supplemental Administrative Agent” has the meaning specified in Section 8.10(a) and “Supplemental Administrative Agents” shall have the corresponding meaning.

“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 Commitment” means an Initial Term Commitment, a commitment in respect of Refinancing Term Loans or a commitment in respect of Extended Term Loans.

“Term Lender” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“Term Loan Facility” means the Initial Term Loan Facility, each Refinancing Term Loan Facility ~~and~~, each Extended Term Loan Facility and each Incremental Term Loan Facility.

“Term Loans” means Initial Term Loans, Refinancing Term Loans ~~and~~, Extended Term Loans or Incremental Term Loans.

“Term Note” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B hereto, evidencing the aggregate indebtedness of the Borrower to such Term Lender resulting from the Initial Term Loans made by such Initial Term Lenders.

“Termination Date” has the meaning specified in Section 8.08(a).

“Total Outstandings” means, as of any date of determination, the aggregate Outstanding Amount of all Loans on such date.

“tranche” shall have the meaning specified in Section 2.13(a).

“Transaction Date” has the meaning specified in the definition of “Consolidated Fixed Charge Coverage Ratio”.

“Treasury Rate” means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity, as compiled by and published in the most recent statistical release designated as “H.15” under the caption “Treasury constant maturities” or any successor publication which is published at least weekly by the Board of Governors of the Federal Reserve System (or companion online data resource published by the Board of Governors of the Federal Reserve System) and which establishes yield on actively traded United States Treasury securities adjusted to constant maturity that has become publicly available at least two Business Days prior to date of such prepayment (or, if such statistical release is no longer published, any publicly available source or similar market data), most nearly equal to the period from the date of such prepayment to November 15, 2021; provided, however, that if the period from the date of such prepayment to November 15, 2021 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the date of such prepayment to November 15, 2021 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Undrawn Amount” has the meaning specified in the definition of “Permitted Indebtedness”.

“Unentitled Land” means land owned by the Borrower or a Guarantor which has not been granted preliminary approvals ((i) in New Jersey, as defined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and (ii) for states other than New Jersey, a point in time equivalent thereto) for residential development.

“Uniform Commercial Code” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the creation or perfection of a security interest in any item or items of Collateral.

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

~~“Unrestricted Cash” means the aggregate amount of cash held in bank accounts of Borrower and the Guarantors that are subject to control agreements in favor of the Joint First Lien Collateral Agent to the extent that the use of such cash for application to payment of the Loan Obligations or other Indebtedness is not prohibited by law or any contract or other agreement (including, with respect to cash held in a bank account of any Subsidiary Guarantor, that such Subsidiary Guarantor is not subject to any restriction on its ability to distribute such cash to Borrower), and such cash is free and clear of all Liens (other than Liens in favor of the Administrative Agent, the New Secured Notes, Second Lien Indebtedness and any statutory Liens in favor of banks (including rights of set-off)).~~

“Unrestricted Subsidiary” means any Subsidiary of Holdings so designated by a resolution adopted by the Board of Directors of Holdings or a duly authorized committee thereof as provided below and provided, that any such Subsidiary (including any JV Holding Company and any Permitted Joint Venture) so designated as an Unrestricted Subsidiary is used, from and after the date of designation, solely in the ordinary course of business consistent with past practice, including the provision of mortgage financing or title insurance and joint venture operations, and has no assets, liabilities or operations other than those reasonably related to such business purpose; provided, further, that the holders of Indebtedness thereof do not, from and after the date of designation, have direct or indirect recourse against Holdings, the Borrower or any Restricted Subsidiary, and neither Holdings, the Borrower nor any Restricted Subsidiary otherwise has liability for, any payment obligations in respect of such Indebtedness (including any undertaking, agreement or instrument evidencing such Indebtedness), except, in each case, to the extent that the amount thereof constitutes a Restricted Payment or Permitted Investment permitted by this Agreement, in the case of Non-Recourse Indebtedness, to the extent such recourse or liability is for the matters discussed in the last sentence of the definition of “Non-Recourse Indebtedness,” or to the extent such Indebtedness is a guarantee by such Subsidiary of Indebtedness of Holdings, the Borrower or a Restricted Subsidiary. As of the Closing Date, the Unrestricted Subsidiaries are the Subsidiaries of Holdings named in Schedule 1.01 hereto.

Subject to the foregoing, the Board of Directors of Holdings or a duly authorized committee thereof may designate any Subsidiary in addition to those named in [Schedule 1.01](#) hereto to be an Unrestricted Subsidiary; provided, however, that (a) the net amount (the “[Designation Amount](#)”) then outstanding of all previous Investments by Holdings and the Restricted Subsidiaries in such Subsidiary will be deemed to be a Restricted Payment at the time of such designation and will reduce the amount available for Restricted Payments under [Section 6.04](#) hereof to the extent provided therein, (b) Holdings must be permitted under [Section 6.04](#) hereof or pursuant to the definition of “Permitted Investment” to make the Restricted Payment deemed to have been made pursuant to [clause \(a\)](#) of this paragraph, and (c) after giving effect to such designation, no Default or Event of Default shall have occurred or be continuing. In accordance with the foregoing, and not in limitation thereof, Investments made by any Person in any Subsidiary of such Person prior to such Person’s merger with Holdings or any Restricted Subsidiary (but not in contemplation or anticipation of such merger) shall not be counted as an Investment by Holdings or such Restricted Subsidiary if such Subsidiary of such Person is designated as an Unrestricted Subsidiary.

The Board of Directors of Holdings or a duly authorized committee thereof may also redesignate an Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that (a) the Indebtedness of such Unrestricted Subsidiary as of the date of such redesignation could then be incurred under [Section 6.03](#) hereof and (b) immediately after giving effect to such redesignation and the incurrence of any such additional Indebtedness, (i) Holdings and the Restricted Subsidiaries could incur \$1.00 of additional Indebtedness under [Section 6.03\(a\)](#) hereof or (ii) the Consolidated Fixed Charge Coverage Ratio would be equal to or greater than the Consolidated Fixed Charge Coverage Ratio immediately prior to such redesignation. Any such designation or redesignation by the Board of Directors of Holdings or a committee thereof will be evidenced to the Administrative Agent by the delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of Holdings or a committee thereof giving effect to such designation or redesignation and an Officer’s Certificate certifying that such designation or redesignation complied with the foregoing conditions and setting forth the underlying calculations of such Officer’s Certificate. The designation of any Person as an Unrestricted Subsidiary shall be deemed to include a designation of all Subsidiaries of such Person as Unrestricted Subsidiaries; provided, however, that the ownership of the general partnership interest (or a similar member’s interest in a limited liability company) by an Unrestricted Subsidiary shall not cause a Subsidiary of Holdings of which more than 95% of the equity interest is held by Holdings or one or more Restricted Subsidiaries to be deemed an Unrestricted Subsidiary.

[“Unsecured Term Loan Exchange Agreement”](#) means the [Unsecured Term Loan Exchange Agreement, dated on or about the Amendment No. 1 Effective Date, among the Borrower, Holdings, the other guarantors party thereto and the other parties named therein, relating to the Amendment No. 1 Exchange.](#)

[“U.S. Person”](#) means any Person that is a “United States person” within the meaning of Section 7701(a)(30) of the Code.

[“U.S. Tax Certificate”](#) has the meaning set forth in [Section 3.01\(f\)\(i\)\(B\)\(3\)](#).

[“Weighted Average Life to Maturity”](#) means, when applied to any Indebtedness or portion thereof at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the sum of all such payments described in [clause \(a\)\(i\)](#) of this definition.

[“Withholding Agent”](#) means any Loan Party, the Administrative Agent and, for U.S. federal income tax purposes only, any other withholding agent.

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

SECTION 1.02 Rules of Construction. Unless the context otherwise requires or except as otherwise expressly provided:

(a) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(b) “herein,” “hereof” and other words of similar import refer to this Agreement as a whole and not to any particular Section, Article or other subdivision;

(c) the use herein of the word “include,” “includes” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but rather shall be deemed to be followed by the phrase “without limitation” and to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter;

(d) all references to Sections or Articles or Exhibits refer to Sections or Articles or Exhibits of or to this Agreement unless otherwise indicated;

(e) references to agreements or instruments, or to statutes or regulations, are to such agreements or instruments, or statutes or regulations, as amended from time to time (or to successor statutes and regulations); and

(f) in the event that a transaction meets the criteria of more than one category of permitted transactions or listed exceptions, the Borrower may classify such transaction as it, in its sole discretion, determines.

SECTION 1.03 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable).

SECTION 1.04 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

ARTICLE II

THE COMMITMENTS AND BORROWINGS

SECTION 2.01 Initial Term Loans.

~~(a)~~ Subject to the terms and conditions set forth herein and in the Closing Date Exchange Agreement, on the Closing Date, pursuant to the Closing Date Exchange Agreement, the Closing Date Exchanged Existing Debt held by the Initial Term Lenders as of such date shall be automatically converted into (and be deemed to be prepaid), and each Initial Term Lender is deemed to have made to the Borrower ~~loans (each, an “Initial Term Loan” and, collectively, the “~~Initial Term Loans~~”)~~ in an amount denominated in Dollars equal to such Initial Term Lender’s Initial Term Commitment on the Closing Date. The Initial Term Loans deemed made or issued under this Section 2.01(a) shall be made without any actual cash funding. Amounts deemed made or issued under this Section 2.01(a) and repaid or prepaid may not be reborrowed.

(b) Subject to the terms and conditions set forth herein, in the Amendment No. 1 Exchange Agreements and in Amendment No. 1, on the Amendment No. 1 Effective Date, pursuant to the Amendment No. 1 Exchange Agreements, a portion of the Amendment No. 1 Exchanged Existing Debt held by the Amendment No. 1 Term Lenders as of such date shall be automatically converted into (and be deemed to be prepaid and/or cancelled, as applicable), and each Amendment No. 1 Term Lender is deemed to have made to the Borrower, Amendment No. 1 Term Loans in an amount denominated in Dollars equal to such Amendment No. 1 Term Lender’s Amendment No. 1 Term Commitment on the Amendment No. 1 Effective Date. The Amendment No. 1 Term Loans deemed made or issued under this Section 2.01(b) shall be made without any actual cash funding. Amounts deemed made or issued under this Section 2.01(b) and repaid or prepaid may not be reborrowed. For all purposes of the Loan Documents, the Amendment No. 1 Term Loans shall be fungible with, and have the same terms as, the Initial Term Loans.

SECTION 2.02 Borrowings of Refinancing Term Loans and Extended Term Loans.

(a) Each Borrowing of Term Loans (other than Initial Term Loans) shall be made upon the Borrower's irrevocable delivery to the Administrative Agent of a Loan Notice (which may be given by telephone as provided below), appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received by the Administrative Agent not later than 12:00 p.m. (noon) one (1) Business Day prior to the requested date of any Borrowing of Loans. Each telephonic notice delivered pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of Loans (other than Initial Term Loans) shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed and (iii) the account of the Borrower to be credited with the proceeds of such Borrowing.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Pro Rata Share of the applicable Class of Loans. In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Subject to the terms and conditions hereof, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to the Administrative Agent by the Borrower.

(c) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03 Prepayments.

(a) (i) The Borrower may, at its option, upon notice to the Administrative Agent (a "Prepayment Notice"), at any time, voluntarily prepay the principal outstanding amount of the ~~Initial~~ Term Loans made to the Borrower, in whole or in part, *plus* (a) all accrued and unpaid interest on the principal amount to be prepaid to, but excluding the date of, prepayment and (b) (other than in connection with a payment made in accordance with Section 6.16(e) pursuant to a Change of Control Offer) the Prepayment Premium, if applicable; provided, that (1) such notice must be received by the Administrative Agent not later than 12:00 p.m., one (1) Business Day prior to any date of prepayment; (2) any prepayment shall be in a principal amount of \$250,000 or a whole multiple of \$50,000 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 Class(es) of Term Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. The Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each prepayment of the Loans pursuant to this Section 2.03(a) shall be applied among the Facilities in such amounts as the relevant Borrower may direct in its sole discretion (and absent such direction, *pro rata* among the Term Loan Facilities and in direct order of maturity); provided that Incremental Term Loans may not be prepaid on a greater than pro rata basis as compared to Initial Term Loans. Each prepayment made by any Borrower in respect of a particular Facility shall be paid to the Administrative Agent for the account of (and to be promptly disbursed to) the Appropriate Lenders in accordance with their respective Pro Rata Shares. The Administrative Agent shall have no obligation to calculate, or confirm the accuracy of, the Prepayment Premium or Make-Whole Premium.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.03(a)(i) if such prepayment would have resulted from (A) a refinancing of all of the Facilities, which refinancing shall not be consummated or shall otherwise be delayed or (B) the refinancing of all or a portion of the Facilities pursuant to a permitted refinancing hereunder, which refinancing shall not be consummated or shall otherwise be delayed. Notices of prepayment may, at the Borrower's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of an Equity Offering, another offering or another transaction or event.

(iii) In the event and on each occasion that Holdings, the Borrower or any Restricted Subsidiary makes an Asset Disposition which results in the realization or receipt of Net Cash Proceeds (other than Net Cash Proceeds in connection with Land Banking Transactions constituting Asset Dispositions which shall be applied in accordance with clause (vii) of this Section 2.03(a)), such Net Cash Proceeds of an Asset Disposition shall, subject to Section 2.03(c) below, within one year, at Holding's election:

(A) be used pursuant to Section 2.03(a)(vi),

(B) be used to permanently prepay or permanently repay any (i) Indebtedness which had been secured by the assets sold in the relevant Asset Disposition, to the extent the assets sold were not Collateral or (ii) ~~Indebtedness of a Restricted Subsidiary that is not a Guarantor (to the extent such Indebtedness is not owed to an Affiliate of the Borrower or any Guarantor), to the extent the assets sold were not Collateral~~[reserved] or (iii) Indebtedness constituting Senior Priority Lien Obligations (or cash collateralize letters of credit that constitute Senior Priority Lien Obligations), or

(C) be used to permanently prepay or permanently repay, subject to Section 2.03(b)(iii), the Pari Secured Debt Obligations (or cash collateralize letters of credit that constitute Obligations with equal Lien priority to the Term Loans), and, if Holdings, the Borrower or a Restricted Subsidiary elects or is required to do so and the assets disposed of were not Collateral, to repay, purchase or redeem any unsubordinated Indebtedness (on a *pro rata* basis if the amount available for such repayment, purchase, redemption or cash collateralization is less than the aggregate amount of (x) the principal amount of Loans held by the Term ~~Loans~~Lenders who have not provided a Rejection Notice pursuant to Section 2.03(b)(iii), (y) the lesser of the principal amount, or accreted value, of the Pari Secured Debt Obligations tendered or to be repaid, redeemed, repurchased or cash collateralized and (z) the lesser of the principal amount, or accreted value, of such unsubordinated Indebtedness tendered or to be repaid, repurchased or redeemed, plus, in each case, accrued interest to the date of repayment, purchase or redemption) at 100% of the principal amount or accreted value thereof, as the case may be, plus accrued and unpaid interest, if any, to the date of repurchase, repayment or redemption;

provided that pending any such application under this Section 2.03(a)(iii), Net Cash Proceeds may be used to temporarily reduce Indebtedness or otherwise be invested in any manner not prohibited by this Agreement.

(iv) ~~[Reserved]~~In the event and on each occasion Side Letter Exchanged Indebtedness is incurred other than in connection with the Term Loans (it being expressly agreed that this section 2.03(a)(iv) shall not apply to any Specified Junior Debt constituting Term Loans) (each such date, the "Side Letter Exchanged Indebtedness Incurrence Date"), the Borrower shall prepay, or cause to be prepaid, on or prior to the date which is five (5) Business Days after the date of such incurrence (the "Required Payment Date"), an aggregate principal amount of Initial Term Loans equal to 100% of the aggregate principal amount of Side Letter Exchanged Indebtedness incurred on such Side Letter Exchanged Indebtedness Incurrence Date, minus the aggregate principal amount of additional Indebtedness permitted to be incurred under clauses (a)(ii) and (a)(iii) of the definition of "Permitted Indebtedness" (other than in the form of Specified Refinancing Indebtedness or Side Letter Exchanged Indebtedness) as of such Side Letter Exchanged Indebtedness Incurrence Date (such amount on any such occasion, the "Required Prepayment Amount"); provided that such amount shall be reduced to the lesser of the amount determined by the following clauses (a) and (b) to the extent the amount determined by either of such clauses would be less than the Required Prepayment Amount: (a) the aggregate principal amount of Initial Term Loans the prepayment of which would not cause Specified Liquidity, on a pro forma basis after giving effect to such prepayment, to be less than \$170.0 million (this clause (a), the "Specified Liquidity Condition") and (b) the aggregate principal amount of Initial Term Loans such that the aggregate principal amount of Initial Term Loans prepaid pursuant to this Section 2.03(a)(iv) does not exceed the amount equal to \$68,502,000 minus the aggregate amount of prepayments of Term Loans that reduced the amount available for prepayments under Section 4.16(a)(v) of 1.125 Lien Notes Indenture or Section 4.16(a)(v) of 1.25 Lien Notes Indenture (this clause (b), the "Specified Aggregate Prepayment Condition", and together with the Specified Liquidity Condition, the "Specified Conditions"). If a Specified Condition occurs, the Borrower and/or the Lenders shall promptly inform the Administrative Agent in writing of the occurrence of such event (the "Specified Condition Event Notice"). The Administrative Agent will promptly forward such notice to the Lenders and/or the Borrower, as applicable. From and after the Business Day following the date upon which a Responsible Officer of the Administrative Agent receives the Specified Condition Event Notice (but in no event earlier than the Business Day following the Required Payment Date), the Applicable Rate applied to the Initial Term Loans will be increased as set forth in the definition of "Applicable Rate", which increased rate shall be set forth in the Specified Condition Event Notice. The Administrative Agent shall be entitled to (i) presume no Specified Condition Event has occurred unless and until a Responsible Officer receives the aforementioned Specified Condition Event Notice and (ii) conclusively rely upon the information set forth in any Specified Condition Event Notice.

(v) In the event and on each occasion that any Other Prepayment Event occurs, which results in the realization or receipt of Net Cash Proceeds, the Borrower shall prepay, or cause to be prepaid, subject to Section 2.03(b)(iii), on or prior to the date which is ten (10) Business Days after the date of realization or receipt of such Net Cash Proceeds, an aggregate principal amount of Term Loans equal to 100% of all Net Cash Proceeds realized or received.

(vi) In lieu of the prepayments set forth in clause (iii) above, with respect to any Net Cash Proceeds realized or received with respect to any Asset Disposition (other than Net Cash Proceeds in connection with Land Banking Transactions constituting Asset Dispositions which shall be applied in accordance with clause (vii) of this Section 2.03(a)), Holdings, the Borrower or any of the Restricted Subsidiaries may, at its option, reinvest the Net Cash Proceeds from such event (or a portion thereof) within 12 months after receipt of such Net Cash Proceeds in assets (including Capital Stock of any Person that is or will be a Restricted Subsidiary following investment therein) used or useful in a Real Estate Business; *provided* that a binding commitment to invest in assets shall be treated as a permitted application of the Net Cash Proceeds from the date of such commitment so long as Holdings, the Borrower or a Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Cash Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an “Acceptable Commitment”) and such Net Cash Proceeds are actually applied in such manner within the later of one year from the consummation of the Asset Disposition and 180 days from the date of the Acceptable Commitment, and in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Cash Proceeds is applied in connection therewith, Holdings, the Borrower or such Restricted Subsidiary enters into any Acceptable Commitment (a “Second Commitment”) within 180 days of such cancellation or termination and such Net Cash Proceeds are actually applied in such manner within 180 days from the date of the Second Commitment, it being understood that if a Second Commitment is later cancelled or terminated for any reason before such Net Cash Proceeds is applied, then such Net Cash Proceeds shall be applied in accordance with Section 2.03(a)(iii)(B) or Section (a)(iii)(C) (in the case of an Asset Disposition which results in the realization or receipt of Net Cash Proceeds (other than Net Cash Proceeds in connection with Land Banking Transactions)).

(vii) The Net Cash Proceeds of Land Banking Transactions constituting Asset Dispositions shall, within 90 days, be used (i) to permanently prepay any Indebtedness constituting Senior Priority Lien Obligations, or (2) to permanently prepay or permanently repay, subject to Section 2.03(b)(iii), the Pari Secured Debt Obligations (on a pro rata basis if the amount available for such repayment, purchase, or redemption is less than the aggregate amount of (x) the aggregate principal amount of Loans held by the Lenders who have not provided a Rejection Notice pursuant to Section 2.03(b)(iii), and (y) the lesser of the principal amount, or accreted value, of such other Pari Secured Debt Obligations tendered or to be repaid, repurchased or redeemed) at 100% of the principal amount or accreted value thereof, as the case may be, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase, repayment or redemption; provided that to the extent that the aggregate amount of Indebtedness to be repaid, redeemed or repurchased under this Section 2.03(a)(vii) is less than such Net Cash Proceeds, Holdings, the Borrower and the Restricted Subsidiaries may use any remaining Net Cash Proceeds for general corporate purposes (including, for the avoidance of doubt, the repayment of repurchase of Indebtedness), subject to the other covenants under this Agreement.

(b) Application.

(i) Application of Prepayments. All prepayments pursuant to Section 2.03(a)(iii), (v) and (vii) shall be applied to prepay the Term Loans among the various Classes thereof on a ratable basis (in accordance with the aggregate outstanding principal amount of the Term Loans of each such Class) in order of maturity, unless otherwise agreed among the Borrower and the Lenders providing Extended Term Loans in accordance with Section 2.13 (it being understood that, in any case, the Initial Term Loans shall not be allocated to any Class in an amount less than such Class’s pro rate share of such prepayment). Unless otherwise provided herein, each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(ii) [Reserved].

(iii) Declined Proceeds. The Borrower shall notify the Administrative Agent in writing of (x) any mandatory prepayments of Loans required to be made pursuant to Section 2.03(a)(iii), (v) and (vii), no less than ten (10) Business Days before the date of such mandatory prepayment and (y) the incurrence of Side Letter Exchanged Indebtedness (other than in connection with the exchange of Term Loans) on the applicable Side Letter Exchanged Indebtedness Incurrence Date. Each such notice shall specify the date of such prepayment, if any, and provide a reasonably detailed calculation of the aggregate amount of such prepayment, if any, to be made by the Borrower: (including, with respect to notices delivered in connection with the incurrence of Side Letter Exchanged Indebtedness (other than in connection with the exchange of Term Loans), the calculation of the applicable prepayment amount, if any, after application of the Specified Conditions). The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of each Lender's Pro Rata Share, or other applicable share provided for under this Agreement. Each Lender may reject all or a portion of its Pro Rata Share, or other applicable share provided for under this Agreement, of such mandatory prepayment (such declined amounts, the "Declined Proceeds") of Loans, by providing written notice to the Administrative Agent (a "Rejection Notice") no later than 5:00 p.m., New York time, ~~five~~three (3) Business Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. A Rejection Notice from a Lender shall specify the principal amount of the mandatory repayment of Loans to be declined by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, or the Rejection Notice fails to specify the principal amount of the Loans to be declined, it will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans.

(iv) Any Declined Proceeds may be used by Holdings, the Borrower and the Subsidiaries for general corporate purposes (including, for the avoidance of doubt, the repayment or repurchase of Indebtedness), subject to the other covenants hereunder.

(c) Threshold. Notwithstanding the foregoing and other than with respect to Net Cash Proceeds in connection with Land Banking Transactions constituting Asset Dispositions which shall be applied in accordance with clause (vii) of Section 2.03(a), the Borrower will not be required to make a prepayment from such Net Cash Proceeds in accordance with Section 2.03(a)(iii) except to the extent that such Net Cash Proceeds, together with the aggregate Net Cash Proceeds of prior Asset Dispositions (other than those so used) which have not been applied in accordance with this Section 2.03 and as to which no prior prepayments or repayments shall have been made, exceed \$25.0 million.

SECTION 2.04 Termination of Commitments. The Initial Term Commitment of the Initial Term Lenders in respect of the Initial Term Loans shall be automatically and permanently reduced to \$0 on the Closing Date upon the incurrence of the Initial Term Loans pursuant to Section 2.01(a) on such date. The Amendment No. 1 Term Commitment of the Amendment No. 1 Term Lenders in respect of the Amendment No. 1 Term Loans shall be automatically and permanently reduced to \$0 on the Amendment No. 1 Effective Date upon the incurrence of the Amendment No. 1 Term Loans pursuant to Section 2.01(b) on such date.

SECTION 2.05 Repayment of Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the ratable account of each Lender the then unpaid principal amount of each Term Loan on the Maturity Date of the applicable Term Loan Facility in an amount equal to the aggregate principal amount of all Term Loans of such Class outstanding on such date.

SECTION 2.06 Interest.

(a) Subject to the provisions of Section 2.06(b), each Initial Term Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Applicable Rate.

(b) While any Event of Default set forth in Sections 7.01(i) or (ii) (as applicable) exists with respect to the payment of any principal, interest or fees, or any Event of Default set forth in Sections 7.01(vii) or (viii) exists, the Borrower shall pay interest on all overdue amounts hereunder at an interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. 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.

SECTION 2.07 Fees.

The Borrower shall pay or cause to be paid to the Agents 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.

SECTION 2.08 Computation of Interest and Fees. All computations of interest and other fees shall be made on the basis of a year of three hundred and sixty (360) days and actual days elapsed. 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 2.10(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.09 Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent in accordance with Section 9.07(c), acting as a non-fiduciary agent solely for purposes of Treasury Regulation Section 5f.103-1(c) or Section 1.163-5(b) of the United States Proposed Treasury Regulations (or, in each case, any amended or successor version), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the 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 the Borrower hereunder to pay any amount owing with respect to the Loan Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register in respect of such matters, the Register shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, 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) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.09(a), and by each Lender in its account or accounts pursuant to Section 2.09(a), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

SECTION 2.10 Payments Generally.

(a) Except as otherwise required by applicable Law, all payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than noon, 12:00 p.m. on the Business Day specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (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 the Administrative Agent after noon, 12:00 p.m., shall be deemed received on the next succeeding Business Day in the Administrative Agent's sole discretion and any applicable interest or fee shall continue to accrue to the extent applicable.

(b) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in immediately available funds at the applicable Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the applicable Federal Funds Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Term Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any Default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.10(b) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation 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 or purchase its participation.

(e) 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) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts then due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in clauses First through Last of Section 7.03. If the Administrative Agent receives funds for application to the Loan Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Loan Obligations then owing to such Lender.

SECTION 2.11 Sharing of Payments. If any Lender shall obtain on account of the Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise, and other than (x) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or Participant or (y) as otherwise expressly provided elsewhere herein, including as provided in or contemplated by Section 2.03(a)(iv), Section 2.13, Section 2.14 or Section 9.01 hereunder in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact and (b) purchase from the other Lenders such participations in the Loans made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them (and notify the Administrative Agent of such purchase); provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 9.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of setoff, but subject to Section 9.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records and maintain entries in the Register (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.11 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.11 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Loan Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Loan Obligations purchased.

SECTION 2.12 [Reserved].

SECTION 2.13 Extensions of Term Loans.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to all Lenders of any Class of Term Loans with a like Maturity Date, in each case on a pro rata basis (based on the aggregate outstanding principal amount of such Term Loans) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the Maturity Date of each such Lender's Term Loans and otherwise modify the terms of such Term Loans, subject to the provisions below, pursuant to the terms of the relevant Extension Offer (including by increasing the fees (other than fees on undrawn amounts) payable in respect of such Term Loans (and related outstandings) (each, an "Extension"), and each group of Term Loans, in each case as so extended, as well as the original Initial Term Loans (in each case not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted), so long as the following terms are satisfied:

(i) no Default or Event of Default shall have occurred and be continuing at the time the offering document in respect of an Extension Offer is delivered to the Lenders or at the time of the effectiveness of the Extension;

(ii) except as to interest rates, fees, amortization, final Maturity Date, premium, required prepayment dates and participation in prepayments (which shall, subject to the immediately succeeding clauses (iii), (iv) and (v), be determined between the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender that agrees to an Extension with respect to such Term Loans (an "Extending Term Lender") extended pursuant to any Extension ("Extended Term Loans") shall have the same terms as the tranche of Term Loans subject to such Extension Offer;

(iii) the final Maturity Date of any Extended Term Loans shall be no earlier than the Latest Maturity Date of the Term Loans extended thereby;

(iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans extended thereby;

(v) any Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary repayments or prepayments hereunder, in each case as specified in the respective Extension Offer;

(vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof), in respect of which Term Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Term Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders have accepted such Extension Offer;

(vii) all documentation in respect of such Extension shall be consistent with the foregoing, and the covenants and events of default applicable to any Extended Term Loans shall be substantially identical to, or, taken as a whole, no more favorable to the Lenders providing such Extended Term Loans than those applicable to the Term Loans subject to such Extension Offer;

(viii) the Extended Term Loans are not secured by any assets or property that does not constitute Collateral, and are not guaranteed by any Subsidiary of Holdings that is not a Subsidiary Guarantor; and

(ix) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section, (i) such Extensions shall not constitute payments or prepayments for purposes of Section 2.03 and (ii) shall be in an integral multiple of \$1.0 million and in an aggregate principal amount that is not less than \$10.0 million, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's sole discretion and which may be waived by the Borrower, but not less than \$10.0 million) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer (which shall be consistent with the foregoing provisions of this Section 2.13)) and hereby waive the requirements of any provision of this Agreement (including Sections 2.03, 2.11 and 9.01) or any other Loan Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section.

(c) No consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans (or a portion thereof). All Extended Term Loans and all obligations in respect thereof shall be Loan Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a *pari passu* basis with all other applicable Loan Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the Facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.13.

SECTION 2.14 Refinancing Facilities. (a) The Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more additional Classes of ~~Term Loans~~ under this Agreement ("Refinancing Term Loans"), which refinance, renew, replace, defease or refund (collectively, "Refinance"), in whole ~~or but not~~ in part, one or more Classes of Term Loans under this Agreement; provided, that such Refinancing Term Loans may not be in an amount greater than the Term Loans being Refinanced plus unpaid accrued interest, fees, expenses and premium (if any) thereon and underwriting discounts, fees, commissions and expenses incurred in connection with the Refinancing Term Loans. Each such notice shall specify the date (each, a "Refinancing Effective Date") on which the Borrower proposes that the Refinancing Term Loans shall be made, which shall be a date not less than five (5) Business Days after the date on which such notice is delivered to the Administrative Agent; provided that:

(i) the Weighted Average Life to Maturity of such Refinancing Term Loans shall not be shorter than the then remaining Weighted Average Life to Maturity of the Class or Classes of Term Loans being Refinanced and the Refinancing Term Loans shall not have a final maturity before the Maturity Date of the Term Loans being Refinanced;

(ii) the Refinancing Term Loans shall have terms and conditions agreed to by the Borrower and the lenders providing such Refinancing Term Loans, but shall be substantially the same as (or, taken as a whole, no more favorable to, the lenders providing such Refinancing Term Loans than) those applicable to the then outstanding Term Loans, except to the extent such covenants and other terms apply solely to any period after the Latest Maturity Date;

(iii) the proceeds of any Refinancing Term Loans shall be applied substantially concurrently with the incurrence thereof to the pro rata prepayment of the Class or Classes of Term Loans being Refinanced hereunder;

(iv) the Refinancing Term Loan Amendment shall set forth the principal installment payment dates of the Refinancing Term Loans, which dates may be delayed to later dates than the corresponding scheduled principal installment payment dates of the Term Loans being refinanced and, in any event, shall be no earlier than the Maturity Date;

(v) the Loan Parties and the Administrative Agent shall (i) enter into such amendments to the Collateral Documents as may be reasonably requested by the Refinancing Term Lenders (which shall not require any consent from any Lender) in order to ensure that the Refinancing Term Loans are provided with the benefit of the applicable Collateral Documents on a *pari passu* or junior basis with the other Loan Obligations and (ii) deliver such other documents and certificates as may be reasonably requested by the Refinancing Term Lenders;

(vi) the Refinancing Term Loans will be unsecured or will rank *pari passu* or junior in respect of Collateral with the other Loans hereunder; and

(vii) with respect to any Refinancing Term Loans made, the Borrower shall pay the Prepayment Premium, if applicable, to the Lenders holding such Initial Term Loans being refinanced.

(b) The Borrower may approach any Lender or any other Person that would be an Eligible Assignee to provide all or a portion of the Refinancing Term Loans (a "Refinancing Term Lender"); provided any Lender offered or approached to provide all or a portion of the Refinancing Term Loans may elect or decline, in its sole discretion, to provide a Refinancing Term Loan. Any Refinancing Term Loans made on any Refinancing Effective Date shall be designated a series (a "Refinancing Term Loan Series") of Refinancing Term Loans for all purposes of this Agreement and the selection of Refinancing Term Lenders shall be subject to any consent that would be required pursuant to Section 9.07(b) hereof; provided that any Refinancing Term Loans may, to the extent provided in the applicable Refinancing Term Loan Amendment, be designated as an increase in any previously established Refinancing Term Loan Series of Refinancing Term Loans made to the Borrower.

(c) The Refinancing Term Loans shall be established pursuant to an amendment to this Agreement among Holdings, the Borrower and the Refinancing Term Lenders providing such Refinancing Term Loans (a “Refinancing Term Loan Amendment”) which shall be consistent with the provisions set forth in paragraph (i) above. Each Refinancing Term Loan Amendment shall be binding on the Lenders (including the Refinancing Term Lenders), the Administrative Agent, the Loan Parties party thereto and the other parties hereto. Upon receipt of an Officer’s Certificate certifying that such Refinancing Term Loan Amendment is permitted under the Loan Documents, the Administrative Agent shall be permitted, and is hereby authorized, to enter into such amendments with the Borrower to effect the foregoing. Any Refinancing Term Loan made by a Term Lender pursuant to a Refinancing Term Loan Amendment shall be deemed a “Term Loan” for all purposes of this Agreement and each Lender with a Refinancing Term Loan shall become a Lender with respect to such Refinancing Term Loans and all matters relating thereto. Notwithstanding anything to the contrary herein, at no time shall there be Term Loans (including Refinancing Term Loans and Extended Term Loans) which have more than five different scheduled final maturity dates or shall there be more than five different “Term Loan Facilities”.

SECTION 2.15 Defaulting Lenders.

(a) Reallocation of Defaulting Lender Commitment, Etc. If a Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply with respect to such Defaulting Lender:

(i) any amount paid by the Borrower for the account of a Defaulting Lender that was or is a Lender under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will not be paid or distributed to such Defaulting Lender, but will instead be retained by the Administrative Agent in a segregated non-interest-bearing account until (subject to Section 2.15(c)) the Termination Date and will be applied by the Administrative Agent, to the fullest extent permitted by Law, to the making of payments from time to time in the following order of priority: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent under this Agreement; second, to satisfy the obligations, if any, of such Term Lender to make Term Loans to the Borrower; third, to the payment of post-default interest and then current interest due and payable to the Lenders hereunder other than Defaulting Lenders that are Lenders, ratably among them in accordance with the amounts of such interest then due and payable to them; fourth, to the payment of fees then due and payable to the Non-Defaulting Lenders that are Lenders hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them; fifth, to the ratable payment of other amounts then due and payable to the Non-Defaulting Lenders that are Lenders; sixth, on the Termination Date, to the payment of any amounts owing to the Borrower as a result of a final judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and seventh, after the Termination Date, to pay amounts owing under this Agreement to such Defaulting Lender or as a court of competent jurisdiction may otherwise direct.

(b) Fees. Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.07 (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees).

(c) Cure. If the Borrower determines that a Lender that is a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Borrower 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 amounts then held in the segregated account referred to in Section 2.15(a)), such Lender will, to the extent applicable, purchase such portion of outstanding Loans of the other Lenders and/or make such other adjustments as the Administrative Agent may determine to be necessary to cause the total Term Commitments pursuant to Section 2.01 of the Term Lenders to be on a *pro rata* basis in accordance with their respective Term Commitments, whereupon such Term Lender will cease to be a Defaulting Lender and will be a Non-Defaulting Lender (and such Term Commitments and Term Loans of each Term Lender will automatically be adjusted on a prospective basis to reflect the foregoing); provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender’s having been a Defaulting Lender.

SECTION 2.16 Incremental Term Loan.

(a) Requests for Incremental Term Loans. Subject to the terms and conditions of this Section 2.16, the Borrower may request one or more additional tranches of Term Loans that do not constitute Initial Term Loans (but the Borrower may not, for the avoidance of doubt, request an increase to the Initial Term Loans) (any such Term Loans, “Incremental Term Loans”; and any such lenders, “Incremental Lenders”); provided, that:

(i) the Incremental Term Loans may be incurred hereunder no later than the date that is 180 days after the Amendment No. 1 Effective Date;

(ii) the Incremental Term Loans may be established for the sole purpose of exchanging Existing 5.0% Unsecured Notes and/or Existing 13.5% Unsecured Notes into Indebtedness under this Agreement;

(iii) subject to clauses (iv) and (v) immediately below, the aggregate amount of Incremental Term Loans established pursuant to this Agreement shall not exceed \$51,556,000;

(iv) with respect to any such exchange of Existing 13.5% Unsecured Notes, the holders of any Existing 13.5% Unsecured Notes so exchanged shall receive no greater than \$1.00 in principal amount of Incremental Term Loans for each \$1.00 in principal amount of Existing 13.5% Unsecured Notes so exchanged;

(v) with respect to any such exchange of Existing 5.0% Unsecured Notes, the holders of any Existing 5.0% Unsecured Notes so exchanged shall receive no greater than \$0.48144 in principal amount of Incremental Term Loans for each \$1.00 in principal amount of Existing 5.0% Unsecured Notes so exchanged; and

(vi) with respect to any such exchange of Existing 5.0% Unsecured Notes or Existing 13.5% Unsecured Notes, no cash consideration shall be payable to such holders in connection with the exchange, including in the form of fees (other than cash payments of accrued and unpaid interest and in respect of fractional Indebtedness permitted under Section 6.20(b)(iii) hereof).

(b) The terms of the Incremental Term Loans shall be as follows:

(i) the maturity date of the Incremental Term Loans shall be no earlier than the maturity date of the Initial Term Loans;

(ii) the Weighted Average Life to Maturity at the time such Incremental Term Loans are incurred shall be equal to or greater than the Weighted Average Life to Maturity of the Initial Term Loans;

(iii) the All-In Yield applicable to the Incremental Term Loans shall be no higher than the All-In Yield applicable to the Initial Term Loans, ignoring for such calculation the proviso in the definition of “Applicable Rate” (which proviso, for the avoidance of doubt, shall not apply to the Incremental Term Loans);

(iv) notwithstanding anything to the contrary herein, Section 2.03(a)(iv) shall not apply to the Incremental Term Loans and shall be for the sole benefit of the Initial Term Lenders;

(v) the Liens on the Collateral securing the Incremental Term Loans will rank *pari passu* in respect of Liens on the Collateral with the other Initial Term Loans hereunder and will have the same obligors; and

(vi) except as expressly set forth above, the Incremental Term Loans shall have the same terms as the Initial Term Loans.

(c) Incremental Term Loans shall become Term Loans under this Agreement (the effective date thereof, the “Incremental Effective Date”) pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender and the Administrative Agent. An Incremental Amendment may effect such amendments to any Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent (acting at the instruction of the Required Lenders) and the Borrower, to effect the provisions of this Section 2.16 (including any amendments required to establish the Incremental Term Loans as a separate tranche of Term Loans hereunder). The effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof of each of the following conditions:

(i) the Administrative Agent shall have received from the Borrower and the Incremental Lenders all such documentation as may be reasonably required by the Administrative Agent to administratively effectuate the Incremental Loans and the Incremental Lenders becoming Lenders;

(ii) the representations and warranties of the Borrower and each other Loan Party contained in this Agreement and any other Loan Document shall be true and correct in all material respects (and in all respects if qualified by materiality) on and as of the date of the Incremental Effective Date (except in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects (and in all respects if qualified by materiality) as of the respective date or for the respective period, as the case may be);

(iii) no Default or Event of Default shall have occurred and be continuing immediately before or after giving effect to the Incremental Amendment; and

(iv) the Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit H-1 hereto.

(d) This Section 2.16 shall supersede and replace any provision of Section 9.01 to the contrary.

ARTICLE III

TAXES, INCREASED COSTS, PROTECTION AND ILLEGALITY

SECTION 3.01 Taxes. (a) 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 Lender or Agent receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Borrower. The Loan Parties shall jointly and severally indemnify each Lender and each Agent, 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 Lender or such Agent or required to be withheld or deducted from a payment to such Lender or such Agent and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or Agent (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or other Agent, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally (but not jointly) indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the 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 9.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B), and (ii)(D), below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Non-U.S. Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States 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 Non-U.S. 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 E-1 to the effect that such Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

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

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01, (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a) or Section 3.01(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts to avoid the consequences of such event, including to designate another Lending Office for any Loan affected by such event or to assign its rights and obligations with respect to such Loan to another of its offices, branches or affiliates; provided that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage; and provided further that nothing in this Section 3.01(h) shall affect or postpone any of the Loan Obligations of any Loan Party or Lender or the rights of the Lender or Loan Party pursuant to this Section 3.01.

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 3.01, the term "applicable Law" includes FATCA.

SECTION 3.02 [Reserved].

SECTION 3.03 [Reserved].

SECTION 3.04 Capital Adequacy.

(a) [Reserved].

(b) If any Lender reasonably determines that the introduction of any Law regarding capital adequacy or liquidity requirements or any change therein or in the interpretation thereof, in each case after the date such Lender becomes a party to this Agreement, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any Person controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and/or liquidity and such Lender's desired return on capital), then from time to time upon written demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

(c) [Reserved].

(d) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan affected by such event or to assign its rights and obligations with respect to such Loan to another of its offices, branches or affiliates; provided that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and provided further that nothing in this Section 3.04(d) shall affect or postpone any of the Loan Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(b).

(e) Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, orders, requests, guidelines or directives in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and 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, are, in each case deemed to have been adopted and to have taken effect after the Closing Date.

SECTION 3.05 [Reserved].

SECTION 3.06 Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01 or Section 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim and that such Lender has determined to request such compensation; provided that if the circumstance giving rise to such increased cost or reduction is retroactive, then such one hundred eighty (180)-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 3.07 Replacement of Lenders Under Certain Circumstances.

(a) If at any time (x) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01(a) or (d) or Section 3.04 as a result of any condition described in such Sections or (y) any Lender becomes a Defaulting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 9.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more Eligible Assignees; provided that (i) in the case of any such assignment resulting from a claim for compensation under Section 3.01(a) or (d) or Section 3.04, such assignment will result in a reduction in such compensation or payments thereafter, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Term Loans, accrued but unpaid interest thereon, accrued but unpaid fees, premium and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person.

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Term Commitment and outstanding Loans of the applicable Class (ii) deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent; provided that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid, and such Lender shall be deemed to have executed such Assignment and Assumption within one Business Day of a request that it do so in the event that it has failed to do so within such period, and such assignment shall be recorded in the Register. Pursuant to such Assignment and Assumption, (x) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Term Commitment and outstanding Loans of the applicable Class, (y) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (z) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 3.01, Section 3.04 and Section 9.05 (and bound by the obligations set forth in Section 9.08) with respect to facts and circumstances occurring prior to the effective date of such assignment.

(c) Notwithstanding anything to the contrary contained above, the Lender that acts as the Administrative Agent may not be replaced in such capacity hereunder except in accordance with the terms of Section 8.06.

SECTION 3.08 Survival. The Borrower's obligations under this Article 3 shall survive any assignment of rights by, or the replacement of, a Lender and the Termination Date.

ARTICLE IV

CONDITIONS PRECEDENT

SECTION 4.01 [Reserved].

SECTION 4.02 Conditions to Incurrence of the Initial Term Loans (Closing Date). The effectiveness of this Agreement and the incurrence of the Initial Term Loans on the Closing Date hereunder is subject solely to the satisfaction of the following conditions precedent (unless expressly waived in accordance with Section 9.01):

(a) The receipt by the Administrative Agent and the Initial Term Lenders of the following, each of which shall be in the form of an original, facsimile or electronic copy unless otherwise specified, and each executed by the Administrative Agent, each Lender and a Responsible Officer of each of the Borrower and Holdings, as applicable:

(i) executed counterparts of this Agreement and the [Closing Date](#) Exchange Agreement;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note at least two (2) Business Days prior to the Closing Date (the original to the Lender and a copy to the Administrative Agent), if any;

(iii) executed counterparts of (A) (1) the First Lien CAA/ICA Joinder, (2) the Security Agreement, (3) the Pledge Agreement and (4) Junior Lien ICA Joinder and (B) such evidence as the Administrative Agent and the Initial Term Lenders may reasonably require of the effectiveness of the security contemplated thereby and the perfection of the security interest created thereby (including the recorded copied of UCC-1s but excluding the actions, perfections and filings which may occur after the Closing Date pursuant to Section 6.14 of this Agreement), in the case of each document referred to in this sub clause (B), in form and substance reasonably satisfactory to the Administrative Agent and the Initial Term Lenders.

(iv) a certificate of the Borrower and each other Loan Party, dated the Closing Date and executed by the secretary or assistant secretary of the Borrower and each applicable Loan Party, respectively, in the form attached as [Exhibit G-1](#) and [G-2](#), respectively, hereto.

(v) (A) a certificate signed by a Responsible Officer of the Borrower, substantially in the form of [Exhibit H-1](#) hereto, (B) a Perfection Certificate substantially in the form attached as [Exhibit H-2](#) and (C) a Solvency Certificate substantially in the form attached as [Exhibit H-3](#).

(b) The receipt by the Administrative Agent and the Initial Term Lenders of (i) a written opinion of Simpson Thacher & Bartlett LLP, special counsel for the Borrower and Holdings, dated as of the Closing Date in the form attached as [Exhibit I-1](#) and (ii) a written opinion of Michael Discafani, Vice President, Corporate Counsel and Secretary of the Borrower and Holdings, dated as of the Closing Date in the form attached as [Exhibit I-2](#).

(c) To the extent requested by the Administrative Agent and/or the Initial Term Lenders not less than ten (10) Business Days prior to the Closing Date, the Administrative Agent and the Initial Term Lenders shall have received, at least three (3) Business Days prior to the Closing Date, all documentation and other information reasonably requested with respect to the Loan Parties required by regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act.

(d) [Reserved]

(e) Concurrently with the making of Loans on the Closing Date, the ~~Specified~~[Closing Date](#) Transactions shall have been consummated in accordance with their terms.

(f) (A) The representations and warranties of the Borrower and each other Loan Party contained in [Article V](#) or any other Loan Document shall be true and correct in all material respects as of the Closing Date; provided that to the extent any such representations and warranties are qualified by “materiality,” “Material Adverse Effect” or similar language, such representations and warranties (after giving effect to any qualification therein) are true and correct in all respects as of the Closing Date (except, in each case, where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date); and (B) upon consummation of the transactions contemplated by the Loan Documents and the application of the proceeds thereof, no Default or Event of Default shall have occurred.

For purposes of determining satisfaction of the conditions specified in this [Section 4.02](#), by the making of the Initial Term Loans the Borrower, the Administrative Agent and each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND THE BORROWER

The Borrower and Holdings jointly and severally, represent and warrant to, and agree with the Administrative Agent and each Lender, that:

SECTION 5.01 Good Standing of the Borrower, Holdings and its Subsidiaries. Each of the Borrower, Holdings and its Subsidiary Guarantors has been duly incorporated or formed, as the case may be, is validly existing as a corporation, limited liability company or limited partnership, as the case may be, in good standing under the laws of its jurisdiction of incorporation or organization and has the corporate power, or its equivalent in the case of a limited partnership or limited liability company, and authority to carry on its business as described in the Public Filings, to own, lease and operate its properties and to enter into and perform its obligations under this Agreement and the other Loan Documents; and each is duly qualified and is in good standing as a foreign corporation, limited liability company or limited partnership, as the case may be, authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the business, prospects, financial condition or results of operations of Holdings and its subsidiaries, taken as a whole, or their ability to perform their respective obligations under this Agreement (a “Material Adverse Effect”).

SECTION 5.02 Loan Documents. Each of the Loan Documents has been duly authorized, executed and delivered by the Borrower and each other Loan Party that is a party thereto, and, assuming that each Loan Document is a valid and binding obligation of the Administrative Agent, each Loan Document is a valid and binding agreement of the Borrower and each other Loan Party that is a party thereto, enforceable against the Borrower and each other Loan Party in accordance with its terms except as the enforceability thereof may be limited by the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

SECTION 5.03 Absence of Defaults and Conflicts. The execution, delivery and performance of the Loan Documents by the Borrower and each other Loan Party, as applicable, compliance by the Borrower and each other Loan Party, as applicable, with all provisions hereof and thereof and the consummation of the transactions contemplated hereby and thereby will not (i) conflict with or constitute a breach of any of the terms or provisions of, or a default under, the charter, by-laws or other organizational documents of the Borrower or any other Loan Party or any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to Holdings or the Borrower and its subsidiaries, taken as a whole, to which the Borrower or the Guarantors is a party or by which the Borrower or the Guarantors or their respective property is bound, including the Side Letter, (ii) violate or conflict with any applicable law or any rule, regulation, judgment, order or decree of any court or any governmental body or agency having jurisdiction over the Borrower, Holdings or any of its subsidiaries or their respective property, (iii) result in the imposition or creation of (or the obligation to create or impose) a Lien under, any agreement or instrument to which the Borrower, Holdings or any of its subsidiaries is a party or by which the Borrower, Holdings or any of its subsidiaries or their respective property is bound, other than as contemplated by the Loan Documents, or (iv) result in the termination, suspension or revocation of permits, licenses, consents, exemptions, franchises, authorizations and other approvals (each, an “Authorization”) of the Borrower, Holdings or any of its subsidiaries or result in any other impairment of the rights of the holder of any such Authorization, except (A) in the case of clauses (ii), (iii) and (iv), for such conflicts, breaches, defaults, liens, charges, encumbrances, impositions, terminations, suspensions or revocations that would not, singly or in the aggregate, have a Material Adverse Effect and (B) in the case of clause (i), after giving effect to the entry into and the effectiveness of the Closing Date Exchange Documentation.

SECTION 5.04 Authorization of this Agreement. This Agreement has been duly authorized, executed and delivered by the Borrower, Holdings and each other Guarantor and is the legal, valid and binding obligation of the Borrower, Holdings and each other Guarantor, enforceable against the Borrower, Holdings and each other Guarantor in accordance with the terms hereof.

SECTION 5.05 Environmental Laws and ERISA. Except as disclosed in the Public Filings, neither the Borrower, Holdings nor any of its subsidiaries has (i) violated any foreign, federal, state or local law or regulation relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (“Environmental Laws”), and, to the knowledge of the Borrower and Holdings, there are no pending or threatened liabilities relating to Environmental Laws or (ii) violated any provisions of ERISA or incurred liability under ERISA, except, in each case, for such violations or liabilities, as the case may be, which, singly or in the aggregate, would not have a Material Adverse Effect.

SECTION 5.06 Litigation. Except as disclosed in the Public Filings and except as would not materially adversely affect consummation of the Specified Closing Date Transactions or the Amendment No. 1 Effective Date Transactions, there are no legal, regulatory or governmental proceedings pending or, to the knowledge of the Borrower or Holdings, threatened to which the Borrower, Holdings or any of its subsidiaries is or could be a party or to which any of their respective property is or could be subject, which might result, singly or in the aggregate, in a Material Adverse Effect.

SECTION 5.07 Financial Statements. The historical financial statements, together with related notes, included in Holdings' annual report on Form 10-K, as amended, for the fiscal year ended October 31, ~~2018~~2023 and in Holdings' quarterly reports on Form 10-Q for the fiscal quarters ended January 31, ~~2019, April 30, 2019 and July 31, 2019~~2024 (collectively, the "Historical Financial Statements"), (1) were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be disclosed therein) and (2) present fairly the consolidated financial position (including all debt and liabilities of Holdings and its subsidiaries on a consolidated basis), results of operations and changes in financial position of Holdings and its subsidiaries, on the basis stated therein and at the respective dates or for the respective periods to which they apply.

SECTION 5.08 Investment Company Act. Each of the Borrower and the other Loan Parties is not and, after giving effect to the incurrence of Loans hereunder and the consummation of the transactions contemplated by the Loan Documents and the application of the net proceeds thereof, will not be, an "investment company," as such term is defined in the Investment Company Act.

SECTION 5.09 Solvency. On the Closing Date and on the Amendment No. 1 Effective Date, immediately after the consummation of the transactions contemplated by the Loan Documents (i) the present fair saleable value of the properties and assets of Holdings and its subsidiaries (on a consolidated basis) is not less than the total amount that would be required to pay the probable liability of Holdings and its subsidiaries (on a consolidated basis) on their total debts and liabilities (including contingent liabilities) as they become absolute and matured; (ii) Holdings and its subsidiaries (on a consolidated basis) are able to realize upon their properties and assets and generally pay their debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business; (iii) Holdings and its subsidiaries (on a consolidated basis) do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay as such debts and liabilities mature; and (iv) Holdings and its subsidiaries (on a consolidated basis) are not engaged in any business or transaction, and do not propose to engage in any business or transaction, for which their properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which Holdings and its subsidiaries are engaged. For purposes of this Section 5.09, the amount of any contingent liability shall be computed in accordance with GAAP.

SECTION 5.10 Regulations T, U, X. Neither the Borrower nor any other Loan Party nor any of their respective subsidiaries nor any agent thereof acting on their behalf has taken, and none of them will take, any action that might cause this Agreement or the borrowing of Loans to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

SECTION 5.11 Sanctions. (a) Neither the Borrower or Holdings and its subsidiaries, nor any director or officer thereof, nor, to the Borrower's or Holdings' knowledge, any employee or agent of the Borrower or Holdings and its subsidiaries, is an individual or an entity (for purposes of this Section 5.11 only, "Person") that is, or is 50% or more owned or controlled in the aggregate by one or more Persons that are: (A) identified on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") or otherwise the target of any applicable sanctions administered or enforced by the U.S. government (including OFAC and the U.S. Department of State), the European Union, the U.K. government (including the Office of Financial Sanctions Implementation of Her Majesty's Treasury) and any other governmental authority with jurisdiction over the Borrower, Holdings or its Subsidiaries (collectively, "Sanctions") or (B) located, organized or resident in a country or region that is the target of comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine) (each, a "Sanctioned Territory").

(b) The operations of the Borrower, Holdings and its subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Borrower, Holdings or any of its subsidiaries conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental or regulatory agency (collectively, the "Anti-Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Borrower, Holdings or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Borrower or any of the Guarantors, threatened.

(c) Neither the Borrower or Holdings and its subsidiaries, nor, to the knowledge of the Borrower and each of the Guarantors, any director, officer, or employee of the Borrower, Holdings or any of its subsidiaries or any agent acting on behalf of the Borrower, Holdings or any of its subsidiaries has (i) used any corporate or organizational funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit.

(d) The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person for the purpose of funding or facilitating any activities or business: (A) of or with any Person identified on the SDN List or otherwise the target of Sanctions, or in any Sanctioned Territory, in each case, except as authorized by U.S. law or (B) in any other manner that would constitute or give rise to a violation of Sanctions by any party hereto (including the Administrative Agent and the Lenders).

SECTION 5.12 Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Borrower and any other Loan Party (a) have timely filed or cause to be filed all Tax returns and reports required to have been filed, and (b) have paid or caused to be paid all Taxes levied or imposed on their properties, income or assets (whether or not shown on a Tax return) that are due and payable, including in their capacity as tax withholding agents, except any Taxes that are being contested in good faith by appropriate proceedings, provided that the Borrower or each other Loan Party, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP. There is no proposed Tax assessment, deficiency or other claim against the Borrower or any other Loan Party and none of the Borrower or any other Loan Party are currently the subject of any audit, contest or similar proceeding with respect to Taxes, in each case, that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.13 Compliance with Laws. Each of the Borrower, Holdings and its Restricted Subsidiaries is in compliance with all applicable Laws, orders, writs, injunctions and orders, except to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.14 Capital Stock. All outstanding shares of capital stock of the Borrower and Holdings have been duly authorized and validly issued and are fully paid, nonassessable and not subject to any preemptive or similar rights, except, for the avoidance of doubt, with respect to the Rights Plan of Holdings, as described in the Public Filings; all of the outstanding shares of capital stock of each of Holdings' direct and indirect subsidiaries have been duly authorized and validly issued and are fully paid and nonassessable and such shares that are owned by Holdings are owned by Holdings, directly or indirectly through one or more subsidiaries, free and clear of any security interest, claim, lien, encumbrance or adverse interest of any nature other than Liens securing obligations under (i) the Loan Documents and (ii) Permitted Liens.

SECTION 5.15 Title to Properties. Except as would not, singly or in the aggregate, have a Material Adverse Effect, each of the Borrower and the other Loan Parties has good and marketable title to or a valid leasehold interest in all properties, assets and other rights which it purports to own or lease or which are reflected as owned or leased on its books and records, free and clear of all liens and encumbrances, except Permitted Liens, and subject to the terms and conditions of the applicable leases. All leases of property are in full force and effect without the necessity for any consent which has not previously been obtained upon consummation of the transactions contemplated hereby.

SECTION 5.16 Possession of Licenses and Permits. Except as disclosed in the Public Filings, each of the Borrower and the other Loan Parties has the Authorizations of, and has made all filings with and notices to, all governmental or regulatory authorities and self-regulatory organizations and all courts and other tribunals, including under any applicable Environmental Laws, as are necessary to own, lease, license and operate its respective properties and to conduct its business, except where the failure to have any such Authorization or to make any such filing or notice would not, singly or in the aggregate, have a Material Adverse Effect. Each such Authorization is valid and in full force and effect and each of the Borrower and the other Loan Parties is in compliance with all the terms and conditions thereof and with the rules and regulations of the authorities and governing bodies having jurisdiction with respect thereto; and no event has occurred (including the receipt of any notice from any authority or governing body) which allows or, after notice or lapse of time or both, would allow, revocation, suspension or termination of any such Authorization or results or, after notice or lapse of time or both, would result in any other impairment of the rights of the holder of any such Authorization; except where such failure to be valid and in full force and effect or to be in compliance, the occurrence of any such event or the presence of any such restriction would not, singly or in the aggregate, have a Material Adverse Effect.

SECTION 5.17 Insurance. The Borrower and each other Loan Party maintains insurance covering their properties, assets, operations, personnel and businesses, and, in the good faith estimate of management, such insurance is of such type and in such amounts as is in accordance with customary industry practice in the locations where the Borrower and each other Loan Party conducts operations, taking into account the costs and availability of such insurance.

SECTION 5.18 No Material Adverse Change in Business. Since the respective dates as of which information is given in the Public Filings, except as set forth therein or, in any respect, relating to or arising from the Specified Closing Date Transactions or the Amendment No. 1 Effective Date Transactions, (i) there has not occurred any material adverse change or any development involving a prospective material adverse change in the condition, financial or otherwise, or the earnings, business, management or operations of each of the Borrower and the other Loan Parties, taken as a whole, (ii) there has not been any material adverse change or any development involving a prospective material adverse change in the capital stock or in the long-term debt of Holdings or any of its subsidiaries and (iii) neither Holdings nor any of its subsidiaries has incurred any material liability or obligation, direct or contingent.

SECTION 5.19 Collateral. The applicable Security Agreement and Pledge Agreement, when duly executed and delivered by each of the Loan Parties party thereto and upon completion of the filings and other actions specified therein, will create valid and perfected (to the extent such security interest can be perfected by such filings or actions) security interests in the Collateral to which they relate, and are prior to all other Liens on such Collateral in existence on the Closing Amendment No. 1 Effective Date except for Permitted Liens.

ARTICLE VI

COVENANTS

Until the Termination Date, the Borrower and Holdings shall, and to the extent applicable, shall cause each Restricted Subsidiary to comply with the following covenants:

SECTION 6.01 Existence. Holdings and the Borrower shall each do or cause to be done all things necessary to preserve and keep in full force and effect their existence and the existence of each of the Restricted Subsidiaries in accordance with their respective organizational documents, and the material rights, licenses and franchises of Holdings, the Borrower and each Restricted Subsidiary; provided, that Holdings and the Borrower are not required to preserve any such right, license or franchise, or the existence of any Restricted Subsidiary, if the maintenance or preservation thereof is no longer desirable in the conduct of the business of Holdings and its Restricted Subsidiaries taken as a whole; and provided, further, that this Section shall not prohibit any transaction otherwise permitted by Section 6.07 or Section 6.11.

SECTION 6.02 Payment of Taxes. Holdings shall pay or discharge, and cause each of its Subsidiaries to pay or discharge, before the same become delinquent all material taxes, assessments and governmental charges levied or imposed upon Holdings or any Subsidiary or its income or profits or property, other than any such tax, assessment or charge the amount, applicability or validity of which is being contested in good faith by appropriate proceedings.

SECTION 6.03 Limitations on Indebtedness. v) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume, become liable for or guarantee the payment of (collectively, an “incurrence”) any Indebtedness (including Acquired Indebtedness); provided that Holdings, the Borrower and any other Loan Party may incur any Indebtedness (including Acquired Indebtedness) if: (i) after giving effect thereto and the application of the proceeds therefrom, the Consolidated Fixed Charge Coverage Ratio on the date thereof would be at least 2.0 to 1.0 and (ii) such Indebtedness complies with the Required Debt Terms.

(a) Notwithstanding the foregoing, the provisions of this Agreement will not prevent the incurrence of:

(i) Permitted Indebtedness; (including Refinancing Indebtedness and Specified Refinancing Indebtedness, in each case, as set forth in the definition thereof).

(ii) [Subject to Section 6.03\(i\), Refinancing Indebtedness \(and subsequent Refinancing Indebtedness in respect thereof\) and Specified Refinancing Indebtedness \(and subsequent Specified Refinancing Indebtedness in respect thereof\),](#)

(iii) (A) Non-Recourse Indebtedness in an aggregate amount at any one time outstanding not to exceed the amount (the “Non-Recourse Indebtedness Amount”) that is 23% of the sum of (1) “total inventories” less (2) “consolidated inventory not owned” (as of the last day of the Most Recent Fiscal Quarter), excluding the impact of consolidated Permitted Joint Ventures, and (B) any Indebtedness which serves to refund, refinance or extend any such Non-Recourse Indebtedness (“Refinancing Non-Recourse Indebtedness”), provided that such Refinancing Non-Recourse Indebtedness is, except for clause (b) of the definition thereof, Non-Recourse Indebtedness,

(iv) any Guarantee of Indebtedness represented by the Loans,

(v) ~~reserved~~ [Incremental Term Loans and Refinancing Indebtedness in respect thereof](#), and

(vi) any guarantee by the Borrower, Holdings or any other Loan Party of Indebtedness that is permitted to be incurred in compliance with this Agreement; provided that in the event such Indebtedness that is being guaranteed is subordinated in right of payment to the Loans or a Guarantee, as the case may be, then the related guarantee shall be subordinated in right of payment to the Loans or such Guarantee, as the case may be.

(b) For purposes of determining compliance with this covenant, in the event that an item of Indebtedness may be incurred through [Section 6.03\(a\)](#) or by meeting the criteria of one or more of the types of Indebtedness described in [Section 6.03\(b\)](#) (or the definitions of the terms used therein), Holdings, in its sole discretion [\(subject to the limitations set forth in Section 6.03\(i\)\)](#),

(i) may divide, classify or later reclassify the amount and type of such item of Indebtedness (or any portion thereof) under and comply with any of such paragraphs (or any of such definitions), as applicable,

(ii) may divide, classify or later reclassify the amount and type of such item of Indebtedness (or any portion thereof) into more than one of such paragraphs (or definitions), as applicable, and

(iii) may elect to comply with such paragraphs (or definitions), as applicable, in any order.

(c) Holdings and the Borrower will not, and will not cause or permit any other Loan Party to, directly or indirectly, in any event incur any Indebtedness that purports to be by its terms (or by the terms of any agreement governing such Indebtedness) subordinated to any other Indebtedness of Holdings or of such other Loan Party, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinated to the Loans or the Guarantee of such other Loan Party, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to such other Indebtedness of Holdings or such other Loan Party, as the case may be.

(d) Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this [Section 6.03](#).

(e) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in another currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed (i) the principal amount of such Indebtedness being refinanced plus all accrued interest thereon plus (ii) the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing. Notwithstanding any other provision of this [Section 6.03](#), the maximum amount of Indebtedness Holdings, the Borrower or a Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness incurred pursuant to and in compliance with, this [Section 6.03](#), the principal amount of Indebtedness outstanding under any clause of [Section 6.03\(b\)](#) shall be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness.

(f) The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

(g) For purposes of this [Section 6.03](#) and the other provisions of this Agreement, (i) unsecured Indebtedness shall not be treated as subordinated or junior to secured Indebtedness merely because it is unsecured, and (ii) senior Indebtedness shall not be treated as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral.

(h) For purposes of determining compliance with this covenant, (i) all Indebtedness incurred under the [Existing Senior Lien Credit Facility \(and any Specified Refinancing Indebtedness in respect thereof\)](#) shall be deemed to be incurred under clause (a)(i) of the definition of "Permitted Indebtedness", (ii) all Existing Unsecured Indebtedness outstanding on the Closing Date ([and any Refinancing Indebtedness in respect thereof](#)) shall be deemed to be incurred under clause (k) of the definition of "Permitted Indebtedness," (iii) ~~all Second Lien Obligations outstanding on the Closing Date shall be deemed to be incurred under clause (n) of the definition of "Permitted Indebtedness,"~~ (iv) ~~all 1.125 Lien Notes shall be deemed to be incurred under clause (a)(ii) of the definition of "Permitted Indebtedness,"~~ (v) ~~all 1.25 Lien Notes in respect thereof~~ shall be deemed to be incurred under clause (a)(iii) of the definition of "Permitted Indebtedness," (vi) ~~all 1.25 Lien Notes (and any Specified Refinancing Indebtedness in respect thereof) shall be deemed to be incurred under clause (a)(vii) of the definition of "Permitted Indebtedness,"~~ (vii) ~~the Term Loans and the 1.75v all 1.25 Lien Notes (and any Specified Refinancing Indebtedness in respect thereof) shall be deemed to be incurred under clause (a)(iii) of the definition of "Permitted Indebtedness,"~~ (viii) ~~the Incremental Term Loans (and any Refinancing Indebtedness in respect thereof) shall be deemed to be incurred under Section 6.03(b)(v) and (vii) the Initial Term Loans (and any Refinancing Indebtedness in respect thereof) shall be deemed to be incurred under clause (i) of the definition of "Permitted Indebtedness,"~~ and none of the foregoing ~~except clause (ii) may be reclassified at any time; provided that all or any portion of any 1.5 Lien Obligations, Existing Unsecured Indebtedness and/or Second Lien Obligations deemed to have been incurred under clauses (a)(iv), (k) and (n), respectively, of the definition of "Permitted Indebtedness" and any Indebtedness deemed to have been incurred under clause (u) of the definition of "Permitted Indebtedness," in each case, may be reclassified by the Borrower pursuant to Section 6.03(c) above; (it being understood and agreed that any reference to Refinancing Indebtedness or Specified Refinancing Indebtedness in the foregoing shall be deemed to include any subsequently incurred Refinancing Indebtedness or Specified Refinancing Indebtedness with respect to previously incurred Refinancing Indebtedness or Specified Refinancing Indebtedness, as applicable).~~

(i) For purposes of determining compliance with Section 6.03(b)(iii)(A), the amount of Non-Recourse Indebtedness outstanding at any one time shall be calculated as the sum of (x) the aggregate principal amount of all Non-Recourse Indebtedness outstanding as of the last day of the Most Recent Fiscal Quarter plus (y) with respect to any Non-Recourse Indebtedness incurred after the provision of the financial statements used for purposes of clause (x) above but prior to the date on which financial statements for a more recent fiscal quarter have been provided (in each case, pursuant to Section 6.12 hereof), the total principal amount or committed principal amount thereof (whether or not borrowed at the time of calculation of the Non-Recourse Indebtedness Amount), and, if the Non-Recourse Indebtedness Amount is satisfied at such time, any subsequent borrowing or reborrowing of such Non-Recourse Indebtedness shall be permitted, whether or not the Non-Recourse Indebtedness Amount at the actual time of any subsequent borrowing or reborrowing is satisfied; provided, however, that, for the avoidance of doubt, if at any time thereafter, the Non-Recourse Indebtedness Amount is exceeded, no new Non-Recourse Indebtedness may be incurred until such time as the Non-Recourse Indebtedness Amount is again satisfied.

(j) [Notwithstanding anything in the definition of Permitted Indebtedness to the contrary, following the incurrence of any Side Letter Exchanged Indebtedness other than in connection with the Term Loans \(it being expressly agreed that this Section 6.03\(k\) shall not apply to any Specified Junior Debt constituting Term Loans\) on any Side Letter Exchanged Indebtedness Incurrence Date:](#)

(A) [the principal amount of additional Indebtedness \(if any\) permitted to be incurred as New 1.125 Lien Basket Debt and/or New 1.25 Lien Basket Debt shall be reduced by the principal amount of Side Letter Exchanged Indebtedness incurred on such Side Letter Exchanged Indebtedness Incurrence Date; and](#)

(B) [the principal amount of additional Indebtedness incurred as New 1.125 Lien Basket Debt, New 1.25 Lien Basket Debt and/or New 1.75 Lien Basket Debt shall not, at the time of any such incurrence exceed, taken together with the then-outstanding principal amount of Indebtedness under clauses \(a\)\(ii\), \(a\)\(iii\) and \(i\) of the definition of "Permitted Indebtedness" \(including such Side Letter Exchanged Indebtedness\), the Senior/Pari Passu Priority Lien Fixed Debt Cap.](#)

(i) For purposes of calculating the Consolidated Fixed Charge Coverage Ratio in connection with the incurrence of any Indebtedness pursuant to Section 6.03(a), the Borrower may elect, at its option, to treat all or any portion of the committed amount of any Indebtedness (and the issuance and creation of letters of credit and bankers' acceptances thereunder) which is to be incurred (or any commitment in respect thereof), as the case may be (any such committed amount elected until revoked as described below, the "Reserved Indebtedness Amount"), as being incurred as of such election date, and, if such Consolidated Fixed Charge Coverage Ratio is satisfied with respect thereto on such election date, any subsequent borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers' acceptances thereunder) shall be deemed to be permitted under Section 6.03(a), whether or not the Consolidated Fixed Charge Coverage Ratio, at the actual time of any subsequent borrowing or reborrowing (or issuance or creation of letters of credit or bankers' acceptances thereunder) is met; provided that for purposes of subsequent calculations of the Consolidated Fixed Charge Coverage Ratio, the Reserved Indebtedness Amount shall be deemed to be outstanding, whether or not such amount is actually outstanding, for so long as such commitments are outstanding or until the Borrower revokes an election of a Reserved Indebtedness Amount.

SECTION 6.04 Limitations on Restricted Payments. (a) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment unless:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or immediately after giving effect to such Restricted Payment;

(ii) immediately after giving effect to such Restricted Payment, (A) Holdings could incur at least \$1.00 of Indebtedness pursuant to Section 6.03(a) hereof and (B) the Secured Debt Leverage Ratio is less than 4.0 to 1.0; and

(iii) immediately after giving effect to such Restricted Payment, the aggregate amount of all Restricted Payments (including the Fair Market Value of any non-cash Restricted Payment) declared or made on or after October ~~3+5, 20+9~~2023 does not exceed the sum of:

(A) 50% of the Consolidated Net Income of Holdings on a cumulative basis during the period (taken as one accounting period) from and including ~~the first day of the first fiscal quarter of Holdings in which the Closing Date occurs~~August 1, 2023 and ending on the last day of Holdings' fiscal quarter immediately preceding the date of such Restricted Payment (or in the event such Consolidated Net Income shall be a deficit, minus 100% of such deficit), *plus*

(B) 100% of the aggregate net cash proceeds of and the Fair Market Value of Property received by Holdings from (1) any capital contribution to Holdings after October ~~3+5, 20+9~~2023 or any issue or sale after October ~~3+5, 20+9~~2023 of Qualified Stock (other than to any Subsidiary of Holdings) and (2) the conversion, exchange or exercise, as the case may be, on or after October ~~3+5, 20+9~~2023 of any Indebtedness or other securities of Holdings or the Borrower convertible into or exchangeable or exercisable for Qualified Stock of Holdings, *plus*

(C) in the case of the disposition or repayment of any Investment constituting a Restricted Payment (or if the Investment was made prior to October ~~3+5, 20+9~~2023, that would have constituted a Restricted Payment if made after October ~~3+5, 20+9~~2023, if such disposition or repayment results in cash received by Holdings, the Borrower or any Restricted Subsidiary), an amount (to the extent not included in the calculation of Consolidated Net Income referred to in (A)) equal to the return of capital with respect to such Investment, including by dividend, distribution or sale of Capital Stock (to the extent not included in the calculation of Consolidated Net Income referred to in (A)), *plus*

(D) with respect to any Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary after October ~~3+5, 20+9~~2023, in accordance with the definition of "Unrestricted Subsidiary" (so long as the designation of such Subsidiary as an Unrestricted Subsidiary was treated under this Agreement as a Restricted Payment made after October ~~3+5, 20+9~~2023, and only to the extent not included in the calculation of Consolidated Net Income referred to in (A)), an amount equal to the lesser of (x) the proportionate interest of Holdings or a Restricted Subsidiary in an amount equal to the excess of (I) the total assets of such Subsidiary, valued on an aggregate basis at the lesser of book value and Fair Market Value thereof, over (II) the total liabilities of such Subsidiary, determined in accordance with GAAP, and (y) the Designation Amount at the time of such Subsidiary's designation as an Unrestricted Subsidiary.

(b) Clause (a) of this Section 6.04 (provided that in the case of clauses (v) and (x) below no Default or Event of Default has occurred and is continuing at the time of such payment) will not prohibit:

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days of its declaration or the giving of notice of such irrevocable redemption, as applicable, if such dividend or such payment could have been made on the date of its declaration or provision of notice, as applicable, without violation of the provisions of this Agreement;

(ii) ~~reserved~~; the purchase, repayment, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of shares of Capital Stock of Holdings in exchange for, or out of the net proceeds of the substantially concurrent sale (other than to a Subsidiary of Holdings) of shares of Qualified Stock;

(iii) [reserved];

(iv) the payment of dividends on Preferred Stock and Disqualified Stock up to an aggregate amount of \$10.0 million in any fiscal year; provided that immediately after giving effect to any declaration of such dividend, (A) Holdings could incur at least \$1.00 of Indebtedness pursuant to the proviso to Section 6.03(a) and (B) the Secured Debt Leverage Ratio is less than 4.0 to 1.0;

(v) the purchase, redemption or other acquisition, cancellation or retirement for value of Capital Stock, or options, warrants, equity appreciation rights or other rights to purchase or acquire Capital Stock, of Holdings or any Subsidiary held by any present, future or former officers, directors, managers, employees or consultants of Holdings or any Subsidiary (or their estates or beneficiaries under their estates) not to exceed \$2.5 million in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$5.0 million in any calendar year); *provided* that such amount in any calendar year may be increased by an amount not to exceed: (A) the cash proceeds from the sale of Qualified Stock of Holdings to any future, present or former officers, directors, managers, employees or consultants of Holdings, any of its Subsidiaries that occurs after October 31, 2019, to the extent the cash proceeds from the sale of such Qualified Stock have not otherwise been applied to the payment of Restricted Payments by virtue of Section 6.04(a)(iii)(B) above; *plus* (B) the cash proceeds of key man life insurance policies received by Holdings and the Restricted Subsidiaries after October 31, 2019; *less* (C) the amount of any Restricted Payments previously made pursuant to clauses (A) and (B) of this clause (v); provided that Holdings may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) of this clause (v) in any calendar year;

(vi) the making of cash payments in connection with any conversion or exchange of Permitted Convertible Indebtedness in an aggregate amount since the date of the indenture therefor not to exceed the sum of (A) the principal amount of such Permitted Convertible Indebtedness *plus* (B) any payments received by Holdings, the Borrower or any Restricted Subsidiaries pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge;

(vii) any payments in connection with (including the purchase of) a Permitted Bond Hedge and the settlement of any related Permitted Warrant (A) by delivery of shares of Holdings' Capital Stock upon net share settlement of such Permitted Warrant or (B) by (x) set-off of such Permitted Warrant against the related Permitted Bond Hedge and (y) payment of an amount due upon termination of such Permitted Warrant in Capital Stock or using cash received upon the exercise, settlement or termination of a Permitted Bond Hedge upon any early termination thereof;

(viii) [reserved];

(ix) (A) any payment of cash by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of fractional shares of Holdings' Capital Stock upon the exercise, conversion or exchange of any stock options, warrants or other rights to purchase Capital Stock or other convertible or exchangeable securities and (B) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or similar taxes payable in connection with the exercise, conversion, settlement, exchange or vesting of Capital Stock by any future, present or former officer, employee, director, manager or consultant and repurchases of Capital Stock deemed to occur upon exercise, conversion, settlement or exchange of stock options, warrants or other rights to purchase Capital Stock or other convertible or exchangeable securities if such Capital Stock represents all or a portion of the exercise price thereof;

(x) other Restricted Payments in an aggregate amount, when taken together with all other Restricted Payments made pursuant to this ~~clause (x)~~ not to exceed \$10.0 million (after giving effect to any return of capital with respect to any Restricted Investments made under this ~~clause (x)~~ in the form of cash);

(xi) payments or distributions to satisfy dissenters' rights, pursuant to or in connection with a consolidation, merger or transfer of assets that complies with Section 6.11; and

(xii) Investments in any Permitted Joint Venture (which Investment may be made via an Investment in the JV Holding Company, if any, owning such Permitted Joint Venture) in an aggregate amount not to exceed at any one time outstanding (measured at the time made) ~~(+) \$182.3 million (which amount represents the aggregate amount of such Investments existing on October 31, 2019) plus (2)~~ the sum of (a) ~~\$100.0~~282.3 million and (b) 100% of the amount of cash and Cash Equivalents received by any of the Borrower, Holdings, any Subsidiary Guarantor or any JV Holding Company from any such Permitted Joint Venture following October ~~31, 2019~~2023 and ending on the last day of the fiscal quarter of Holdings immediately preceding the date of such Investment for which financial statements have been provided pursuant to Section 6.04 hereof; provided that after giving effect to such Investment, the ratio of total Indebtedness to (x) "total inventories" less (y) "inventory not owned" (as of the last day of the Most Recent Fiscal Quarter) for all such Permitted Joint Ventures would not be greater than 55% (as of the last day of the Most Recent Fiscal Quarter);

provided, however, that each Restricted Payment described in clauses (i) and (v) of this Section 6.04(b) shall be taken into account for purposes of computing the aggregate amount of all Restricted Payments pursuant to clause (iii) of Section 6.04(a).

For purposes of the proviso in Section 6.04(b)(xii), the amount of "Indebtedness" outstanding at any one time shall be calculated as the sum of (x) the aggregate principal amount of all Indebtedness of Permitted Joint Ventures outstanding as of the last day of the Most Recent Fiscal Quarter plus (y) with respect to any Indebtedness of Permitted Joint Ventures incurred after the provision of the financial statements used for purposes of clause (x) above but prior to the date on which financial statements for a more recent fiscal quarter have been provided (in each case, pursuant to Section 6.12 hereof), the total principal amount or committed principal amount thereof (whether or not borrowed at the time of calculation of the amount of such Indebtedness).

(c) For purposes of determining the aggregate and permitted amounts of Restricted Payments made, the amount of any guarantee of any Investment in any Person that was initially treated as a Restricted Payment and which was subsequently terminated or expired, net of any amounts paid by Holdings or any Restricted Subsidiary in respect of such guarantee, shall be deducted.

(d) In determining the "Fair Market Value of Property" for purposes of clause (iii) of Section 6.04(a), Property other than cash, Cash Equivalents and Marketable Securities shall be deemed to be equal in value to the "equity value" of the Capital Stock or other securities issued in exchange therefor. The equity value of such Capital Stock or other securities shall be equal to (i) the number of shares of Common Equity issued in the transaction (or issuable upon conversion or exercise of the Capital Stock or other securities issued in the transaction) multiplied by the closing sale price of the Common Equity on its principal market on the date of the transaction (less, in the case of Capital Stock or other securities which require the payment of consideration at the time of conversion or exercise, the aggregate consideration payable thereupon) or (ii) if the Common Equity is not then traded on the New York Stock Exchange, the NYSE MKT or Nasdaq Stock Market, or if the Capital Stock or other securities issued in the transaction do not consist of Common Equity (or Capital Stock or other securities convertible into or exercisable for Common Equity), the value (if more than \$10.0 million) of such Capital Stock or other securities as determined in good faith by the Board of Directors of Holdings.

(e) For purposes of determining compliance with this Section 6.04, in the event that a proposed Restricted Payment or Investment (or a portion thereof) meets the criteria of clauses (i) through (xii) of Section 6.04(b) above or is entitled to be made pursuant to Section 6.04(a) and/or one or more of the exceptions contained in the definition of "Permitted Investments", the Borrower will be entitled to divide, classify or later reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment or Investment (or portion thereof) among such clauses (i) through (xii) of Section 6.04(b) and Section 6.04(a) and/or one or more of the exceptions contained in the definition of "Permitted Investments" in a manner that otherwise complies with this covenant.

SECTION 6.05 Limitations on Liens. (a) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Liens, other than Permitted Liens, on any of its Property, or on any shares of Capital Stock or Indebtedness of any Restricted Subsidiary, or on any shares of Capital Stock of any JV Holding Company.

(b) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Liens on the Capital Stock of any Permitted Joint Venture owned, directly or indirectly, by such Person, other than Liens securing Indebtedness or other obligations of such Permitted Joint Venture.

SECTION 6.06 Limitations on Restrictions Affecting Restricted Subsidiaries. Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary that is not a Loan Party to, create, assume or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction (other than encumbrances or restrictions imposed by law or by judicial or regulatory action or by provisions of agreements that restrict the assignability thereof) on the ability of such Restricted Subsidiary to:

(a) pay dividends or make any other distributions on its Capital Stock or any other interest or participation in, or measured by, its profits, owned by Holdings or any other Restricted Subsidiary, or pay interest on or principal of any Indebtedness owed to Holdings or any other Restricted Subsidiary,

(b) make loans or advances to Holdings or any other Restricted Subsidiary, or

(c) transfer any of its property or assets to Holdings or any other Restricted Subsidiary,

except for:

(i) encumbrances or restrictions existing under or by reason of applicable Law,

(ii) contractual encumbrances or restrictions in effect at or entered into on the Closing Date or the Amendment No. 1 Effective Date (including, for the avoidance of doubt, those existing under or by reason of the New Secured Notes, the Existing Senior Lien Credit Facility; ~~the Existing Secured Notes~~, this Agreement, the Existing Unsecured Indebtedness and the related agreements) and any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings thereof; provided, that such amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in such contractual encumbrances or restrictions, as in effect at or entered into on the Closing Date or the Amendment No. 1 Effective Date.

(iii) encumbrances or restrictions under any agreement or other instrument of a Person acquired by or merged or consolidated with or into Holdings or any Restricted Subsidiary, or of an Unrestricted Subsidiary that is designated a Restricted Subsidiary, or that is assumed in connection with the acquisition of assets from such Person, in each case that is in existence at the time of such transaction (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired or designated,

(iv) any restrictions or encumbrances arising in connection with Refinancing Indebtedness; provided, however, that any restrictions and encumbrances of the type described in this clause (iv) that arise under such Refinancing Indebtedness shall not be materially more restrictive or apply to additional assets than those under the agreement creating or evidencing the Indebtedness being refunded, refinanced, replaced or extended,

(v) any Permitted Lien, or any other agreement restricting the sale or other disposition of property, securing Indebtedness permitted by this Agreement if such Permitted Lien or agreement does not expressly restrict the ability of a Subsidiary of Holdings to pay dividends or make or repay loans or advances prior to default thereunder,

(vi) reasonable and customary borrowing base covenants set forth in agreements evidencing Indebtedness otherwise permitted by this Agreement,

(vii) customary non-assignment provisions in leases, licenses, encumbrances, contracts or similar assets entered into or acquired in the ordinary course of business,

(viii) any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition,

(ix) encumbrances or restrictions existing under or by reason of this Agreement or the other Loan Documents,

(x) purchase money obligations that impose restrictions on the property so acquired of the nature described in clause (c) of this Section 6.06,

(xi) Liens permitted under this Agreement securing Indebtedness that limit the right of the debtor to dispose of the assets subject to such Lien,

(xii) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, assets sale agreements, stock sale agreements and other similar agreements,

(xiii) customary provisions of any franchise, distribution or similar agreements,

(xiv) restrictions on cash or other deposits or net worth imposed by contracts entered into in the ordinary course of business,

(xv) any encumbrances or restrictions existing under (A) development agreements or other contracts entered into with municipal entities, agencies or sponsors in connection with the entitlement or development of real property or (B) agreements for funding of infrastructure, including in respect of the issuance of 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,

(xvi) any encumbrances or restrictions that require “lockbox” or similar obligations with respect to Non-Recourse Indebtedness,

(xvii) any encumbrances or restrictions of the type referred to in clauses (a), (b) or (c) of this Section 6.06 imposed by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) and (ii) through (xvi) of this Section 6.06; provided, that such amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings are, in the good faith judgment of Holdings’ Board of Directors or its chief executive officer or chief financial officer, not materially more restrictive with respect to such encumbrances or restrictions than those contained in the encumbrance or restrictions prior to such amendment, modification, restatement, renewal, supplement, refunding, replacement or refinancing, and

(xviii) any encumbrance or restriction under other Indebtedness of Restricted Subsidiaries permitted to be incurred subsequent to the Closing Date pursuant to Section 6.03; provided, that such encumbrances or restrictions will not materially affect the Borrower’s ability to make anticipated principal and interest payments on the Loans, as determined in the good faith judgment of Holdings’ Board of Directors or its chief executive officer or chief financial officer.

(d) For purposes of determining compliance with this Section 6.06: (i) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to Holdings or a Restricted Subsidiary to other Indebtedness incurred by Holdings or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 6.07 Limitations on Dispositions of Assets. (a) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, make any Asset Disposition unless: (i) Holdings (or the Borrower or such Restricted Subsidiary, as the case may be) receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value thereof, and (ii) not less than 75% of the consideration received by Holdings (or the Borrower or such Restricted Subsidiary, as the case may be) from such Asset Disposition and all other Asset Dispositions since the Closing Date, on a cumulative basis, is in the form of cash, Cash Equivalents and Marketable Securities (which must be pledged as Collateral if the assets disposed of constituted Collateral; provided that the Borrower and the Restricted Subsidiaries will not be required to comply with the requirements of this subclause (ii) to the extent that the non-cash consideration received in connection with such Asset Disposition, together with the sum of all non-cash consideration received in connection with all prior Asset Dispositions that has not yet been converted into cash, Cash Equivalents or Marketable Securities, does not exceed \$25.0 million; *provided, however*, that when any non-cash consideration is converted into cash, Cash Equivalents or Marketable Securities, such cash shall constitute Net Cash Proceeds and be subject to Section 2.03.

(b) The amount of (i) any Indebtedness that constitutes Senior Priority Lien Obligations (as reflected on Holdings' most recent consolidated balance sheet or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such Indebtedness that would have been reflected on Holdings' consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by Holdings) of Holdings or the Borrower or any Subsidiary Guarantor (other than any Subordinated Indebtedness) that is actually assumed by the transferee in such Asset Disposition (or is otherwise extinguished in connection with the transactions relating to such Asset Disposition), (ii) the fair market value (as determined in good faith by the Board of Directors of Holdings) of any property or assets (including Capital Stock of any Person that will be a Subsidiary Guarantor) received that are used or useful in a Real Estate Business (provided that (except as permitted by clause (c) under the definition of "Permitted Investment") to the extent that the assets disposed of in such Asset Disposition were Collateral, such property or assets are pledged as Collateral under the Collateral Documents substantially simultaneously with such sale, with the Lien on such Collateral securing the Loans being of the same priority with respect to the Loans as the Lien on the assets disposed of), and (iii) any securities, notes or other obligations or assets received by Holdings, the Borrower or such Restricted Subsidiary from such transferee that are converted by Holdings, the Borrower or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days following the closing of such Asset Disposition, shall in each case be deemed to be consideration required by clause (ii) of Section 6.07(a) for purposes of determining the percentage of such consideration received by Holdings or the Restricted Subsidiaries.

(c) The Net Cash Proceeds of an Asset Disposition shall be applied pursuant to Section 2.03.

SECTION 6.08 Guarantees by Restricted Subsidiaries. Each existing Restricted Subsidiary (other than the Borrower (for so long as it remains the Borrower) ~~and any Excluded Subsidiary~~) will be a Guarantor on the Closing Date by executing this Agreement. Holdings is permitted to cause any Unrestricted Subsidiary to be a Guarantor. If the Borrower, Holdings or any of its Restricted Subsidiaries acquires or creates a Restricted Subsidiary ~~(other than any Excluded Subsidiary)~~ after the Closing Date, such Restricted Subsidiary shall execute a supplemental guarantee in the form of Exhibit K hereto, and deliver an Opinion of Counsel to the Administrative Agent to the effect that such supplemental guarantee has been duly authorized, executed and delivered by the new Restricted Subsidiary and constitutes a valid and binding obligation of the new Restricted Subsidiary, enforceable against the new Restricted Subsidiary in accordance with its terms (subject to customary exceptions).

SECTION 6.09 [Reserved].

SECTION 6.10 Limitations on Transactions with Affiliates. (a) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, make any loan, advance, guarantee or capital contribution to, or for the benefit of, or sell, lease, transfer or otherwise dispose of any property or assets to or for the benefit of, or purchase or lease any property or assets from, or enter into or amend any contract, agreement or understanding with, or for the benefit of, any Affiliate of Holdings or any Affiliate of any of Holdings' Subsidiaries involving payments or consideration in a single transaction or series of related transactions (each, an "Affiliate Transaction"), unless:

(i) with respect to any such Affiliate Transaction involving or having a value of more than \$5.0 million, Holdings shall have (A) obtained the approval of a majority of the Board of Directors of Holdings and (B) either obtained the approval of a majority of Holdings' disinterested directors or obtained an opinion of a qualified independent financial advisor to the effect that such Affiliate Transaction is fair to Holdings, the Borrower or such Restricted Subsidiary, as the case may be, from a financial point of view, and

(ii) with respect to any such Affiliate Transaction involving or having a value of more than \$10.0 million, Holdings shall have (A) obtained the approval of a majority of the Board of Directors of Holdings and (B) delivered to the Administrative Agent an opinion of a qualified independent financial advisor to the effect that such Affiliate Transaction is fair to Holdings, the Borrower or such Restricted Subsidiary, as the case may be, from a financial point of view.

(b) Notwithstanding the foregoing, an Affiliate Transaction will not include:

(i) any contract, agreement or understanding with, or for the benefit of, or plan for the benefit of, employees of Holdings or its Subsidiaries generally (in their capacities as such) that has been approved by the Board of Directors of Holdings;

(ii) Capital Stock issuances to directors, officers and employees of Holdings or its Subsidiaries pursuant to plans approved by the stockholders of Holdings;

(iii) any Restricted Payment otherwise permitted under Section 6.04 hereof or any Permitted Investment (other than a Permitted Investment referred to in clause (b) of the definition thereof, except as permitted by clause (iv) below);

(iv) any transaction between or among Holdings and/or one or more Restricted Subsidiaries or between or among Restricted Subsidiaries (provided, however, no such transaction shall involve any other Affiliate of Holdings (other than an Unrestricted Subsidiary to the extent permitted by this Agreement)) and any Guarantees issued by Holdings or a Restricted Subsidiary for the benefit of Holdings or a Restricted Subsidiary, as the case may be, in accordance with Section 6.03;

(v) any transaction between Holdings, the Borrower or one or more Restricted Subsidiaries and one or more Unrestricted Subsidiaries (A) where all of the payments to, or other benefits conferred upon, such Unrestricted Subsidiaries are substantially contemporaneously divided, or otherwise distributed or transferred without charge, to Holdings, the Borrower or a Restricted Subsidiary or (B) in the ordinary course of business, including sales (directly or indirectly), sales subject to repurchase options, leases and sales and leasebacks of (1) homes, improved land and unimproved land and (2) real estate (including related amenities and improvements);

(vi) issuances, sales or other transfers or dispositions of mortgages and collateralized mortgage obligations in the ordinary course of business between Restricted Subsidiaries and Unrestricted Subsidiaries of Holdings;

(vii) the payment of reasonable and customary fees to, and indemnity provided on behalf of, officers, directors, employees or consultants of Holdings, the Borrower or any Restricted Subsidiary;

(viii) transactions in which Holdings, the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent an opinion of a qualified independent financial advisor stating that such transaction is fair to Holdings, the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to Holdings, the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Holdings, the Borrower or such Restricted Subsidiary with an unrelated Person on an arm's length basis;

(ix) any agreement or arrangement as in effect as of the Closing Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect to the Lenders when taken as a whole as compared to the applicable agreement or arrangement as in effect on the Closing Date);

(x) transactions with joint ventures entered into in the ordinary course of business, including sales (directly or indirectly), sales subject to repurchase options, leases and sales and leasebacks of (A) homes, improved land and unimproved land and (B) real estate (including related amenities and improvements);

(xi) any transaction with a Person (other than an Unrestricted Subsidiary) which would constitute an Affiliate Transaction solely because Holdings, the Borrower or a Restricted Subsidiary owns Capital Stock in or otherwise controls such Person;

(xii) the issuance and transfer of Capital Stock of Holdings, the Borrower and the granting and performance of customary registration rights;

(xiii) any lease entered into between Holdings, the Borrower or any Restricted Subsidiary, as lessee, and any Affiliate of Holdings, as lessor, in the ordinary course of business;

(xiv) intellectual property licenses in the ordinary course of business;

(xv) transactions between Holdings, the Borrower or any of its Restricted Subsidiaries and any Person that would constitute an Affiliate Transaction solely because a director of which is also a director of Holdings; provided, however, that such director abstains from voting as a director of Holdings on any matter involving such other Person; and

(xvi) pledges of Capital Stock of Unrestricted Subsidiaries (other than a JV Holding Company or Permitted Joint Venture (except in compliance with Section 6.05 hereof)).

SECTION 6.11 Limitations on Mergers, Consolidations and Sales of Assets. Neither the Borrower nor any other Loan Party will consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including by way of liquidation or dissolution), or assign any of its obligations under this Agreement and any other Loan Document (as an entirety or substantially as an entirety in one transaction or in a series of related transactions), to any Person (in each case other than in a transaction in which Holdings, the Borrower or a Restricted Subsidiary is the survivor of a consolidation or merger, or the transferee in a sale, lease, conveyance or other disposition) unless:

(i) the Person formed by or surviving such consolidation or merger (if other than Holdings, the Borrower or the other Loan Parties, as the case may be), or to which such sale, lease, conveyance or other disposition or assignment will be made (collectively, the "Successor"), is a corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by amendment hereto in a form reasonably satisfactory to the Administrative Agent all of the obligations of Holdings, the Borrower or the other Loan Parties, as the case may be, under this Agreement and any other Loan Document, as the case may be,

(ii) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing, and

(iii) immediately after giving effect to such transaction,

(A) Holdings (or its Successor) could incur at least \$1.00 of Indebtedness pursuant to Section 6.03(a) hereof, or

(B) the Consolidated Fixed Charge Coverage Ratio would be equal to or greater than the Consolidated Fixed Charge Coverage Ratio immediately prior to such transaction.

The foregoing provisions shall not apply to: (1) a transaction involving the sale or disposition of Capital Stock of a Guarantor, or the consolidation or merger of a Guarantor, or the sale, lease, conveyance or other disposition of all or substantially all of the assets of a Guarantor, that in any such case results in such Guarantor being released from its Guarantee, or (2) a transaction the purpose of which is to change the state of incorporation or formation of Holdings, the Borrower or any other Loan Party.

SECTION 6.12 Reports to Lenders. (a) Holdings shall file with the Commission the annual reports and the information, documents and other reports required to be filed pursuant to Section 13 or 15(d) of the Exchange Act. Holdings shall file with the Administrative Agent such reports, information and documents within 15 days after it files them with the Commission. In the event that Holdings is no longer subject to these periodic reporting requirements of the Exchange Act, it will nonetheless continue to file reports with the Commission and the Administrative Agent as if it were subject to such reporting requirements. Regardless of whether Holdings is required to furnish such reports to its stockholders pursuant to the Exchange Act, Holdings will cause its consolidated financial statements and a "Management's Discussion and Analysis of Results of Operations and Financial Condition" written report, similar to those that would have been required to appear in annual or quarterly reports, to be delivered to the Administrative Agent.

(b) The posting of the reports, information and documents referred to above on Holdings' website or one maintained on its behalf for such purpose shall be deemed to satisfy Holdings' delivery obligations to the Administrative Agent. In addition, availability of the foregoing materials on the Commission's EDGAR service shall be deemed to satisfy Holdings' delivery obligations to the Administrative Agent. The Administrative Agent shall have no obligation to monitor whether Holdings posts such reports, information and documents on its website or the Commission's EDGAR service, or collect any such information from Holdings' website or the Commission's EDGAR service.

(c) Delivery of such reports, information and documents to the Administrative Agent is for informational purposes only and the Administrative Agent's receipt of them will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's and/or Holdings' compliance with any of its covenants in this Agreement (as to which the Administrative Agent is entitled to rely exclusively on Officers' Certificates).

SECTION 6.13 Notice of Other Defaults. In the event that any Indebtedness that has an outstanding principal amount of \$40.0 million or more of the Borrower or any other Loan Party is declared due and payable before its maturity because of the occurrence of any default under such Indebtedness, the Borrower or the relevant Loan Party, as the case may be, shall promptly deliver to the Administrative Agent an Officer's Certificate stating such declaration; provided, that the term "Indebtedness" as used in this Section 6.13 shall not include Non-Recourse Indebtedness.

SECTION 6.14 Collateral Requirement; Further Assurances; Costs.

(a) On the Closing Date, the Borrower and each other Loan Party shall grant Liens on all their property (other than Excluded Property) and take all appropriate steps to cause such Liens to be perfected liens (subject to Permitted Liens), including through recordation of mortgages or deeds of trust, entry into control agreements, filing of UCC-1 financing statements or otherwise, pursuant to, and to the extent required by, the Collateral Documents to be entered into on the Closing Date and this Agreement. For the avoidance of doubt, the requirements of this Section 6.14(a) are subject to Section 6.14(d) below.

(b) If the Borrower or any of the Guarantors at any time grants, assumes, perfects or becomes subject to any Lien upon any of its property (other than Excluded Property of the type referred to in clause (a) of the definition thereof) then owned or thereafter acquired as security for any other Secured Obligation that in each case is subject to the Intercreditor Agreements, the Borrower shall, or shall cause such Guarantor to, as promptly as practical (subject to Section 6.14(d) below):

(i) grant a Lien with the same priority as the Liens on the Collateral then securing the Loan Obligations on such property to the Collateral Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties and, to the extent such grant would require the execution and delivery of a Collateral Document, the Borrower or such Guarantor shall execute and deliver a Collateral Document on substantially the same terms as the agreement or instrument executed and delivered to secure such other Secured Obligations (but subject to changes to make such new Collateral Document consistent with the Collateral Documents delivered on the Closing Date);

(ii) cause the Lien granted in such Collateral Document to be duly perfected in any manner permitted by law to the same extent as the Liens granted for the benefit of such other Secured Obligations are perfected; and

(iii) instruct the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and the Joint First Lien Collateral Agent in writing to take all action necessary in connection with the foregoing provisions of this Section 6.14(b), including as necessary under the Collateral Documents. By their making of the Loans, the Lenders shall be deemed to have instructed and authorized the Administrative Agent, 1.75 Pari Passu Lien Collateral Agent and the Joint First Lien Collateral Agent to take such action as instructed by Holdings or the Borrower or any other Guarantor.

(c) If the Borrower or any other Loan Party at any time after the Closing Date acquires any new property (other than Excluded Property) that is not automatically subject to a Lien under the Collateral Documents, or a non-Loan Party Restricted Subsidiary becomes a Loan Party, the Borrower will, or will cause such other Loan Party, subject to the requirements of the Collateral Documents, to as soon as practical after such property's acquisition or it no longer being Excluded Property (subject to Section 6.14(d) below):

(i) grant a Lien with the same priority as the Liens on the Collateral then securing the Loan Obligations on such property (or, in the case of a new Loan Party, all of its assets except Excluded Property) to the Administrative Agent for the benefit of the Secured Parties and, to the extent such grant would require the execution and delivery of a Collateral Document, the Borrower or such other Loan Party shall execute and deliver a Collateral Document on substantially the same terms as the Collateral Documents executed and delivered on the Closing Date);

(ii) cause the Lien granted in such Collateral Document to be duly perfected in any manner permitted by law to the same extent as the Liens granted on the Closing Date are perfected; and

(iii) instruct the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and the Joint First Lien Collateral Agent in writing to take all action necessary in connection with the foregoing provisions of this Section 6.14(c) including as necessary under the Collateral Documents. By their making of the Loans, the Lenders shall be deemed to have instructed and authorized the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and the Joint First Lien Collateral Agent to take such actions as instructed by Holdings or the Borrower or any other Guarantor.

The Borrower or such Guarantor shall deliver an Opinion of Counsel to the Administrative Agent in respect of any Lien grant referred to in this Section 6.14(c) by a new Guarantor or with respect to real property, addressing customary matters (and containing customary exceptions) consistent with the Opinion of Counsel (if any) delivered on the Closing Date in respect of such matters; provided, that, an Opinion of Counsel shall not be required with respect to any mortgage or similar instrument for real property located in a jurisdiction for which an Opinion of Counsel has been previously delivered to the Administrative Agent pursuant to this Agreement.

(d) Notwithstanding anything to the contrary set forth in this Section 6.14 or elsewhere in this Agreement or any Collateral Document:

(i) any mortgages, deeds of trust or similar instruments (and any related Collateral Documents) required to be granted pursuant to this Agreement or the Collateral Documents with respect to real property owned by the Borrower or a Loan Party on the Closing Date shall be granted, together with Opinions of Counsel delivered to the Administrative Agent in respect of the enforceability and validity of such mortgages, deeds of trust and similar instruments, addressing customary matters (and containing customary exceptions) (provided, that, an Opinion of Counsel shall not be required with respect to any mortgage or similar instrument for real property located in a jurisdiction for which an Opinion of Counsel with respect to real property located in such jurisdiction has been previously delivered to the Administrative Agent pursuant to this Agreement), using reasonable best efforts following the Closing Date, but in no event later than (A) 180 days following the Closing Date with respect to real property to be pledged as Collateral with an aggregate book value of at least 60% of the aggregate book value of such real property owned on the Closing Date, (B) 210 days following the Closing Date with respect to real property to be pledged as Collateral with an aggregate book value of at least 75% of the aggregate book value of such real property owned on the Closing Date and (C) in any event, 270 days after the Closing Date with respect to all real property owned on the Closing Date to be pledged as Collateral;

(ii) any control, intercreditor or similar agreements or other Collateral Documents with respect to L/C Collateral (other than Excluded Property) and any deposit, checking and securities accounts required to be provided pursuant to this Agreement or the Collateral Documents on the Closing Date shall be provided promptly following the Closing Date, but in no event later than 90 days following the Closing Date or such later date as may be reasonably agreed by the Required Lenders;

(iii) [Reserved];

(iv) any control, intercreditor or similar agreements or other Collateral Documents required pursuant to this Agreement or the Collateral Documents with respect to L/C Collateral (other than Excluded Property) may provide that the Administrative Agent or the 1.75 Pari Passu Lien Collateral Agent, as applicable, for the benefit of the Secured Parties has a security interest in such Collateral that is junior to both the lien granted to the holders of the obligations secured by such L/C Collateral and the Senior Priority Lien Obligations;

(v) in the case of personal property, (A) the Borrower and the other Loan Parties will not be required to take any steps to perfect liens on personal property outside the United States and (B) except as set forth in Section 6.14(d)(vi)(C), with respect to perfection, the Borrower and the Guarantors shall only be required to provide for perfection in the name of the Joint First Lien Collateral Agent to the extent required under the First Lien Collateral Agency Agreement; and

(vi) in the case of real property Collateral, (A) the Borrower and the other Loan Parties will not be required to provide title insurance policies in respect thereof and (B) subject to clause (C), the Borrower and the Guarantors shall only be required to provide for and record a single mortgage to the extent and in the manner contemplated by the mortgages to be put in place in accordance with Section 6.14(d)(i) hereof and (C) if the Administrative Agent does not receive an Opinion of Counsel from local counsel in which real property Collateral is located that opines that a mortgage on such real property Collateral in favor of the Joint First Lien Collateral Agent or the 1.75 Pari Passu Lien Collateral Agent on behalf of the applicable First Lien Creditors (as defined in the First Lien Intercreditor Agreement) is enforceable (subject to customary exceptions) in such jurisdiction, the Borrower or the applicable Guarantor shall enter into a separate mortgage over the real property Collateral in such jurisdiction in favor of the Administrative Agent (other than the Joint First Lien Collateral Agent and the 1.75 Pari Passu Lien Collateral Agent) in each case, within the time periods and subject to the other conditions set forth in Section 6.14(d)(i).

(e) The Borrower will bear and pay all legal expenses, collateral audit and valuation costs, filing fees, insurance premiums and other costs associated with the performance of the obligations of the Borrower and the other Loan Parties set forth in this Section 6.14 and will also pay or reimburse the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and/or the Joint First Lien Collateral Agent for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and/or the Joint First Lien Collateral Agent in connection therewith, including the reasonable compensation and expenses of the Administrative Agent, the 1.75 Pari Passu Lien Collateral Agent and/or the Joint First Lien Collateral Agent's agents and counsel.

(f) Neither the Borrower nor any of the other Loan Parties will be permitted to take any action, or knowingly or negligently omit to take any action, which action or omission might or would have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Administrative Agent and the Secured Parties.

(g) On the Closing Date, Holdings shall deliver to the Administrative Agent, a Perfection Certificate.

SECTION 6.15 ~~Reserved~~ Limitations on Amendments.

(a) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, amend or modify any provision of any Specified Senior Lien Indebtedness or any Existing Unsecured Indebtedness if such amendment or modification would:

(i) shorten the maturity of such Indebtedness;

(ii) shorten the Weighted Average Life to Maturity of such Indebtedness;

(iii) permit such Indebtedness to be secured by Liens on assets other than Collateral (unless Liens on such assets are also granted to the Collateral Agent for the benefit of the Secured Parties to secure the Loan Obligations);

(iv) permit such Indebtedness to be incurred or guaranteed by any Person that is not the Borrower or a Guarantor hereunder (unless such Person becomes a Guarantor hereunder);

(v) otherwise be materially adverse to the Lenders (as determined by the Borrower in good faith); or

(vi) in the case of Indebtedness outstanding under the Existing Senior Lien Credit Facility, effect a change in the nature of such facility from a revolving credit facility to a term loan facility (other than in connection with a Specified Replacement Facility).

(b) Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to, amend or modify the Side Letter to (i) increase the Side Letter Maximum Amount, (ii) prohibit, or eliminate the Borrower's option to, purchase Specified Junior Debt under the Side Letter in cash, (iii) expand the types of indebtedness constituting Specified Junior Debt for purposes of the Side Letter and/or (iv) change the definition of "Side Letter Specified Persons" for purposes of the Side Letter.

SECTION 6.16 Change of Control Offers.

(a) Upon the occurrence of a Change of Control, each Lender shall have the right, at such Lender's option, to require the Borrower to purchase (the "Change of Control Offer") all or any part of such Lender's Loans and terminate such Lender's Term Commitments, if any, on a date (the "Change of Control Repurchase Date") that is no later than 90 days after notice of the Change of Control, with such purchase of Loans being at a price equal to 101% of the principal amount of the Loans held by such Lender plus accrued and unpaid interest, if any, to, but excluding, the Change of Control Repurchase Date.

(b) On or before the thirtieth day after any Change of Control, the Borrower shall provide written notice to the Administrative Agent and the Lenders, regarding the Change of Control and the repurchase right. The notice shall state the Change of Control Repurchase Date, the date by which the purchase right must be exercised, the price for the Loans and the procedure which the Lender must follow to exercise such right. To exercise such right, a Lender must deliver, at least ten days prior to the Change of Control Repurchase Date, written notice to the Borrower of the Lender's exercise of such right; *provided, however*, that if mandated by applicable Law, a Lender may be permitted to deliver such written notice nearer to the Change of Control Repurchase Date than may be specified by the Borrower.

(c) Notices may be delivered prior to the occurrence of a Change of Control stating that the Change of Control Offer is conditional on the occurrence of such Change of Control, and, if applicable, shall state that, in the Borrower's discretion, the Change of Control Repurchase Date may be delayed until such time as the Change of Control shall occur, or that such repurchase may not occur and such notice may be rescinded in the event that the Borrower shall determine that such condition will not be satisfied by the Change of Control Repurchase Date, or by the Change of Control Repurchase Date as so delayed.

(d) The Borrower will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this [Section 6.16](#) and purchases all such Loans validly tendered for purchase and not validly withdrawn under such Change of Control Offer.

(e) If Lenders holding not less than 90% of the sum of the Total Outstandings and unused Term Commitments, if any, then outstanding and which have not terminated pursuant to [Section 2.04](#) validly tender and do not validly withdraw such Loans and Term Commitments, if any, in a Change of Control Offer and the Borrower, or any third party making a Change of Control Offer in lieu of the Borrower as permitted by this [Section 6.16](#), purchases of all of the Loans validly tendered and not validly withdrawn by such Lenders, the Borrower or such third party shall have the right, upon not less than 10 nor more than 60 days' prior notice to the Lenders (with a copy to the Administrative Agent), given not more than 30 days following such purchase pursuant to the Change of Control Offer described in this [Section 6.16](#), to purchase all Loans that remain outstanding following such repurchase at a price in cash equal to 100% of the principal amount thereof *plus* accrued and unpaid interest, if any, to, but not including, the date of repurchase, and to terminate all Term Commitments, if any.

SECTION 6.17 ~~[Reserved]~~.

SECTION 6.18 ~~[Reserved]~~[Material Intellectual Property](#).

[Notwithstanding anything to the contrary in this Article VI or in the definition of Unrestricted Subsidiary, \(x\) no Restricted Subsidiary may transfer \(including through an Investment, including an Investment made through the designation of a Restricted Subsidiary as an Unrestricted Subsidiary\), sell or otherwise dispose of, or grant an exclusive license in, any Material Intellectual Property to an Unrestricted Subsidiary and \(y\) no Unrestricted Subsidiary may, at any time, own, or hold an exclusive license in, any Material Intellectual Property.](#)

SECTION 6.19 ~~[Reserved]~~[Restrictions on Specified Indebtedness](#).

(a) [Holdings and the Borrower will not, and will not cause or permit any Restricted Subsidiary to \(i\) make any Investment in \(including through the designation of a Restricted Subsidiary as an Unrestricted Subsidiary\), Restricted Payment to, or transfer or disposition of property or assets to, a Person that is not a Loan Party that includes as a component of such Investment, Restricted Payment or transfer or disposition a debt tender offer or exchange, a refinancing, restructuring or any similar transaction \(either in a single transaction or in a series of related transactions\) of or for the Specified Indebtedness or \(ii\) issue any Disqualified Stock.](#)

(b) [Holdings and the Borrower will not cause or permit any Unrestricted Subsidiary to incur or guarantee any Indebtedness that includes as a component of such incurrence or guarantee a debt tender offer or exchange, a refinancing, restructuring, repurchase or any similar transaction \(either in a single transaction or in a series of related transactions\) of or for Indebtedness incurred under clauses \(a\)\(i\), \(a\)\(ii\), \(a\)\(iii\), \(k\), \(n\) or \(u\) of the definition of "Permitted Indebtedness".](#)

(c) [Holdings, the Borrower and its Restricted Subsidiaries shall not Prepay any Indebtedness incurred pursuant to clauses \(a\)\(ii\), \(a\)\(iii\) or \(i\) of the definition of "Permitted Indebtedness" \(other than, in the case of clause \(i\), the Loan Obligations\) with proceeds from the Existing Senior Lien Credit Facility.](#)

SECTION 6.20 [Limitation of Prepayment of Existing Junior Lien Indebtedness and Existing Unsecured Indebtedness](#).

(a) Holdings, the Borrower and its Restricted Subsidiaries shall not purchase, repurchase, redeem, acquire or retire for value, including through any defeasance or discharge prior to stated maturity (collectively "Prepay", and the terms "Prepaid" and "Prepayment" have meanings correlative to the foregoing), any Indebtedness secured by a Lien on the Collateral that is junior to the Liens on the Collateral securing the Loan Obligations pursuant to the terms of the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement or other intercreditor agreement that is substantially similar to such intercreditor agreements (such Indebtedness, "[Junior Lien Indebtedness](#)"), Existing Unsecured Indebtedness, Subordinated Indebtedness, or any Refinancing Indebtedness in respect thereof (or any subsequently incurred Refinancing Indebtedness in respect of any such Refinancing Indebtedness) (collectively, the "[Prepayment Indebtedness](#)"), except:

(i) with respect to any Junior Lien Indebtedness and Prepayment Indebtedness in respect thereof, a Prepayment in exchange for, or with the proceeds of or from (including in connection with a tender offer or exchange offer): (A) Refinancing Indebtedness or Indebtedness that is “Permitted Indebtedness” under any of clauses ~~(a)(iv), (i), (k)~~, (n) or (u) of such definition, which Refinancing Indebtedness or Permitted Indebtedness (as applicable), if secured, shall be secured by Liens pursuant to clauses (i)~~(cb)~~, (i)(d), ~~(i)(f), (i)(g)~~ or (qq), as applicable, of the definition of “Permitted Liens”; or (B) an issuance of Qualified Stock; ~~provided that this Section 6.20 shall not limit or restrict any Prepayments of any Existing Secured Notes outstanding on the Closing Date (x) made within one year prior to the stated maturity of such Existing Secured Notes if, after giving effect to such Prepayment, the Secured Debt Leverage Ratio is less than 7.0 to 1.0 and (y) made at any time if, after giving effect to such Prepayment, the Secured Debt Leverage Ratio is less than 5.5 to 1.0;~~

(ii) with respect to the Existing Unsecured Indebtedness and Prepayment Indebtedness in respect thereof, a Prepayment in exchange for, or with the proceeds of or from (including in connection with a tender offer or exchange offer): (A) Refinancing Indebtedness or Indebtedness that is “Permitted Indebtedness” under any of clauses ~~(a)(iv), (i), (k)~~, (n) or (u) of the definition thereof, which Refinancing Indebtedness or Permitted Indebtedness (as applicable), if secured, shall be secured by Liens pursuant to clauses (i)~~(cb)~~, (i)(d), ~~(i)(f), (i)(g)~~ or (qq), as applicable, of the definition of “Permitted Liens”; or (B) an issuance of Qualified Stock;

(iii) with respect to any Subordinated Indebtedness and Prepayment Indebtedness in respect thereof, a Prepayment in exchange for, or with the proceeds of or from (including in connection with a tender offer or exchange offer): (A) Refinancing Indebtedness or Indebtedness that is “Permitted Indebtedness” under clause (u) of the definition thereof; or (B) an issuance of Qualified Stock; ~~and~~

(iv) with respect to any Specified Junior Debt, in each case beneficially owned by any Side Letter Specified Person, Prepayments (A) in exchange for, or with the proceeds of or from (including in connection with a tender offer or exchange offer), (A) Refinancing Indebtedness or Indebtedness that is “Permitted Indebtedness” under any of clauses (a)(iii)(y), (k), (n) or (u) of such definition, which Refinancing Indebtedness or Permitted Indebtedness if secured shall be secured by Liens pursuant to clauses (i)(a), (i)(b), (i)(d) or (qq), as applicable, of definition of Permitted Liens and (B) not to exceed an aggregate purchase price, excluding accrued and unpaid interest in accordance with clause (b)(iii) below, since October 5, 2023, equal to the Side Letter Maximum Amount; provided that the aggregate amount of Prepayments made pursuant the foregoing clauses (A) and (B), collectively, shall not exceed the Side Letter Maximum Amount;

~~(ivv)~~ with respect to any Junior Lien Indebtedness, Existing Unsecured Indebtedness, Subordinated Indebtedness and Prepayment Indebtedness in respect thereof, or any other Indebtedness incurred in compliance with this Section 6.20, Prepayments (other than with proceeds from the Existing Revolving Senior Lien Credit Agreement Facility) not to exceed the Prepayment Builder Amount; provided that (x) in the case of clause (b) of the definition thereof, (A) no Default or Event of Default shall have occurred and be continuing on the date of any such Prepayment and (B) the Borrower and Holdings shall have delivered an Officer’s Certificate to the Administrative Agent stating that the applicable Prepayment was made pursuant to this Section 6.20(a)(ivv) and setting forth the underlying calculations of the Prepayment Builder Amount after giving effect to such Prepayment and (y) the amount of Prepayments made pursuant to this Section 6.20(a)(ivv) shall not exceed \$125.0 million in the aggregate since the Closing Date; and

(vi) with respect to the Existing 5.0% Unsecured Notes and the Existing 13.5% Unsecured Notes, Prepayments in exchange for, or with the proceeds of or from (including in connection with a tender offer or exchange offer), Incremental Term Loans, so long as such Prepayment is made in compliance with Section 2.16.

(b) Clause (a) of this Section 6.20 will not prohibit:

(i) the purchase, repayment, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of any Prepayment Indebtedness or other Indebtedness incurred in compliance with this Section 6.20 (A) at a purchase price not greater than 101% of the principal amount of such Indebtedness in the event of a Change of Control in accordance with provisions similar to Section 6.16 hereof or (B) at a purchase price not greater than 100% of the principal amount thereof in accordance with provisions similar to the mandatory prepayment provisions set forth in Sections 6.07 and 6.16 hereof; provided that, prior to or simultaneously with such purchase, repayment, repurchase, redemption, defeasance or other acquisition, cancellation, or retirement, the Borrower, Holdings or any Restricted Subsidiary has made the Change of Control Offer pursuant to Section 6.16 hereof or offered to prepay pursuant to Section 2.03 hereof, as applicable, with respect to the Term Loans and has completed such repurchase or prepayment of all Term Loans for payment in connection with such Change of Control Offer or offer to prepay;

(ii) any purchase or redemption of Prepayment Indebtedness or other Indebtedness incurred in compliance with this Section 6.20 from Net Cash Proceeds of an Asset Disposition to the extent permitted under Section 6.07 hereof; ~~and~~

(iii) any (x) payments of accrued and unpaid interest to holders of Prepayment Indebtedness and other Indebtedness incurred in compliance with this Section 6.20 and (y) payments, not to exceed \$1.0 million ~~of~~for all such payments since October ~~31~~⁵, ~~2019~~²⁰²³, in respect of fractional Indebtedness in connection with the tender or exchange thereof, in each case, made in connection with a Prepayment made in compliance with this Section 6.20;

~~(iv) any Prepayments of any Prepayment Indebtedness or other Indebtedness incurred in compliance with this Section 6.20 made within one year prior to the stated maturity of such Prepayment Indebtedness or other Indebtedness; and~~

~~(v) the Prepayment of the Amendment No. 1 Exchanged Existing Debt in exchange for the Amendment No. 1 Term Loans.~~

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01 Events of Default. “Event of Default” means any one or more of the following events:

(i) the failure by Holdings, the Borrower and the other Loan Parties to pay interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document when the same becomes due and payable and the continuance of any such failure for a period of 30 days;

(ii) the failure by Holdings, the Borrower and the other Loan Parties to pay the principal or premium of any Loan when the same becomes due and payable at maturity, upon acceleration or otherwise;

(iii) the failure by Holdings, the Borrower or any Restricted Subsidiary to comply with any of its agreements or covenants in, or provisions of, this Agreement, the Collateral Documents or the Guarantees and such failure continues for the period and after the notice specified below (except in the case of a default under Section 6.11, which will constitute an Event of Default with notice but without passage of time);

(iv) the acceleration of any Indebtedness (other than Non-Recourse Indebtedness) of Holdings, the Borrower or any Restricted Subsidiary that has an outstanding principal amount of \$40.0 million or more, individually or in the aggregate, and such acceleration does not cease to exist, or such Indebtedness is not satisfied, in either case within 30 days after such acceleration;

(v) the failure by Holdings, the Borrower or any Restricted Subsidiary to make any principal or interest payment in an amount of \$40.0 million or more, individually or in the aggregate, in respect of Indebtedness (other than Non-Recourse Indebtedness) of Holdings, the Borrower or any Restricted Subsidiary within thirty (30) days of such principal or interest becoming due and payable (after giving effect to any applicable grace period set forth in the documents governing such Indebtedness);

(vi) a final judgment or judgments that exceed \$40.0 million or more, individually or in the aggregate, for the payment of money having been entered by a court or courts of competent jurisdiction against Holdings, the Borrower or any Restricted Subsidiaries and such judgment or judgments is not satisfied, stayed, annulled or rescinded within 60 days of being entered;

(vii) Holdings, the Borrower or any Restricted Subsidiary that is a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case,
- (B) consents to the entry of an order for relief against it in an involuntary case,
- (C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or
- (D) makes a general assignment for the benefit of its creditors;

(viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against Holdings, the Borrower or any Restricted Subsidiary that is a Significant Subsidiary as debtor in an involuntary case,

(B) appoints a Custodian of Holdings, the Borrower or any Restricted Subsidiary that is a Significant Subsidiary or a Custodian for all or substantially all of the property of Holdings or any Restricted Subsidiary that is a Significant Subsidiary, or

(C) orders the liquidation of Holdings, the Borrower or any Restricted Subsidiary that is a Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 days;

(ix) any Guarantee of a Loan Party that is a Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and this Agreement) or is declared null and void and unenforceable or found to be invalid or Holdings or any Subsidiary Guarantor denies its liability under its Guarantee (other than by reason of release of such Loan Party from its Guarantee in accordance with the terms of this Agreement and such Guarantee);

(x) the Liens created by the Collateral Documents shall at any time not constitute valid and perfected Liens on any material portion of the Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required by this Agreement or the Collateral Documents) other than in accordance with the terms of the relevant Collateral Document and this Agreement and other than the satisfaction in full of all Loan Obligations under this Agreement or the release or amendment of any such Lien in accordance with the terms of this Agreement or the Collateral Documents, or, except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Agreement and the relevant Collateral Document, any of the Collateral Documents shall for whatever reason be terminated or cease to be in full force and effect, if in either case, such default continues for 30 days after notice, or the enforceability thereof shall be contested by the Borrower or any other Loan Party;

(xi) any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (and in any respect if qualified by materiality) when made or deemed made;

(xii) any material provision of the Loan Documents (other than as described in subclause (ix) or subclause (x) of this Section 7.01) shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder; or

(xiii) unless Holdings, the Borrower or a permitted third party has consummated a Change of Control Offer in accordance with Section 6.16 and the purchase of any Loans of Lenders exercising a repurchase right thereunder, the occurrence of a Change of Control.

A Default as described in subclause (iii) of this Section 7.01 will not be deemed an Event of Default until the Lenders of at least 25 percent in principal amount of the then outstanding Loans notify Holdings and the Administrative Agent, of the Default and (except in the case of a Default with respect to Section 6.11 hereof) Holdings does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases to be a Default.

If an Event of Default (other than an Event of Default with respect to Holdings or the Borrower resulting from subclauses (vii) or (viii) of this Section 7.01), shall have occurred and be continuing under this Agreement, the Administrative Agent by notice to Holdings, or the Required Lenders by notice to Holdings and the Administrative Agent, may declare all Loans to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Loans and all other Loan Obligations will be due and payable immediately. If an Event of Default specified in subclauses (iv) or (v) of this Section 7.01 occurs, the declaration of acceleration of the amounts due and payable on the Loans and all other Loan Obligations shall be automatically annulled if the default triggering such Event of Default pursuant to subclauses (iv) or (v) of this Section 7.01 shall be remedied or cured by Holdings, the Borrower or a Restricted Subsidiary or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the amounts due and payable on the Loans would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium, if any, or interest on the Loans that became due solely because of the acceleration of the amounts due and payable on the Loans, have been cured or waived. The Borrower shall provide the Administrative Agent with notice of any such annulment of a declaration of acceleration of the Loans. If an Event of Default with respect to Holdings or the Borrower specified in subclauses (vii) or (viii) of this Section 7.01 occurs, such an amount will *ipso facto* become and be immediately due and payable without any declaration, notice or other act on the part of the Administrative Agent and Holdings or any Lender. This provision, however, is subject to the condition that, if at any time after the unpaid principal amount (or such specified amount) of the Loans shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Borrower shall pay or shall deposit with the Administrative Agent a sum sufficient to pay all matured installments of interest, if any, upon all of the Loans and the principal of all the Loans, which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, if any, to the extent that payment of such interest is enforceable under applicable Law and on such principal at the rate borne by the Loans to the date of such payment or deposit) and the reasonable compensation, disbursements, expenses and advances of the Administrative Agent (including, but not limited to, fees, expenses and disbursements of legal counsel) and all other amounts due to the Administrative Agent under Section 2.07 and Section 8.12 and any and all defaults under this Agreement, other than the nonpayment of such portion of the principal amount of and accrued interest, if any, on Loans which shall have become due by acceleration, shall have been cured or shall have been waived in accordance with Section 9.01 or provision deemed by the Administrative Agent to be adequate shall have been made therefor, then and in every such case the Required Lenders, by written notice to the Borrower and to the Administrative Agent, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon. Notwithstanding the previous sentence, no waiver shall be effective against any Lender for any Event of Default or event which with notice or lapse of time or both would be an Event of Default with respect to any covenant or provision which cannot be modified or amended without the consent of the Lender of each outstanding Loan affected thereby, unless all such affected Lenders agree, in writing, to waive such Event of Default or other event.

Following an Event of Default, the Administrative Agent shall proceed to enforce rights under this Agreement or the applicable Collateral Document with respect to the Collateral at the direction of the Required Lenders (subject to the Administrative Agent's rights hereunder). If the Administrative Agent shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any reason or shall have been determined to be adverse to the Administrative Agent, then and in every such case the Borrower, the Administrative Agent and the Lenders shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Administrative Agent and the Lenders shall continue as though no such proceeding had been taken.

Except with respect to an Event of Default pursuant to clauses (i) or (ii) of this Section 7.01, the Administrative Agent shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Responsible Officer of the Administrative Agent by the Borrower or any Lender and such notice references the Loans and this Agreement.

SECTION 7.02 [Reserved].

SECTION 7.03 Application of Funds. After the Loans have automatically become immediately due and payable and the Term Commitments, if any, have automatically terminated, any amounts received on account of the Loan Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Loan Obligations constituting fees, indemnities, expenses and other amounts (including amounts payable under Article 3, but not including principal of or interest on any Loan) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Loan Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including amounts payable under Article 3), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Loan Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Loan Obligations constituting unpaid principal of the Loans;

Fifth, to the payment of all other Loan Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Loan Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Loan Obligations have been paid in full, to the Borrower or as otherwise required by Law.

ARTICLE VIII

ADMINISTRATIVE AGENT AND OTHER AGENTS

SECTION 8.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Wilmington Trust, National Association to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers, rights and remedies as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. In performing its functions and duties hereunder, the Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Agent or Lender (i) for purposes of the perfection of all Liens created by the Loan Documents and all other purposes stated therein, (ii) to manage, supervise and otherwise deal with the Collateral, (iii) to take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents and (iv) except as may be otherwise specified in any Loan Document, to exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Law or otherwise, in each case, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any sub-agents appointed by the Administrative Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 8 and Section 8.05 as though such sub-agents were the “collateral agent” under the Loan Documents and as if the term Administrative Agent included the “collateral agent” as if set forth in full herein with respect thereto.

(c) Each Lender irrevocably authorizes the Administrative Agent to enter into any and all of the Collateral Documents together with such other documents as shall be necessary to give effect to the Lien on the Collateral contemplated by the other Collateral Documents, on its behalf and shall not be charged with knowledge of any term of any other agreement to which it is not a party. The Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents to which it is a party. The Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The Administrative Agent's duties hereunder shall be entirely administrative in nature. The Administrative Agent (i) is not assuming any obligation under any Loan Document other than as expressly set forth therein and (ii) shall not have implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this or the immediately preceding sentence or in Section 8.03. The Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein. Any action taken by the Administrative Agent in reliance upon the instructions of the Required Lenders (or, where so required by Section 9.01, such greater proportion of Lenders) and the exercise by the Administrative Agent of the powers set forth herein or in the other Loan Documents, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

SECTION 8.02 Rights as a Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, the Administrative Agent in its individual capacity as a Lender hereunder. The Person serving as the Administrative Agent hereunder shall, if it is a Lender, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with Holdings or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and may accept fees and other consideration from the Borrower for services in connection herewith and otherwise without any duty to account therefor to the Lenders. The Lenders acknowledge that pursuant to such activities, the Administrative Agent and its Related Parties may receive information regarding any Loan Party or any Affiliate of any Loan Party (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent and its Related Parties shall be under no obligation to provide such information to them.

SECTION 8.03 Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied (or express) duties or obligations arising under the agency doctrine of any applicable Law or otherwise, regardless of whether a Default has occurred and is continuing;

(b) notwithstanding anything herein to the contrary, the Administrative Agent shall not be required to take any action (or omit to take any action) that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Laws or if the Administrative Agent is not indemnified to its satisfaction; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any Agent-Related Person in any capacity.

The Administrative Agent and the Agent-Related Persons shall not be liable for any action taken or not taken by it or them (i)(A) under or in connection with any of the Loan Documents or (B) with the consent or at the request of the Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances provided in Section 9.01) or (ii) in the absence of its own gross negligence, or willful misconduct; provided, that the Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default and stating it is a "notice of default" is given to the Administrative Agent by the Borrower or a Lender; provided, further, that in the event the Administrative Agent shall receive such a notice, the Administrative Agent shall give notice thereof to the Lenders; it being understood that the failure to give such notice shall not result in any liability on the part of the Administrative Agent.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other 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 representations, warranties, covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Loan Documents, (v) the value or the sufficiency of any Collateral, (vi) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Loan Obligations or as to the use of the proceeds of the Loans, (vii) the properties, books or records of any Loan Party, (viii) the existence or possible existence of any Event of Default or Default or (ix) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection unless Administrative Agent has received satisfactory instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders, it being understood, however, that with regards to enforcement actions following an Event of Default, the Administrative Agent shall be entitled to act upon the direction of the Required Lenders), and, if necessary in the Administrative Agent's opinion, satisfactory indemnity and security. Phrases such as "satisfactory to the Administrative Agent", "approved by the Administrative Agent", "acceptable to the Administrative Agent", "as determined by the Administrative Agent", "in the Administrative Agent's discretion", "selected by the Administrative Agent", and phrases of similar import authorize and permit the Administrative Agent to approve, disapprove, determine, act or decline to act in its discretion, it being understood that the Administrative Agent in exercising such discretion under the Loan Documents shall be acting on the instructions of the Required Lenders (or Lenders to the extent required hereunder) and shall be fully protected in, and shall incur no liability in connection with, acting or failing to act (or failing to act while awaiting such direction) pursuant to such instructions.

The Administrative Agent shall never be required to use, risk or advance its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder (including, but not limited to, no obligation to grant any credit extension or to make any advance hereunder).

Neither the Administrative Agent nor any Agent-Related Person shall be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

The permissive authorizations, entitlements, powers and rights (including the right to request that the Borrower take an action or deliver a document and the exercise of remedies following an Event of Default) granted to the Administrative Agent herein shall not be construed as duties. The Administrative Agent shall have no responsibility for interest or income on any funds held by it hereunder and any funds so held shall be held un-invested pending distribution thereof.

Notwithstanding anything herein to the contrary, the Administrative Agent shall not have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any Lien or security interest created under the Loan Documents; (ii) take any necessary steps to preserve rights against any parties with respect to any Collateral; or (iii) take any action to protect against any diminution in value of the Collateral.

Knowledge of the Administrative Agent shall not be attributed or imputed to Wilmington Trust, National Association's other roles as trustee, administrative agent or collateral agent for the Borrower, and knowledge of Wilmington Trust, National Association in any other similar role for the Borrower shall not be attributed or imputed to each other or to the Administrative Agent.

SECTION 8.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, experts or professional advisors. No Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents). If at any time the Administrative Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Collateral), the Administrative Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Administrative Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Administrative Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Administrative Agent is unsure of what act to take hereunder, it may request the direction of the Required Lenders (or if necessary under Section 9.01, a greater percentage of Lenders) and shall be fully protected in acting in reliance thereon.

SECTION 8.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent and shall not be responsible for the acts of any such party appointed with due care. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory, indemnification and other provisions of this Article 8 shall apply to any such sub-agent and its Related Parties and to the Agent-Related Persons in any role or capacity, 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. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of this Article 8 shall apply to any such sub-agent and to the Related Parties of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Related Parties were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise against such sub-agent.

SECTION 8.06 Resignation of Administrative Agent: Appointment of Successor. The Administrative Agent may at any time resign or, if it is a Defaulting Lender pursuant to clause (iv) of the definition thereof, be removed by the Borrower upon ten (10) days' prior written notice of such resignation or removal to the Lenders and the Borrower. Upon receipt of any such notice of resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed and provided that no consent of the Borrower shall be required if an Event of Default has occurred and is continuing), to appoint a successor Administrative Agent which shall be a commercial bank or trust company with offices in the U.S. having combined capital and surplus in excess of \$100,000,000. If no such successor shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after notice of the Administrative Agent's resignation or removal, then, (i) in the case of a resignation of the Administrative Agent, the resigning Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld, or delayed; provided that no consent of the Borrower shall be required if an Event of Default has occurred and is continuing) or (ii) in the case of a removal of the Administrative Agent, the Borrower, may, with the consent of the Required Lenders, on behalf of the Lenders, appoint a successor Administrative Agent; provided that if no qualifying Person has accepted such appointment, then such resignation or removal shall nonetheless become effective after such thirty-day period and (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any possessory Collateral held by the Administrative Agent on behalf of the Lenders the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly (and each Lender will cooperate with the Borrower to enable the Borrower to take such actions), until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. 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 retired) or removed Administrative Agent, and the retiring (or retired) or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph) other than its obligations under Section 9.08. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the resignation or removal of the Administrative Agent hereunder and under the other Loan Documents, the provisions of this Article 8 and Section 9.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent. If the Administrative Agent consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor administrative agent hereunder.

SECTION 8.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement, made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with the incurrence of the Initial Term Loans hereunder, and made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, or otherwise, to make any such investigation or any such appraisal on behalf of the Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Administrative Agent shall not have any responsibility with respect to the accuracy or completeness of any information provided to the Lenders. Except for documents expressly required by this Agreement to be transmitted by the Administrative Agent to the Lenders, the Administrative Agent shall not have any duty or responsibility to provide any Secured Party with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come in to the possession of the Administrative Agent or any of its Related Parties.

SECTION 8.08 Collateral and Guarantee Matters. The Lenders irrevocably authorize the Administrative Agent to, and the Administrative Agent shall:

(a) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) on the date upon which all of the Loan Obligations (other than contingent obligations not yet accrued and payable) have been paid in full in cash, the Aggregate Commitments have expired or have been terminated (such date, the "Termination Date"), (ii) with respect to any property constituting Collateral that (x) is sold, transferred or otherwise disposed of by the Borrower, Holdings or any other Loan Party to any Person other than a Loan Party (but excluding any transaction where the recipient is required to become a Loan Party) in a transaction permitted by this Agreement and the Collateral Documents, at the time of such sale or disposition, to the extent of the interest sold or disposed of or (y) is owned or at any time acquired by a Restricted Subsidiary that has been released from its Guarantee, concurrently with the release of such Guarantee, (iii) subject to Section 9.01, if approved, authorized or ratified in writing by the Required Lenders or such other number or percentage of Lenders required by Section 9.01, (iv) owned by a Guarantor upon release of such Guarantor from its obligations under its Guarantee pursuant to clause (c) below or (v) as expressly provided in the Collateral Documents;

(b) [Reserved];

(c) execute any documents and instruments reasonably requested by the Borrower to evidence the release of any Guarantor from its obligations under the Guarantee if (i) all or substantially all of the assets of any Guarantor other than Holdings or all of the Capital Stock of any Guarantor other than Holdings is sold (including by consolidation, merger, issuance or otherwise) or disposed of (including by liquidation, dissolution or otherwise) by Holdings or any of its Subsidiaries, (ii) unless Holdings elects otherwise, any Guarantor other than Holdings is designated an Unrestricted Subsidiary in accordance with the terms of this Agreement, (iii) such Person ceases to be a Restricted Subsidiary ~~or becomes an Excluded Subsidiary~~ as a result of a transaction or designation permitted hereunder (it being understood that, in each case under this clause (c), any such Person shall be automatically and unconditionally released and discharged from all obligations under its Guarantee upon notice from Borrower to the Administrative Agent to such effect, without any further action required on the part of the Administrative Agent or any Lender), in each case, only to the extent such transaction is in compliance with the Loan Documents;

(d) upon receipt of an Officer's Certificate stating that such Indebtedness (or Liens securing such Indebtedness, if applicable) is permitted under the Loan Documents, enter into intercreditor agreements or arrangements (including any amendment, supplement or other modification of any Collateral Document to add or provide for additional secured parties) with respect to Indebtedness (or Liens securing such Indebtedness) that is required or permitted to be pari passu with or subordinated to the Loan Obligations (or the Liens securing the Loan Obligations) pursuant to Section 6.03; and

(e) release the Borrower from its obligations under the Loan Documents, without the consent of the Lenders, if: (1) Holdings or any successor to Holdings has assumed the obligations of the Borrower under the Loan Documents, by executing and delivering documentation that is reasonably satisfactory in form to the Administrative Agent and the Required Lenders, (2) the Borrower shall execute a Guarantee, (3) Holdings delivers an Opinion of Counsel to the Administrative Agent and the Required Lenders that such Guarantee is permitted by the terms of this Agreement, and has been duly authorized, executed and delivered by the Borrower and constitutes a valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms (subject to customary exceptions), until such time, if any, such Guarantee may be released pursuant to the terms of this Agreement, and that all conditions precedent (if any) to the execution of such Guarantee provided for in this Agreement have been complied with and (4) any other Loan party shall provide any affirmation or Collateral Documents reasonably requested by the Administrative Agent or the Required Lenders.

In each case as specified in this Section 8.08, upon receipt of an Officer's Certificate, the Administrative Agent will (and each Lender hereby authorizes the Administrative Agent to), at the Borrower's expense, deliver, upon the request of the applicable Loan Party, to such Loan Party or any designee of such Loan Party any certificates, powers or other physical collateral held by it and relating to such item of Collateral (but subject to the requirements of any applicable intercreditor agreement) and execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, release such Guarantor from its obligations under the Guarantee or execute and deliver the agreements described in clause (d) above, in each case, in accordance with the terms of the Loan Documents and this Section 8.08; provided that the Borrower shall have delivered to the Administrative Agent (i) a certificate of a Responsible Officer of the Borrower certifying that any such transaction has been consummated in compliance with this Agreement and the other Loan Documents as the Administrative Agent shall reasonably request and (ii) an Opinion of Counsel confirming that such release is permitted by Section 8.08. Additionally, with respect to subordinating the Administrative Agent's security interest in Collateral to a Permitted Lien which is permitted pursuant to this agreement to rank senior to the Loans, upon the request of the applicable Loan Party, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the subordination of the Administrative Agent's security interest in the Collateral to such Permitted Lien; provided that the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying that any such subordination has been consummated in compliance with this Agreement and the other Loan Documents as the Administrative Agent shall reasonably request and (ii) an Opinion of Counsel confirming that such subordination is permitted by this Agreement.

Each Secured Party hereby further authorizes the Administrative Agent on behalf of and for the benefit of the Secured Parties, (a) to be the agent for and representative of the Secured Parties with respect to the Collateral and the Collateral Documents, (b) to enter into any applicable intercreditor agreement contemplated by this agreement, including any Intercreditor Agreement and (c) to take any actions thereunder as determined by the Administrative Agent to be necessary or advisable. Each Secured Party hereby further authorizes the Administrative Agent on behalf of and for the benefit of the Secured Parties to enter into any other intercreditor agreement reasonably required by the Loan Documents (including any Intercreditor Agreement), and each Secured Party agrees to be bound by the terms of such intercreditor agreement.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Secured Party hereby agree that (i) unless the Administrative Agent consents thereto, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Documents, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent on behalf of itself and the Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Administrative Agent shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Loan Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

SECTION 8.09 [Reserved]

SECTION 8.10 Appointment of Supplemental Administrative Agents.

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “Supplemental Administrative Agent” and collectively as “Supplemental Administrative Agents”).

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article 8 and of Section 9.05 (obligating the Borrower to pay the Administrative Agent’s expenses and to indemnify the Administrative Agent) that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from the Borrower or any other Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

(d) No Administrative Agent shall be responsible for the actions of any other administrative agent appointed pursuant to this Section 8.10.

SECTION 8.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Loan Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 2.07) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.07.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Loan Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

SECTION 8.12 Indemnification of Administrative Agent. Each Lender, on a pro rata basis, based on its Aggregate Exposure Percentage, severally (but not jointly) agrees to indemnify the Administrative Agent and its Related Parties, to the extent that the Administrative Agent or its Related Parties shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including Attorney Costs (which shall be limited to one (1) counsel, at any given time, to the Administrative Agent, and if reasonably necessary, one (1) local counsel, at any given time, to the Administrative Agent in each relevant jurisdiction)) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or on behalf of or asserted against the Administrative Agent or its Related Parties (solely to the extent such Related Party was performing services on behalf of the Administrative Agent) in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as the Administrative Agent in any way relating to or arising out of this Agreement or the other Loan Documents (including in connection with enforcing a Lender's indemnification obligation hereunder); provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or its Related Parties', as applicable, gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable judgment.

In addition, each Lender hereby severally (but not jointly) agrees to reimburse the Administrative Agent and each of its Related Parties promptly upon demand for such Lender's pro rata share based on its Aggregate Exposure Percentage of any costs and expenses (including Attorney Costs (which shall be limited to one (1) counsel, at any given time, to the Administrative Agent, and if reasonably necessary, one (1) local counsel, at any given time, to the Administrative Agent in each relevant jurisdiction)) that may be incurred by the Administrative Agent or any of its Related Parties, to the extent not reimbursed by a Loan Party, in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

SECTION 8.13 Agency for Perfection. The Administrative Agent hereby appoints, authorizes and directs each Secured Party to act as collateral sub-agent for the Administrative Agent and the other Secured Parties for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Loan Party with, and cash and Cash Equivalents held by, such Secured Party, and may further authorize and direct such Secured Party to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Secured Party hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. For the avoidance of doubt, nothing in this Section 8.13 is intended to require the parties hereto to enter into any account control agreements not otherwise required hereunder. For the avoidance of doubt, any Secured Party that is appointed as a collateral sub-agent for the Administrative Agent shall be entitled to the benefits set forth in Section 8.05.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Amendments, Etc.— No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) extend or increase the Term Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02, or the waiver of any non-monetary Default or Event of Default shall not constitute an extension or increase of any Term Commitment of any Lender);

(b) postpone any date scheduled for any payment of principal, premium, interest or fees, without the prior written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any non-monetary Default or Event of Default shall not constitute a postponement of any date scheduled for any payment of principal, premium, interest or fees);

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or (subject to clause (iii) of the second proviso to this Section 9.01) reduce or forgive any fees or premium payable hereunder or under any other Loan Document without the prior written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 9.01 without the prior written consent of each Lender directly and adversely affected thereby; provided that the consent of each Lender shall be required to reduce the voting percentage set forth in the definition of “Required Lenders” or Section 9.07(a) (solely with regard to the ability of the Borrower to assign or otherwise transfer any of its rights or obligations hereunder);

(e) release all or substantially all of the Collateral in any transaction or series of related transactions (it being understood that a transaction permitted under Section 6.07 or Section 6.11 shall not constitute the release of all or substantially all of the Collateral); provided that the unused Term Commitment and the portion of the Total Outstandings held or deemed held by any Defaulting Lender shall be excluded for purposes of making such determination;

(f) other than in connection with a transaction permitted under Section 6.07 or Section 6.11, release all or substantially all of the aggregate value of the Guarantees; provided that the unused Term Commitment and the portion of the Total Outstandings held or deemed held by any Defaulting Lender shall be excluded for purposes of making such determination;

(g) except as necessary or advisable to carry out the express intent of sections of this Agreement (including Section 2.13, Section 2.14, Section 2.16 and this Section 9.01) permitting the addition of Classes of Loans or Term Commitments that may be incurred on a pari passu or junior basis in right of payment and/or Lien priority to the then-existing Loans and/or Term Commitments, or amend Section 7.03 or Section 2.10(f) in a manner that directly and adversely affects any Class without the consent of the Majority Lenders of such Class ~~holding more than 50% of the Term Commitments in respect of such Class;~~

(h) except as expressly set forth herein, amend Section 2.10(a) or Section 2.11 without the consent of each Lender directly and adversely affected thereby; ~~and~~

(i) amend, modify or change any provision that provides for the pro rata nature of disbursements by or payments to Lenders; ~~and~~

(j) effect any amendment or waiver that by its terms directly adversely affects the rights of a given Term Loan Facility in respect of payments under this Agreement or Liens on the Collateral securing the Loan Obligations, in each case, in a manner different than such amendment or waiver affects the other Term Loan Facilities under this Agreement without the written consent of the Majority Lenders with respect to such adversely affected Term Loan Facility;

and provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document (it being understood that the Required Lenders may agree to grant forbearance without the consent of the Administrative Agent, so long as such forbearance is not related to any rights of the Administrative Agent). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Term Commitment of such Lender may not be increased or extended without the consent of such Lender and (y) the principal and accrued and unpaid interest of such Lender's Loans shall not be reduced or forgiven without the consent of such Lender.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the prior written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with any Term Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and all of the applicable Refinancing Term Lenders (and no other Lenders) of the applicable Refinancing Term Loan Series providing such Refinancing Term Loans in connection with any refinancing facilities permitted pursuant to Section 2.14.

In addition, notwithstanding anything to the contrary contained in this Section 9.01 or any Loan Document, (a) the Borrower and the Administrative Agent may, without the input or consent of any other Lender, (i) effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower and the Administrative Agent to effect the provisions of Section 2.13 or Section 2.14 (provided, that the consents of any applicable Lender shall be required, to the extent specified in Section 2.13, or Section 2.14), (ii) evidence the succession of another Person to the Borrower or Holdings or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Borrower or Holdings herein, (iii) add to the covenants of the Borrower or Holdings such further covenants, restrictions, conditions or provisions for the protection of the Lenders, or to surrender any right or power herein conferred upon the Borrower or Holdings, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenants, restrictions, conditions or provisions such amendment, supplemented Agreement or waiver may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Administrative Agent upon such an Event of Default or may limit the right of Required Lenders to waive such an Event of Default, (iv) evidence and provide for the acceptance of appointment hereunder by a successor or replacement Administrative Agent or under the Collateral Documents of a successor or replacement Administrative Agent, Joint First Lien Collateral Agent or 1.75 Pari Passu Lien Collateral Agent, (v) to provide for any Guarantee, (vi) to add security to or for the benefit of the Loans and, in the case of the Collateral Documents, to or for the benefit of the other secured parties named therein, or to confirm and evidence the release, termination or discharge of any Guarantee of the Loans or Lien securing the Loans or any Guarantee when such release, termination or discharge is permitted by this Agreement and the Collateral Documents and (vii) (a) [reserved], (b) if the Administrative Agent and the Borrower have jointly identified an obvious error, ambiguity, defect, inconsistency or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, (c) guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented or waived without the consent of any Lender if such amendment, supplement or waiver is delivered in order to (x) comply with local Law, (y) cure ambiguities, omissions, mistakes or defects or (z) cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents and (d) the Borrower and the Administrative Agent may, with the prior written consent of the Required Lenders, effect immaterial amendments to the schedules and/or the exhibits to this Agreement and the other Loan Documents, in each case, as in effect on the Closing Date, if the Required Lenders have reasonably determined that such amendments are appropriate or to account for events or circumstances occurring after the Closing Date, which would have been included if such events or circumstances had occurred prior to the Closing Date. Notwithstanding its receipt of direction from the Lenders, the Administrative Agent shall not be required to enter into any amendment hereunder that effects its own rights, indemnities, protections, obligations or duties.

SECTION 9.02 Notices and Other Communications; Facsimile Copies.

(a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or any other Loan Document shall be in writing (including by facsimile or other electronic transmission). All such written notices shall be mailed, faxed or delivered (including electronically) to the applicable address, facsimile number or electronic mail address, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, facsimile number or electronic mail address specified for such Person on Schedule 9.02 or to such other address, facsimile number or electronic mail address as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number or electronic mail address specified in its Administrative Questionnaire or to such other address, facsimile number or electronic mail address as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto, (B) if delivered by mail, four (4) Business Days after deposit in the mail, postage prepaid, (C) if delivered by facsimile, when sent and receipt has been confirmed, and (D) if delivered by electronic mail, when delivered; provided that notices and other communications to the Administrative Agent pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a telephone or voice-mail message be effective as a notice, communication or confirmation hereunder; provided, however, this sentence shall not limit Section 8.04.

(b) *Effectiveness of Facsimile or Other Electronic Documents and Signatures.* Loan Documents may be transmitted and/or signed by facsimile or other electronic transmission (including portable document format). The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agents and the Lenders. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or other electronic document or signature.

(c) *Reliance by Agents and Lenders.* The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in accordance with Section 9.05.

SECTION 9.03 No Waiver; Cumulative Remedies. No failure by any Lender or the 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.

SECTION 9.04 Expenses. Holdings and the Borrower, jointly and severally, agree to reimburse (1) the Administrative Agent in accordance with the Agent Fee Letter and (2) the Administrative Agent and the Lenders for all of their costs, fees and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith, including in each case the reasonable fees, disbursements and other charges of one outside counsel to the Administrative Agent and one outside counsel to the Lenders as a whole, and if reasonably necessary, one additional local counsel to the Administrative Agent in each relevant jurisdiction and one local counsel to the Lenders, taken as a whole, in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions).

SECTION 9.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Administrative Agent, each Lender and their respective Affiliates and their and their respective Affiliates' directors, officers, employees, controlling persons, counsel, agents, attorneys-in-fact, trustees and advisors (collectively the "Indemnitees") from and against any and all liabilities, losses, damages, claims and expenses (including Attorney Costs (which shall be limited to one (1) counsel, at any given time, to the Administrative Agent and one (1) additional counsel for all other Indemnitees taken as a whole and solely in the case of a conflict of interest among or between Indemnitees, one (1) additional counsel to all similarly affected Indemnitees taken as a whole, and if reasonably necessary, one (1) local counsel, at any given time, to the Administrative Agent in each relevant jurisdiction and one (1) additional local counsel for all other Indemnitees taken as a whole in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions), and solely in the case of a conflict of interest, one (1) additional local counsel to all similarly affected Person, taken as a whole)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee, in each case, in any way relating to ~~or the Closing Date, the Amendment No. 1 Effective Date Transactions or otherwise~~ arising on or after the Closing Date ~~(or, in the case of the Administrative Agent only, in its capacity as such, the Closing Date)~~—out of or in connection with (a) the enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby (including enforcing the Borrower's indemnification obligations hereunder), (b) any Term Commitment or Loan or the use or proposed use of the proceeds therefrom, ~~or~~(c) the Amendment No. 1 Effective Date Transactions or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is instituted by a third party or by the Borrower or any other Loan Party) (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements (x) have been determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee (or any of its Related Indemnitees) or (y) arise from claims of any of the Indemnitees solely against one (1) or more Indemnitees (other than claims against an Indemnitee in its capacity as Administrative Agent) that have not resulted from the action, inaction, participation or contribution of the Borrower, Holdings or any Affiliates of the foregoing or any of their respective officers, directors, stockholders, partners, members, employees, agents, representatives or advisors; provided further that Section 3.01 (instead of this Section 9.05) shall govern indemnities with respect to Taxes, except that Taxes representing losses, claims, damages, etc., with respect to a non-Tax claim shall be governed by this Section 9.05 (without duplication of Section 3.01). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, IntraLinks, the internet, email or other similar information transmission systems in connection with this Agreement, in each case, except to the extent any such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); provided that nothing contained in this sentence shall limit the Borrower's indemnification and reimbursement obligations under this Agreement. The Borrower shall not be liable for any settlement in respect of any Indemnified Liabilities effected without the Borrower's consent (which consent shall not be unreasonably withheld), but if settled with the Borrower's prior written consent, or (without limitation of the Borrower's obligations set forth above) if there is a final judgment against an Indemnitee, the Borrower agrees to indemnify and hold harmless each Indemnitee in the manner set forth above. The Borrower shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened Indemnified Liability against such Indemnitee in respect of which indemnity could have been sought hereunder by such Indemnitee unless such settlement (a) includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such claimed or threatened Indemnified Liability, (b) does not include any statement as to any admission of fault, culpability or failure to act by or on behalf of such Indemnitee and (c) includes customary confidentiality provisions reasonably acceptable to such Indemnitee. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, shareholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 9.05 shall be reimbursed within ten (10) Business Days of written demand therefor (together with reasonable backup documentation). The agreements in this Section 9.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the Termination Date. For purposes hereof, "Related Indemnitee" of an Indemnitee means (1) any Controlling Person or Controlled affiliate of such Indemnitee, (2) the respective partners, directors, officers, or employees of such Indemnitee or any of its Controlling Persons or Controlled affiliates and (3) the respective agents, advisors or other representatives of such Indemnitee or any of its Controlling Persons or Controlled affiliates, in the case of this clause (3), acting on behalf of or at the instructions of such Indemnitee, Controlling Person or such Controlled affiliate; provided that each reference to a Related Indemnitee in this sentence pertains to a Related Indemnitee involved in performing services under this Agreement and the Facilities. Notwithstanding the foregoing, if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action, proceeding or investigation that any loss, claim, damage or liability of any Indemnitee has resulted from the gross negligence or willful misconduct of such Indemnitee (or any of its Related Indemnitees), such Indemnitee will repay such portion of the reimbursed amounts previously paid to such Indemnitee under this Section that is attributable to expenses incurred in relation to the act or omission of such Indemnitee which is the subject of such finding.

SECTION 9.06 Marshalling; Payments Set Aside. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Loan Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent 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 such Agent 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, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any 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 applicable Federal Funds Rate from time to time in effect.

SECTION 9.07 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and the acknowledgement of the Administrative Agent, and any such assignment without such consent shall be null and void (for the avoidance of doubt, any such transfer that occurs pursuant to a transaction permitted under Section 6.11 is permitted hereunder without any such consent), and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 9.07(b), or (ii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.07(g) or Section 9.07(i), as the case may be. 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 Section 9.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement; provided that (i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than \$1,000,000, in the case of any assignment in respect of any Term Loans (provided, however, that concurrent assignments to or by Approved Funds will be treated as a single assignment for the purpose of meeting the minimum transfer requirements), (ii) each of the Administrative Agent (whose consent shall not be unreasonably withheld, delayed or conditioned) (except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund (but subject to clause (iv) below)), and, so long as no Event of Default has occurred and is continuing, the Borrower consents (such consent not to be unreasonably withheld, delayed or conditioned and deemed granted if not refused in writing within five (5) Business Days of any written request to consent to an assignment) to such assignment, (iii) 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 Term Commitment assigned, except that this clause (iii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis, (iv) the parties (other than the Borrower unless its consent to such assignment is required hereunder) to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption together with a processing and recordation fee of \$3,500 (which fee (x) the Borrower shall not have an obligation to pay except as required in Section 3.07 and (y) may be waived or reduced by the Administrative Agent in its discretion) and (v) the assigning Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent if requested.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 9.07(c), from and after the effective date specified in each Assignment and Assumption, the Eligible 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 Section 3.01, Section 3.04 and Section 9.05 with respect to facts and circumstances occurring prior to the effective date of such assignment and shall continue to be bound by Section 9.08). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender; provided that if the Borrower has previously issued an assigning Lender a Note, then the Borrower shall have no obligation to deliver a Note to the assignee Lender except upon the surrender by the assigning Lender of its Note (or receipt by the Borrower of a certificate of loss including reasonably satisfactory indemnification provisions).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Commitments of, and principal amounts (and stated interest amounts) of the Loans, owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the owner of its interests in the Loans and amounts due under the Loan Documents as set forth in the Register and as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent, any Lender (solely with respect to such Lender's interest), at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding anything to the contrary contained in this Agreement, the Loans and Loan Obligations are intended to be treated as registered obligations for U.S. federal income Tax purposes. Any right or title in or to any Loans and Loan Obligations (including with respect to the principal amount and any interest thereon) may only be assigned or otherwise transferred through the Register. This Section 9.07 shall be construed so that the Loans and Loan Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code, Treasury Regulation Section 5f.103-1(c) or Section 1.163-5(b) of the United States Proposed Treasury Regulations (or, in each case, any amended or successor version) and any other related regulations (or any successor provisions of the Code or such regulations).

(d) The words "execution," "signed," "signature" and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(e) Any Lender may at any time (but without the consent of or notice to the Administrative Agent or Borrower), sell participations to any Person (other than a natural person, the Borrower, Holdings or any Affiliate of the Borrower or Holdings or (unless a Default or Event of Default has occurred and is continuing) a Competitor) (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 Term Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the clauses (a) through (i) of the first proviso to Section 9.01 that directly and adversely affects such Participant. Subject to Section 9.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Section 3.01 and Section 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.01(f) and Section 3.06 read as if a Participant were a Lender (it being understood that the documentation required thereunder shall be delivered to the participating Lender and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.07(b); provided that such Participant agrees to bound by such Sections, including for the avoidance of doubt to be subject to the provisions of Section 3.01(f) and Section 3.06 as if it were an assignee under paragraph (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Term Commitments or any Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Term Commitment or Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or Section 1.163-5(b) of the United States Proposed Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender (and the Borrower, to the extent that the Participant requests payment from the Borrower) 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.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01 or Section 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(g) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, 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 or any central bank having jurisdiction over such Lender; 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.

(h) [Reserved].

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Pledging Lender") shall have the right from time to time in its discretion and without the consent of Borrower to pledge, securitize, encumber, hypothecate, or otherwise transfer (a "Pledge") all or any portion of its interest in the Loan to an Eligible Assignee (each, a "Pledgee"); provided that unless and until the applicable Pledgee actually becomes a Lender in compliance with the other provisions of this Section 9.07, (i) no such Pledge shall release the Pledging Lender from any of its obligations under the Loan Documents and, (ii) such Pledgee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such Pledgee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise (unless such Pledgee is an Eligible Assignee which has complied with the requirements of Section 9.07(b)).

(j) [Reserved].

(k) Assignments of Term Loans to any Purchasing Borrower Party shall be permitted through open market purchases and/or "Dutch auctions", so long as any offer to purchase or take by assignment (other than through open market purchases) by such Purchasing Borrower Party shall have been made to all Term Lenders, so long as (i) no Default or an Event of Default has occurred and is continuing and (ii) the Term Loans purchased are immediately cancelled pursuant to Section 9.07(l).

(l) Upon any purchase of Loans by a Purchasing Borrower Party, such Loans shall be immediately contributed to the Borrower, whereupon, (i) the aggregate principal amount (calculated on the face amount thereof) of such Loans shall automatically be cancelled and retired by the Borrower on the date of such contribution or purchase (and, if requested by the Administrative Agent, with respect to a contribution of Loans, any applicable contributing Lender shall execute and deliver to the applicable Agent an Assignment and Assumption, or such other form as may be reasonably requested by the Administrative Agent, in respect thereof pursuant to which the respective Lender assigns its interest in such Loans to the Borrower for immediate cancellation) and (ii) the applicable Agent shall record such cancellation or retirement in the Register.

SECTION 9.08 [Reserved].

SECTION 9.09 Setoff. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, after obtaining the prior written consent of the Administrative Agent, each Lender is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each other Loan Party) to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender to or for the credit or the account of the respective Loan Parties against any and all Loan Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Lender shall have made demand under this Agreement or any other Loan Document and although such Loan Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Loan Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 9.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have.

SECTION 9.10 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 any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an 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 Loan Obligations hereunder.

SECTION 9.11 Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission (including portable document format) of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier or other electronic means be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier or other electronic transmission.

SECTION 9.12 Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed to be a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

SECTION 9.13 Survival. 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 each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of incurrence of the Initial Term Loans or any Borrowing, and shall continue in full force and effect until the Termination Date. The provisions of Article 3 and Article 8 and Sections 9.05, 9.08, 9.15 and 9.16 shall survive and remain in full force and effect following the Termination Date.

SECTION 9.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. 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 9.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 9.15 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT (OTHER THAN ANY LOAN DOCUMENT EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE BORROWER, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND APPELLATE COURTS FROM ANY THEREOF (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT OR ANY LENDER IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT GOVERNED BY A LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO). EACH OF THE BORROWER, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

SECTION 9.16 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 9.17 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent and each Lender and their respective successors and permitted assigns.

SECTION 9.18 U.S.A PATRIOT Act Notice. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the PATRIOT Act.

SECTION 9.19 No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby, each of Holdings and the Borrower acknowledge and agrees that (a) the Facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between Holdings and the Borrower, on the one hand, and the Agents and the Lenders, on the other hand, and Holdings and the Borrower are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, each of the Agents and the Lenders is and has been acting solely as a principal and is not the agent or fiduciary, for the Borrower; and (c) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and Holdings and the Borrower have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

SECTION 9.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. 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 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 that may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
- (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 9.21 Acknowledgement Regarding Any Supported QFCs

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Obligations 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 or of the United States or any other state of the United States):

(i) 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.

(ii) As used in this Section 9.21, 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:

- (iii) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b).
- (iv) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (v) 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.

“OFC” 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).

ARTICLE X
GUARANTEES; RELEASE OF GUARANTOR

SECTION 10.01 Guarantee. Each of the Guarantors hereby unconditionally guarantees, jointly and severally with each other Guarantor, to each Lender and to the Administrative Agent and its successors and assigns, irrespective of the validity and enforceability of this Agreement, any other Loan Document or the obligations of the Borrower hereunder or thereunder, that: (i) the due and punctual payment of the principal of, premium, if any, and interest on the Loans, whether at maturity or on an interest payment date, by acceleration, pursuant to any prepayment pursuant to Section 2.03, Change of Control Offer or otherwise, to the extent lawful, and all other obligations of the Borrower to the Lenders or the Administrative Agent hereunder or thereunder shall be promptly paid in full when due, all in accordance with the terms hereof and thereof, including all amounts payable to the Administrative Agent under Section 9.05 hereof, and (ii) in case of any extension of time of payment or renewal of any Loans or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

If the Borrower fails to make any payment when due of any amount so guaranteed for whatever reason, each Guarantor shall be obligated, jointly and severally with each other Guarantor, to pay the same immediately. Each Guarantor hereby agrees that its obligations hereunder shall be continuing, absolute and unconditional, irrespective of, and shall be unaffected by, the validity, regularity or enforceability of the Loans, this Agreement, the Collateral Documents, the absence of any action to enforce the same, any waiver or consent by any Lender or the Administrative Agent with respect to any provisions hereof or thereof, the recovery of any judgment against the Borrower, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of such Guarantor. If any Lender or the Administrative Agent is required by any court or otherwise to return to the Borrower or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Borrower or such Guarantor, any amount paid by the Borrower or any Guarantor to the Administrative Agent or such Lender, this Article X, to the extent theretofore discharged with respect to any Guarantee, shall be reinstated in full force and effect. Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Lenders in respect of any obligations guaranteed hereby by such Guarantor until payment in full of all such obligations. Each Guarantor further agrees that, as between such Guarantor, on the one hand, and the Lenders of Loans and the Administrative Agent on the other hand, (i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VII hereof for the purposes of such Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby and (ii) in the event of any acceleration of such obligations as provided in Article VII hereof such obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor, jointly and severally with each other Guarantor, for the purpose of this Article X. In addition, without limiting the foregoing, upon the effectiveness of an acceleration under Article VII, the Administrative Agent may make a demand for payment on the Loans under any Guarantee provided hereunder and not discharged.

SECTION 10.02 Obligations of each Guarantor Unconditional. Nothing contained in this Article X or elsewhere in this Agreement or in any other Loan Document is intended to or shall impair, as between each Guarantor and the Lenders, the obligations of such Guarantor which are absolute and unconditional, to pay to the Lenders the principal of, premium, if any, and interest on the Loans as and when the same shall become due and payable in accordance with the provisions of their Guarantee or is intended to or shall affect the relative rights of the Lenders and creditors of such Guarantor, nor shall anything herein or therein prevent the Administrative Agent or any Lender from exercising all remedies otherwise permitted by applicable Law upon any Default under this Agreement in respect of cash, property or securities of such Guarantor received upon the exercise of any such remedy.

Upon any distribution of assets of a Guarantor referred to in this Article X, the Administrative Agent, subject to the provisions of Article VIII, and the Lenders shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other person making any distribution to the Administrative Agent or to such Lenders for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of other indebtedness of such Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article X.

SECTION 10.03 Release of a Guarantor. (a) If (i) all or substantially all of the assets of any Guarantor other than Holdings or all of the Capital Stock of any Guarantor other than Holdings is sold (including by consolidation, merger, issuance or otherwise) or disposed of (including by liquidation, dissolution or otherwise) by Holdings or any of its Subsidiaries, (ii) unless Holdings elects otherwise, any Guarantor other than Holdings is designated an Unrestricted Subsidiary in accordance with the terms of this Agreement ~~or becomes an Excluded Subsidiary (other than pursuant to clause (a) of the definition of "Excluded Subsidiary" except in the circumstances set forth in clause (i) above)~~, (iii) the Termination Date shall have occurred, or (iv) in accordance with Section 9.01, then in each case such Guarantor or the Person acquiring such assets (in the event of a sale or other disposition of all or substantially all of the assets of a Guarantor), as the case may be, shall be deemed automatically and unconditionally released and discharged from any of its obligations under this Agreement without any further action on the part of the Administrative Agent or any Lender.

(b) An Unrestricted Subsidiary ~~or an Excluded Subsidiary~~ that Holdings has, at its option, caused to become a Guarantor shall be deemed automatically and unconditionally released and discharged from all obligations under its Guarantee upon written notice from Holdings to the Administrative Agent to such effect, without any further action required on the part of the Administrative Agent or any Lender.

SECTION 10.04 Execution and Delivery of Guarantee. The execution by each Guarantor of this Agreement or a supplemental guarantee in the form included in Exhibit K evidences the Guarantee of such Guarantor.

SECTION 10.05 Limitation on Guarantor Liability. Notwithstanding anything to the contrary in this Article X, each Guarantor, the Administrative Agent and each Lender hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent conveyance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law. To effectuate that intention, the Administrative Agent, the Lenders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor under its Guarantee are limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law.

SECTION 10.06 Article X not to Prevent Events of Default. The failure to make a payment on account of principal, premium, if any, or interest, if any, on the Loans by reason of any provision in this Article X shall not be construed as preventing the occurrence of any Event of Default under Section 7.01 hereof.

SECTION 10.07 Waiver by the Guarantors. To the extent permitted by applicable Law, each Guarantor hereby irrevocably waives diligence, presentment, demand of payment, demand of performance, filing of claims with a court in the event of insolvency of bankruptcy of the Borrower, any right to require a proceeding first against the Borrower, the benefit of discussion, protest, notice and all demand whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in this Agreement, any other Loan Document and in this Article X.

SECTION 10.08 Subrogation and Contribution. Upon making any payment with respect to any obligation of the Borrower under this Article, the Guarantor making such payment shall be subrogated to the rights of the payee against the Borrower with respect to such obligation; *provided*, that the Guarantor may not enforce either any right of subrogation, or any right to receive payment in the nature of contribution, or otherwise, from any other Guarantor, with respect to such payment so long as any amount payable by the Borrower hereunder or under any other Loan Document remains unpaid.

Each Guarantor that makes a payment under its Guarantee shall be entitled, upon payment in full of all guaranteed obligations under this Agreement, to seek and receive contribution from and against each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

SECTION 10.09 Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower under this Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of this Agreement are nonetheless payable by the Guarantors hereunder forthwith on demand by the Administrative Agent or the Lenders.

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SCHEDULE I

[Initial Term Lenders]

SCHEDULE 1.01

Unrestricted Subsidiaries

1. GTIS-HOV Holdings XV LLC
 2. K. Hovnanian GT XV Investment, LLC
 3. K. Hovnanian GT Investment, L.L.C.
 4. K. Hovnanian Terra Lago Investment, LLC
 5. K. Hovnanian Agency Holdings, LLC
 6. K. Hovnanian GT IX Investment, LLC
 7. K. Hovnanian GT V Investment, LLC
 8. K. Hovnanian GT VI Investment, LLC
 9. K. Hovnanian GT VII Investment, LLC
 10. K. Hovnanian GT VIII Investment, LLC
 11. K. Hovnanian HovSite II Investment, LLC
 12. K. Hovnanian HovSite III Investment, LLC
 13. K. Hovnanian M.E. Investments, LLC
 14. K. Hovnanian at Delray Beach, L.L.C.
 15. K. HOVNANIAN 77 HUDSON STREET INVESTMENTS, L.L.C.
 16. K. Hovnanian at Port Imperial Investment, LLC
 17. K. Hovnanian GT XII Investment, LLC
 18. K. Hovnanian GT XIII Investment, LLC
 19. K. Hovnanian GT XI Investment, LLC
 20. K. Hovnanian at Pleasanton, LLC
 21. K. Hovnanian's Four Seasons at Pennfield, LLC
 22. K. Hovnanian at Horizon Isle, LLC
 23. K. Hovnanian at Salerno Reserve, LLC
 24. K. Hovnanian's Four Seasons at Kent Island III, LLC
 25. K. Hovnanian Serenity Walk at Plainsboro Urban Renewal, LLC
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26. K. Hovnanian's The Townes at West Windsor, LLC
 27. K. Hovnanian's Four Seasons at Hilton Head Lakes, LLC
 28. 77 Hudson Street Joint Development, L.L.C.
 29. GTIS-HOV Holdings XII LLC
 30. GTIS-HOV Holdings XIII LLC
 31. GTIS-HOV Holdings XIV LLC
 32. HovSite Holdings II LLC
 33. HovSite Holdings III LLC
 34. K. Hovnanian GT XIV Investment, LLC
 35. Port Imperial Partners, LLC
 36. Terra Lago Indio LLC
 37. Al Tahaluf Al Aqary LLC (Al Tahaluf Real Estate Limited Liability Company)
 38. MM-BEACHFRONT NORTH II, L.L.C.
 39. MILLENNIUM TITLE AGENCY, LTD.
 40. WHI-REPUBLIC, LLC
 41. K. Hovnanian at Monarch Glen, LLC
 42. K. Hovnanian's Four Seasons at Belle Terre, LLC
 43. K. Hovnanian's Four Seasons at Scenic Manor, LLC
 44. HovSite II Casa Del Mar Leasehold LLC
 45. HovSite II Casa Del Mar LLC
 46. HovSite III at Parkland LLC
 47. K. Hovnanian at Mystic Dunes, LLC
 48. K. Hovnanian Osprey Ranch, LLC
 49. K. Hovnanian at Fairway Estates, LLC
 50. K. Hovnanian's Four Seasons at Kent Island II, LLC
 51. K. Hovnanian at 77 Hudson Street Urban Renewal Company, L.L.C.
 52. K. Hovnanian at Manalapan Landing, LLC
 53. K. HOVNANIAN AT PORT IMPERIAL URBAN RENEWAL VI, L.L.C.
 54. K. Hovnanian's Four Seasons at Carolina Oaks, LLC
 55. K. Hovnanian Houston Marvida, LLC
 56. K. Hovnanian at Hazel Run Glen, L.L.C.
 57. K. Hovnanian at The Boulevards at Westfields, LLC
 58. K. Hovnanian Homes at the Gallery Park at Westfields, LLC
 59. GTIS-HOV Residences at Columbia Park Parent LLC
 60. GTIS-HOV Residences at Columbia Park LLC
 61. K. Hovnanian American Mortgage, L.L.C.
 62. K. Hovnanian at Trenton II, L.L.C.
 63. K. Hovnanian at Trenton Urban Renewal, L.L.C.
 64. Eastern National Title Agency Texas, Inc.
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SCHEDULE 2.01

[Initial Term Commitments]

[Amendment No. 1 Term Commitments]

SCHEDULE 10.01

Subsidiary Guarantors

1. 2700 Empire, LLC
 2. AMBER RIDGE, LLC
 3. ARBOR TRAILS, LLC
 4. BUILDER SERVICES NJ, L.L.C.
 5. BUILDER SERVICES PA, L.L.C.
 6. EASTERN NATIONAL ABSTRACT, INC.
 7. EASTERN NATIONAL TITLE AGENCY ARIZONA, LLC
 8. EASTERN NATIONAL TITLE AGENCY FLORIDA, LLC
 9. EASTERN NATIONAL TITLE AGENCY ILLINOIS, LLC
 10. EASTERN NATIONAL TITLE AGENCY MARYLAND, LLC
 11. EASTERN NATIONAL TITLE AGENCY VIRGINIA, INC.
 12. EASTERN NATIONAL TITLE AGENCY, INC.
 13. F&W MECHANICAL SERVICES, L.L.C.
 14. GLENRISE GROVE, L.L.C.
 15. GTIS-HOV ARBORS AT MONROE LLC
 16. GTIS-HOV Arbors at Monroe Parent LLC
 17. GTIS-HOV AT SILVERSTONE LLC
 18. GTIS-HOV Four Ponds Parent LLC
 19. GTIS-HOV Heatherfield Parent LLC
 20. GTIS-HOV Hilltop at Cedar Grove Parent LLC
 21. GTIS-HOV Holdings IX LLC
 22. GTIS-HOV Holdings LLC
 23. GTIS-Hov Holdings V LLC
 24. GTIS-HOV Holdings VI LLC
 25. GTIS-HOV HOLDINGS VII LLC
 26. GTIS-HOV HOLDINGS VIII LLC
 27. GTIS-HOV HOLDINGS X LLC
 28. GTIS-HOV HOLDINGS XI LLC
 29. GTIS-HOV Lakes of Cane Bay Parent LLC
 30. GTIS-HOV LEELAND STATION LLC
 31. GTIS-HOV Nicholson Parent LLC
 32. GTIS-HOV PARKSIDE OF LIBERTYVILLE LLC
 33. GTIS-HOV Parkside of Libertyville Parent LLC
 34. GTIS-HOV Pender Oaks Parent LLC
 35. GTIS-HOV Pinnacle Peak Patio Parent LLC
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36. GTIS-HOV POINTE 16 LLC
 37. GTIS-HOV Rancho 79 LLC
 38. GTIS-HOV SAUGANASH GLEN LLC
 39. GTIS-HOV Sauganash Glen Parent LLC
 40. GTIS-HOV VILLAGES AT PEPPER MILL LLC
 41. GTIS-HOV WARMINSTER LLC
 42. GTIS-HOV WILLOWSFORD WINDMILL LLC
 43. HILLTOP AT CEDAR GROVE URBAN RENEWAL, LLC
 44. HOMEBUYERS FINANCIAL SERVICES, L.L.C.
 45. Homebuyers Financial USA, LLC
 46. HOVNANIAN DEVELOPMENTS OF FLORIDA, INC.
 47. HOVNANIAN LAND INVESTMENT GROUP OF MARYLAND, L.L.C.
 48. HOVNANIAN LAND INVESTMENT GROUP, L.L.C.
 49. HovSite Churchill Club LLC
 50. HovSite Firenze LLC
 51. HovSite Hunt Club LLC
 52. HovSite Liberty Lakes LLC
 53. HovSite Providence LLC
 54. HovSite Southampton LLC
 55. K. HOV IP, II, Inc.
 56. K. HOVNANIAN ABERDEEN, LLC
 57. K. HOVNANIAN ACQUISITIONS, INC.
 58. K. HOVNANIAN AKRON SCATTERED SITE, LLC
 59. K. HOVNANIAN AMBER GLEN, LLC
 60. K. HOVNANIAN ARIZONA NEW GC, LLC
 61. K. HOVNANIAN ARIZONA OPERATIONS, LLC
 62. K. HOVNANIAN ASBURY POINTE, LLC
 63. K. HOVNANIAN ASPIRE AT AULD FARMS, LLC
 64. K. Hovnanian Aspire at Bellevue Ranch M2, LLC
 65. K. Hovnanian Aspire at Bellevue Ranch, LLC
 66. K. HOVNANIAN ASPIRE AT BOATMAN HAMMOCK, LLC
 67. K. HOVNANIAN ASPIRE AT EAST LAKE, LLC
 68. K. HOVNANIAN ASPIRE AT HAWKS RIDGE, LLC
 69. K. Hovnanian Aspire at Lynnbury Woods, LLC
 70. K. HOVNANIAN ASPIRE AT MARION OAKS, LLC
 71. K. HOVNANIAN ASPIRE AT PALM BAY, LLC
 72. K. HOVNANIAN ASPIRE AT PALM COAST, LLC
 73. K. HOVNANIAN ASPIRE AT PORT ST. LUCIE, LLC
 74. K. Hovnanian Aspire at River Terrace, LLC
 75. K. Hovnanian Aspire at Solaire, LLC
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76. K. Hovnanian Aspire at Stones Throw, LLC
 77. K. HOVNANIAN ASPIRE AT VICTORIA PARC, LLC
 78. K. HOVNANIAN ASPIRE AT WATERSTONE, LLC
 79. K. HOVNANIAN ASPIRE AT WESTON PLACE, LLC
 80. K. HOVNANIAN AT 17 NORTH, LLC
 81. K. HOVNANIAN AT 23 NORTH, LLC
 82. K. HOVNANIAN AT 240 MISSOURI, LLC
 83. K. HOVNANIAN AT ACACIA PLACE, LLC
 84. K. HOVNANIAN AT ACADEMY HILL URBAN RENEWAL, LLC
 85. K. Hovnanian at Admiral's Landing, LLC
 86. K. HOVNANIAN AT AIRE ON MCDOWELL, LLC
 87. K. HOVNANIAN AT ALAMEDA POINT, LLC
 88. K. HOVNANIAN AT ALEXANDER LAKES, LLC
 89. K. HOVNANIAN AT ALTO, LLC
 90. K. HOVNANIAN AT AMBERLEY WOODS, LLC
 91. K. HOVNANIAN AT AMBRA, LLC
 92. K. Hovnanian at Andalusia, LLC
 93. K. HOVNANIAN AT APPLE BLOSSOM, LLC
 94. K. HOVNANIAN AT ARMEN GROVES, LLC
 95. K. HOVNANIAN AT ASBURY PARK URBAN RENEWAL, LLC
 96. K. Hovnanian at Ashby Place, LLC
 97. K. HOVNANIAN AT ASHLEY POINTE LLC
 98. K. Hovnanian at Aspire at Apricot Grove PH2, LLC
 99. K. Hovnanian at Aspire at Webber Farm, LLC
 100. K. Hovnanian at Aspire at Wickersham, LLC
 101. K. HOVNANIAN AT ASTER RIDGE, LLC
 102. K. Hovnanian at Autumn Ridge, LLC
 103. K. HOVNANIAN AT AVENIR II, LLC
 104. K. HOVNANIAN AT AVENIR, LLC
 105. K. Hovnanian at Bakersfield 463, L.L.C.
 106. K. Hovnanian at Bay Knolls, LLC
 107. K. Hovnanian at Beacon Park Area 129 II, LLC
 108. K. Hovnanian at Beacon Park Area 129, LLC
 109. K. Hovnanian at Beacon Park Area 137, LLC
 110. K. HOVNANIAN AT BELLEWOOD, LLC
 111. K. Hovnanian at Bennett Ranch, LLC
 112. K. HOVNANIAN AT BENSEN'S MILL ESTATES, LLC
 113. K. Hovnanian at Blackstone, LLC
 114. K. HOVNANIAN AT BOCA DUNES, LLC
 115. K. HOVNANIAN AT BOOTH FARM, LLC
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116. K. HOVNIANIAN AT BRADWELL ESTATES, LLC
 117. K. Hovnianian at Brenford Station, LLC
 118. K. HOVNIANIAN AT BRITTANY MANOR, LLC
 119. K. HOVNIANIAN AT BURCH KOVE, LLC
 120. K. Hovnianian at Cadence Park, LLC
 121. K. HOVNIANIAN AT CANTER V, LLC
 122. K. HOVNIANIAN AT CAPISTRANO, L.L.C.
 123. K. Hovnianian at Carlsbad, LLC
 124. K. HOVNIANIAN AT CARRIAGES AT WALL URBAN RENEWAL, LLC
 125. K. HOVNIANIAN AT CATANIA, LLC
 126. K. HOVNIANIAN AT CATON'S RESERVE, LLC
 127. K. Hovnianian at Cedar Lane Estates, LLC
 128. K. Hovnianian at Cedar Lane, LLC
 129. K. HOVNIANIAN AT CHARLESTON MEADOWS, LLC
 130. K. HOVNIANIAN AT CHESTERFIELD, L.L.C.
 131. K. HOVNIANIAN AT CHRISTINA COURT, LLC
 132. K. HOVNIANIAN AT CHURCHILL FARMS LLC
 133. K. Hovnianian at Cielo, L.L.C.
 134. K. HOVNIANIAN AT CITRUS COVE, LLC
 135. K. HOVNIANIAN AT COOPER'S LANDING, LLC
 136. K. HOVNIANIAN AT COOSAW POINT, LLC
 137. K. HOVNIANIAN AT CORAL LAGO, LLC
 138. K. HOVNIANIAN AT COUNTRY VIEW ESTATES, LLC
 139. K. HOVNIANIAN AT CREEKSIDE CROSSING, LLC
 140. K. HOVNIANIAN AT DEER RIDGE, LLC
 141. K. HOVNIANIAN AT DILLON FARM, LLC
 142. K. HOVNIANIAN AT DOMINION CROSSING, LLC
 143. K. HOVNIANIAN AT DOYLESTOWN, LLC
 144. K. HOVNIANIAN AT DUNELLEN URBAN RENEWAL, LLC
 145. K. HOVNIANIAN AT EAGLE HEIGHTS, LLC
 146. K. HOVNIANIAN AT EAGLES EDGE, LLC
 147. K. HOVNIANIAN AT EAST BRUNSWICK III, LLC
 148. K. HOVNIANIAN AT EAST BRUNSWICK, LLC
 149. K. HOVNIANIAN AT EAST CHASE, LLC
 150. K. HOVNIANIAN AT EAST WINDSOR, LLC
 151. K. HOVNIANIAN AT EDEN TERRACE, L.L.C.
 152. K. HOVNIANIAN AT EDGEWOOD, LLC
 153. K. Hovnianian at Egret Shores, LLC
 154. K. HOVNIANIAN AT EMBREY MILL VILLAGE, LLC
 155. K. HOVNIANIAN AT EMBREY MILL, LLC
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156. K. HOVNIANIAN AT ESTATES AT WHEATLANDS, LLC
 157. K. HOVNIANIAN AT ESTATES OF CHANCELLORSVILLE, LLC
 158. K. HOVNIANIAN AT ESTATES OF FOX CHASE, LLC
 159. K. HOVNIANIAN AT ESTATES OF TUSCARORA, LLC
 160. K. HOVNIANIAN AT FAIRFIELD RIDGE, LLC
 161. K. Hovnianian at Fiddymment Ranch, LLC
 162. K. Hovnianian at Firefly at Winding Creek, LLC
 163. K. Hovnianian at Fork Landing, LLC
 164. K. HOVNIANIAN AT FOX PATH AT HAMPTON LAKE, LLC
 165. K. HOVNIANIAN AT FRANKLIN II, L.L.C.
 166. K. HOVNIANIAN AT FRANKLIN, L.L.C.
 167. K. HOVNIANIAN AT FREEHOLD TOWNSHIP III, LLC
 168. K. Hovnianian at Fresno, LLC
 169. K. HOVNIANIAN AT GALLERY PARK AT WESTFIELDS, LLC
 170. K. HOVNIANIAN AT GALLERY, LLC
 171. K. HOVNIANIAN AT GALLOWAY RIDGE, LLC
 172. K. HOVNIANIAN AT GAMBRILL GLENN, LLC
 173. K. Hovnianian at Gilroy 60, LLC
 174. K. Hovnianian at Gilroy, LLC
 175. K. HOVNIANIAN AT GLEN OAKS, LLC
 176. K. HOVNIANIAN AT GRACE MEADOWS, LLC
 177. K. HOVNIANIAN AT GRANDE PARK, LLC
 178. K. HOVNIANIAN AT GREAT NOTCH, L.L.C.
 179. K. HOVNIANIAN AT HAMMOCK BREEZE, LLC
 180. K. HOVNIANIAN AT HAMPSHIRE FARMS, LLC
 181. K. HOVNIANIAN AT HAMPTON COVE, LLC
 182. K. HOVNIANIAN AT HAMPTON LAKE, LLC
 183. K. HOVNIANIAN AT HAMPTON RUN, LLC
 184. K. HOVNIANIAN AT HANOVER ESTATES, LLC
 185. K. Hovnianian at Harbor's Edge at Bayside, LLC
 186. K. HOVNIANIAN AT HARVEST MEADOWS, LLC
 187. K. HOVNIANIAN AT HARVEST OAKS, LLC
 188. K. HOVNIANIAN AT HAULOVER CREEK, LLC
 189. K. HOVNIANIAN AT HAWK RIDGE, LLC
 190. K. HOVNIANIAN AT HEATHERFIELD, LLC
 191. K. HOVNIANIAN AT HERITAGE GROVE, LLC
 192. K. HOVNIANIAN AT HERITAGE PARK, LLC
 193. K. Hovnianian at Hidden Brook, LLC
 194. K. Hovnianian at Hidden Lake, LLC
 195. K. HOVNIANIAN AT HIGHLAND PARK, LLC
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196. K. HOVNIANIAN AT HILLANDALE, LLC
 197. K. HOVNIANIAN AT HILLSBOROUGH, LLC
 198. K. HOVNIANIAN AT HILLTOP RESERVE II, LLC
 199. K. HOVNIANIAN AT HILLTOP RESERVE, LLC
 200. K. HOVNIANIAN AT HOLLY RIDGE, LLC
 201. K. HOVNIANIAN AT HONEYSUCKLE TRAIL, LLC
 202. K. HOVNIANIAN AT HOWELL FORT PLAINS, LLC
 203. K. HOVNIANIAN AT HOWELL II, LLC
 204. K. HOVNIANIAN AT HOWELL, LLC
 205. K. HOVNIANIAN AT HUNTER'S POND, LLC
 206. K. HOVNIANIAN AT HUNTFIELD, LLC
 207. K. HOVNIANIAN AT INDIAN WELLS, LLC
 208. K. HOVNIANIAN AT ISLAND LAKE, LLC
 209. K. HOVNIANIAN AT JACKS RUN, LLC
 210. K. HOVNIANIAN AT JACKSON I, L.L.C.
 211. K. HOVNIANIAN AT JACKSON VILLAGE, LLC
 212. K. HOVNIANIAN AT JACKSON, L.L.C.
 213. K. Hovnianian at Jaeger Ranch, LLC
 214. K. Hovnianian at La Laguna, L.L.C.
 215. K. Hovnianian at Ladd Ranch, LLC
 216. K. HOVNIANIAN AT LAKE BURDEN, LLC
 217. K. HOVNIANIAN AT LAKE FLORENCE, LLC
 218. K. HOVNIANIAN AT LAKE LECLARE, LLC
 219. K. HOVNIANIAN AT LAKES AT NEW RIVERSIDE, LLC
 220. K. HOVNIANIAN AT LAUREL HILLS CROSSING, LLC
 221. K. HOVNIANIAN AT LAVEEN SPRINGS, LLC
 222. K. HOVNIANIAN AT LENA WOODS, LLC
 223. K. HOVNIANIAN AT LIBERTY HILL FARM, LLC
 224. K. Hovnianian at Liberty West, LLC
 225. K. HOVNIANIAN AT LILY ORCHARD, LLC
 226. K. HOVNIANIAN AT LINCOLN PARK, LLC
 227. K. HOVNIANIAN AT LINK CROSSING, LLC
 228. K. HOVNIANIAN AT LITTLE EGG HARBOR TOWNSHIP II, L.L.C.
 229. K. HOVNIANIAN AT LOCKE LANDING, LLC
 230. K. HOVNIANIAN AT LUKE LANDING, LLC
 231. K. Hovnianian at Luna Vista, LLC
 232. K. HOVNIANIAN AT MADISON SQUARE, LLC
 233. K. HOVNIANIAN AT MAGNOLIA PLACE, LLC
 234. K. HOVNIANIAN AT MAIN STREET SQUARE, LLC
 235. K. HOVNIANIAN AT MANALAPAN CROSSING, LLC
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236. K. HOVNANIAN AT MANALAPAN II, L.L.C.
 237. K. HOVNANIAN AT MANALAPAN IV, LLC
 238. K. HOVNANIAN AT MANALAPAN V, LLC
 239. K. HOVNANIAN AT MAPLE AVENUE, L.L.C.
 240. K. HOVNANIAN AT MAPLE HILL LLC
 241. K. HOVNANIAN AT MARLBORO GROVE, LLC
 242. K. HOVNANIAN AT MARSHVIEW ESTATES, LLC
 243. K. HOVNANIAN AT MARYLAND RIDGE, LLC
 244. K. HOVNANIAN AT MCCARTNEY RANCH, LLC
 245. K. HOVNANIAN AT MEADOW SPRINGS RUN, LLC
 246. K. HOVNANIAN AT MEADOWRIDGE VILLAS, LLC
 247. K. Hovnanian at Melanie Meadows, LLC
 248. K. HOVNANIAN AT MELODY FARM, LLC
 249. K. Hovnanian at Meridian Hills, LLC
 250. K. HOVNANIAN AT MIDDLETOWN III, LLC
 251. K. HOVNANIAN AT MIDDLETOWN IV, LLC
 252. K. Hovnanian at Middletown Reserve, LLC
 253. K. HOVNANIAN AT MIDDLETOWN, LLC
 254. K. HOVNANIAN AT MILLVILLE II, L.L.C.
 255. K. Hovnanian at Monarch Glen, LLC
 256. K. HOVNANIAN AT MONROE NJ II, LLC
 257. K. HOVNANIAN AT MONROE NJ III, LLC
 258. K. HOVNANIAN AT MONROE NJ, L.L.C.
 259. K. HOVNANIAN AT MONROE RANCH, LLC
 260. K. HOVNANIAN AT MONTANA VISTA DOBBINS, LLC
 261. K. HOVNANIAN AT MONTANA VISTA, LLC
 262. K. HOVNANIAN AT MONTGOMERY, LLC
 263. K. HOVNANIAN AT MONTVALE II, LLC
 264. K. HOVNANIAN AT MORRIS TWP, LLC
 265. K. HOVNANIAN AT MORRIS WOODS, LLC
 266. K. Hovnanian at Muirfield, LLC
 267. K. HOVNANIAN AT NEW POST, LLC
 268. K. HOVNANIAN AT NICHOLSON, LLC
 269. K. Hovnanian at North Brunswick VI, L.L.C.
 270. K. HOVNANIAN AT NORTH CALDWELL III, L.L.C.
 271. K. HOVNANIAN AT NORTH GROVE CROSSING, LLC
 272. K. HOVNANIAN AT NORTH HILL, LLC
 273. K. HOVNANIAN AT NORTH POINTE ESTATES LLC
 274. K. HOVNANIAN AT NORTH RIDGE, LLC
 275. K. HOVNANIAN AT NORTH WILDWOOD, L.L.C.
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276. K. HOVNANIAN AT NORTHAMPTON, L.L.C.
 277. K. HOVNANIAN AT NORTHLAKE, LLC
 278. K. HOVNANIAN AT NORTHRIDGE ESTATES, LLC
 279. K. HOVNANIAN AT NORTON LAKE LLC
 280. K. Hovnanian at Nottingham Meadows, LLC
 281. K. HOVNANIAN AT OAK POINTE, LLC
 282. K. HOVNANIAN AT OAKLAND, LLC
 283. K. Hovnanian at Ocean View Beach Club, LLC
 284. K. HOVNANIAN AT OLD BRIDGE II, LLC
 285. K. HOVNANIAN AT OLD BRIDGE, L.L.C.
 286. K. HOVNANIAN AT OLD CAROLINA, LLC
 287. K. HOVNANIAN AT ORANGWOOD RANCH, LLC
 288. K. HOVNANIAN AT ORCHARD MEADOWS, LLC
 289. K. HOVNANIAN AT ORCHARD PARK, LLC
 290. K. HOVNANIAN AT OREGON TOWN CENTER, LLC
 291. K. Hovnanian at Oyster Cove, LLC
 292. K. HOVNANIAN AT PALERMO, LLC
 293. K. HOVNANIAN AT PALM VALLEY, L.L.C.
 294. K. HOVNANIAN AT PARK PASEO, LLC
 295. K. Hovnanian at Parkside, LLC
 296. K. Hovnanian at Patriots Bluff, LLC
 297. K. Hovnanian at Pavilion Park, LLC
 298. K. HOVNANIAN AT PICKETT RESERVE, LLC
 299. K. HOVNANIAN AT PINCKNEY FARM, LLC
 300. K. HOVNANIAN AT PINE CREST, LLC
 301. K. HOVNANIAN AT PINNACLE PEAK PATIO, LLC
 302. K. Hovnanian at Plantation Lakes, L.L.C.
 303. K. Hovnanian at Pleasanton, LLC
 304. K. HOVNANIAN AT POINTE 16, LLC
 305. K. HOVNANIAN AT PORT IMPERIAL URBAN RENEWAL V, L.L.C.
 306. K. HOVNANIAN AT PORT IMPERIAL URBAN RENEWAL VIII, L.L.C.
 307. K. Hovnanian at Positano, LLC
 308. K. HOVNANIAN AT POTOMAC TRACE, LLC
 309. K. HOVNANIAN AT PRAIRIE POINTE, LLC
 310. K. HOVNANIAN AT QUAIL CREEK, L.L.C.
 311. K. HOVNANIAN AT RANCHO CABRILLO, LLC
 312. K. HOVNANIAN AT RANCHO EL DORADO, LLC
 313. K. HOVNANIAN AT RANCHO MIRAGE PARCEL 17, LLC
 314. K. HOVNANIAN AT RANCHO MIRAGE PARCEL 23, LLC
 315. K. HOVNANIAN AT RANCOCAS CREEK, LLC
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316. K. HOVNIANIAN AT RANDALL HIGHLANDS, LLC
 317. K. HOVNIANIAN AT RAYMOND FARM, LLC
 318. K. Hovnianian at Red Mill Pond, LLC
 319. K. HOVNIANIAN AT REDTAIL, LLC
 320. K. HOVNIANIAN AT RESERVES AT WHEATLANDS, LLC
 321. K. HOVNIANIAN AT RESERVOIR POINT, LLC
 322. K. HOVNIANIAN AT RESIDENCE AT DISCOVERY SQUARE, LLC
 323. K. Hovnianian at Retreat at Millstone, LLC
 324. K. HOVNIANIAN AT RIDGEMONT, L.L.C.
 325. K. HOVNIANIAN AT RIVER HILLS, LLC
 326. K. HOVNIANIAN AT RIVERFIELD RESERVE, LLC
 327. K. HOVNIANIAN AT ROCKLAND VILLAGE GREEN, LLC
 328. K. HOVNIANIAN AT ROCKY RUN VILLAGE, LLC
 329. K. HOVNIANIAN AT ROSEMARY LANTANA, L.L.C.
 330. K. Hovnianian at Sage II Harvest at Limoneira, LLC
 331. K. HOVNIANIAN AT SAGEBROOK, LLC
 332. K. HOVNIANIAN AT SALERNO RESERVE, LLC
 333. K. HOVNIANIAN AT SANDPIPER PLACE, LLC
 334. K. Hovnianian at Santa Nella, LLC
 335. K. HOVNIANIAN AT SANTA ROSA SPRINGS, LLC
 336. K. HOVNIANIAN AT SANTANILLA, LLC
 337. K. Hovnianian at Satterfield, LLC
 338. K. HOVNIANIAN AT SCOTTSDALE HEIGHTS, LLC
 339. K. HOVNIANIAN AT SEA ISLAND COLLECTIVE, LLC
 340. K. Hovnianian at Seabrook, LLC
 341. K. Hovnianian at Sendero Ranch, LLC
 342. K. HOVNIANIAN AT SHREWSBURY, LLC
 343. K. HOVNIANIAN AT SIENNA HILLS, LLC
 344. K. Hovnianian at Sierra Vista, LLC
 345. K. HOVNIANIAN AT SILVER LEAF, LLC
 346. K. HOVNIANIAN AT SILVERSTONE G, LLC
 347. K. HOVNIANIAN AT SILVERSTONE, LLC
 348. K. HOVNIANIAN AT SILVERWOOD GLEN, LLC
 349. K. Hovnianian at Skye Isle, LLC
 350. K. HOVNIANIAN AT SKYE ON MCDOWELL, LLC
 351. K. HOVNIANIAN AT SMITHVILLE, INC.
 352. K. HOVNIANIAN AT SOMERSET, LLC
 353. K. HOVNIANIAN AT SOUTH BRUNSWICK II, LLC
 354. K. HOVNIANIAN AT SOUTH BRUNSWICK III, LLC
 355. K. HOVNIANIAN AT SOUTH BRUNSWICK IV, LLC
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356. K. HOVNIANIAN AT SOUTHPOINTE, LLC
 357. K. HOVNIANIAN AT SPRING ISLE, LLC
 358. K. HOVNIANIAN AT STATION SQUARE, L.L.C.
 359. K. HOVNIANIAN AT STERLING VISTAS, LLC
 360. K. HOVNIANIAN AT SUMMERLAKE, LLC
 361. K. HOVNIANIAN AT SUMMIT CROSSING ESTATES, LLC
 362. K. HOVNIANIAN AT SUN CITY WEST, LLC
 363. K. Hovnianian at Sunridge Park, LLC
 364. K. HOVNIANIAN AT SUNRISE TRAIL II, LLC
 365. K. HOVNIANIAN AT SUNRISE TRAIL III, LLC
 366. K. HOVNIANIAN AT TAMARACK SOUTH LLC
 367. K. HOVNIANIAN AT TANAGER, LLC
 368. K. HOVNIANIAN AT TANGLEWOOD OAKS, LLC
 369. K. HOVNIANIAN AT TERRA BELLA TWO, LLC
 370. K. HOVNIANIAN AT THE COMMONS AT RICHMOND HILL, LLC
 371. K. HOVNIANIAN AT THE HIGHLANDS AT SUMMERLAKE GROVE, LLC
 372. K. HOVNIANIAN AT THE MEADOWS 9, LLC
 373. K. HOVNIANIAN AT THE MEADOWS, LLC
 374. K. HOVNIANIAN AT THE MONARCH, L.L.C.
 375. K. HOVNIANIAN AT THE PROMENADE AT BEAVER CREEK, LLC
 376. K. HOVNIANIAN AT THE VIEWS AT NORTHSORE URBAN RENEWAL, LLC
 377. K. HOVNIANIAN AT TORTOSA SOUTH, LLC
 378. K. HOVNIANIAN AT TOUSSAINT SPRINGS, LLC
 379. K. Hovnianian at Tower Hill, LLC
 380. K. HOVNIANIAN AT TOWNES AT COUNTY CENTER, LLC
 381. K. HOVNIANIAN AT TOWNES AT PARKVIEW, LLC
 382. K. HOVNIANIAN AT TOWNES AT WEST LONG BRANCH, LLC
 383. K. Hovnianian at Townsend Fields, LLC
 384. K. HOVNIANIAN AT TRAFFORD PLACE, LLC
 385. K. Hovnianian at Trail Ridge, LLC
 386. K. HOVNIANIAN AT TRAMORE LLC
 387. K. HOVNIANIAN AT UNION PARK, LLC
 388. K. HOVNIANIAN AT UPPER PROVIDENCE, LLC
 389. K. Hovnianian at Valle Del Sol, LLC
 390. K. HOVNIANIAN AT VALLETTA, LLC
 391. K. HOVNIANIAN AT VDARA, LLC
 392. K. HOVNIANIAN AT VENTANA LAKES, LLC
 393. K. Hovnianian at Verona Estates, LLC
 394. K. HOVNIANIAN AT VERRADO CASCINA, LLC
 395. K. HOVNIANIAN AT VERRADO MARKETSIDE, LLC
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396. K. Hovnanian at Victorville, L.L.C.
 397. K. HOVNANIAN AT VICTORY AT VERRADO PH3C, LLC
 398. K. HOVNANIAN AT VICTORY AT VERRADO PH9, LLC
 399. K. HOVNANIAN AT VICTORY AT VERRADO, LLC
 400. K. HOVNANIAN AT VIEWS AT SEASIDE URBAN RENEWAL, LLC
 401. K. Hovnanian at Village Center, LLC
 402. K. HOVNANIAN AT VILLAGES AT COUNTRY VIEW, LLC
 403. K. HOVNANIAN AT VILLAGES AT FLORHAM PARK, LLC
 404. K. HOVNANIAN AT VILLAGO, LLC
 405. K. HOVNANIAN AT VILLAS AT THE COMMONS, LLC
 406. K. Hovnanian at Vineyard Heights, LLC
 407. K. HOVNANIAN AT VIVIENDO, LLC
 408. K. HOVNANIAN AT WADE'S GRANT, L.L.C.
 409. K. HOVNANIAN AT WALDWICK, LLC
 410. K. HOVNANIAN AT WALKERS GROVE, LLC
 411. K. HOVNANIAN AT WALL DONATO, LLC
 412. K. HOVNANIAN AT WALL QUAIL RIDGE, LLC
 413. K. HOVNANIAN AT WARREN TOWNSHIP II, LLC
 414. K. HOVNANIAN AT WASHINGTON RIDGE, LLC
 415. K. Hovnanian at Waterstone, LLC
 416. K. HOVNANIAN AT WAXPOOL CROSSING, LLC
 417. K. HOVNANIAN AT WELLSPRINGS, LLC
 418. K. Hovnanian at West View Estates, L.L.C.
 419. K. HOVNANIAN AT WESTBROOK, LLC
 420. K. Hovnanian at Westshore, LLC
 421. K. Hovnanian at Wheeler Ranch, LLC
 422. K. HOVNANIAN AT WHEELER WOODS, LLC
 423. K. HOVNANIAN AT WILDWOOD BAYSIDE, L.L.C.
 424. K. HOVNANIAN AT WILLOWSFORD GREENS III, LLC
 425. K. Hovnanian at Woodcreek West, LLC
 426. K. Hovnanian at Woodfield, LLC
 427. K. HOVNANIAN AT WOOLWICH I, L.L.C.
 428. K. HOVNANIAN AT WREN HOLLOW, LLC
 429. K. HOVNANIAN BELDEN POINTE, LLC
 430. K. HOVNANIAN BELMONT RESERVE, LLC
 431. K. HOVNANIAN BRITTANY MANOR BORROWER, LLC
 432. K. HOVNANIAN BUILD ON YOUR LOT DIVISION, LLC
 433. K. Hovnanian CA Land Holdings, LLC
 434. K. Hovnanian California Operations, Inc.
 435. K. Hovnanian California Region, Inc.
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436. K. HOVNIANIAN CAMBRIDGE HOMES, L.L.C.
 437. K. Hovnianian Central Acquisitions, L.L.C.
 438. K. HOVNIANIAN CENTRAL OHIO, LLC
 439. K. HOVNIANIAN CHICAGO DIVISION, INC.
 440. K. HOVNIANIAN CLASSICS, L.L.C.
 441. K. HOVNIANIAN CLEVELAND DIVISION, LLC
 442. K. Hovnianian Communities, Inc.
 443. K. HOVNIANIAN COMPANIES OF ARIZONA, LLC
 444. K. HOVNIANIAN COMPANIES OF FLORIDA, LLC
 445. K. HOVNIANIAN COMPANIES OF NEW YORK, INC.
 446. K. Hovnianian Companies of Southern California, Inc.
 447. K. Hovnianian Companies, LLC
 448. K. HOVNIANIAN CORNERSTONE FARMS, LLC
 449. K. HOVNIANIAN CRAFTBUILT HOMES OF SOUTH CAROLINA, L.L.C.
 450. K. HOVNIANIAN CYPRESS CREEK, LLC
 451. K. HOVNIANIAN CYPRESS KEY, LLC
 452. K. Hovnianian Delaware Division, Inc.
 453. K. Hovnianian Delaware Operations, LLC
 454. K. HOVNIANIAN DEVELOPMENTS OF D.C., INC.
 455. K. HOVNIANIAN DEVELOPMENTS OF GEORGIA, INC.
 456. K. HOVNIANIAN DEVELOPMENTS OF MARYLAND, INC.
 457. K. HOVNIANIAN DEVELOPMENTS OF MINNESOTA, INC.
 458. K. HOVNIANIAN DEVELOPMENTS OF NEW YORK, INC.
 459. K. HOVNIANIAN DEVELOPMENTS OF NORTH CAROLINA, INC.
 460. K. HOVNIANIAN DEVELOPMENTS OF PENNSYLVANIA, INC.
 461. K. Hovnianian Developments of Texas, Inc.
 462. K. HOVNIANIAN DEVELOPMENTS OF VIRGINIA, INC.
 463. K. HOVNIANIAN DEVELOPMENTS OF WEST VIRGINIA, INC.
 464. K. Hovnianian DFW Agave Ranch, LLC
 465. K. Hovnianian DFW Ascend at Creekshaw, LLC
 466. K. Hovnianian DFW Ascend at Justin Crossing, LLC
 467. K. Hovnianian DFW ASPIRE AT Reunion, LLC
 468. K. Hovnianian DFW Auburn Farms, LLC
 469. K. Hovnianian DFW Bayside, LLC
 470. K. Hovnianian DFW Belmont, LLC
 471. K. Hovnianian DFW Berkshire II, LLC
 472. K. Hovnianian DFW Berkshire, LLC
 473. K. Hovnianian DFW Bluff Creek, LLC
 474. K. Hovnianian DFW Caldwell Lakes, LLC
 475. K. Hovnianian DFW Calloway Trails, LLC
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476. K. Hovnanian DFW Canyon Falls, LLC
 477. K. Hovnanian DFW Carillon, LLC
 478. K. Hovnanian DFW Commodore at Preston, LLC
 479. K. Hovnanian DFW Creekside Estates II, LLC
 480. K. Hovnanian DFW Creekside Estates, LLC
 481. K. Hovnanian DFW Diamond Creek Estates, LLC
 482. K. Hovnanian DFW Division, LLC
 483. K. Hovnanian DFW Elevon, LLC
 484. K. Hovnanian DFW Encore of Las Colinas II, LLC
 485. K. Hovnanian DFW Encore of Las Colinas, LLC
 486. K. Hovnanian DFW Harmon Farms, LLC
 487. K. Hovnanian DFW Heritage Crossing, LLC
 488. K. Hovnanian DFW Heritage Ranch, LLC
 489. K. Hovnanian DFW Heron Pond, LLC
 490. K. Hovnanian DFW High Pointe, LLC
 491. K. Hovnanian DFW Hightower, LLC
 492. K. Hovnanian DFW Homestead, LLC
 493. K. Hovnanian DFW Inspiration, LLC
 494. K. Hovnanian DFW Kensington Place, LLC
 495. K. Hovnanian DFW Kreymer at the Park, LLC
 496. K. Hovnanian DFW Lexington, LLC
 497. K. Hovnanian DFW Liberty Crossing II, LLC
 498. K. Hovnanian DFW Liberty Crossing, LLC
 499. K. Hovnanian DFW Liberty, LLC
 500. K. Hovnanian DFW Light Farms Cypress III, LLC
 501. K. Hovnanian DFW Light Farms II, LLC
 502. K. Hovnanian DFW Light Farms, LLC
 503. K. Hovnanian DFW Lincoln Pointe, LLC
 504. K. Hovnanian DFW Midtown Park, LLC
 505. K. Hovnanian DFW Milrany Ranch, LLC
 506. K. Hovnanian DFW Monterra, LLC
 507. K. Hovnanian DFW Mustang Lakes II, LLC
 508. K. Hovnanian DFW Mustang Lakes, LLC
 509. K. Hovnanian DFW Noble Ridge, LLC
 510. K. Hovnanian DFW North Creek, LLC
 511. K. Hovnanian DFW North Sky, LLC
 512. K. Hovnanian DFW Oakmont Park II, LLC
 513. K. Hovnanian DFW Oakmont Park, LLC
 514. K. Hovnanian DFW Palisades, LLC
 515. K. Hovnanian DFW Parkside, LLC
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516. K. Hovnanian DFW Parkview, LLC
 517. K. Hovnanian DFW Providence Commons, LLC
 518. K. Hovnanian DFW Ridgeview, LLC
 519. K. Hovnanian DFW Rolling Ridge, LLC
 520. K. Hovnanian DFW Sanford Park, LLC
 521. K. Hovnanian DFW Sapphire Bay, LLC
 522. K. Hovnanian DFW Seventeen Lakes, LLC
 523. K. Hovnanian DFW South Pointe, LLC
 524. K. Hovnanian DFW Sterling Greene, LLC
 525. K. Hovnanian DFW The Parks at Rosehill, LLC
 526. K. Hovnanian DFW Timberbrook, LLC
 527. K. Hovnanian DFW Trailwood II, LLC
 528. K. Hovnanian DFW Trailwood, LLC
 529. K. Hovnanian DFW Villas at Mustang Park, LLC
 530. K. Hovnanian DFW Villas at The Station, LLC
 531. K. Hovnanian DFW Watson Creek, LLC
 532. K. Hovnanian DFW Wellington Estates South, LLC
 533. K. Hovnanian DFW Wellington Villas, LLC
 534. K. Hovnanian DFW Wellington, LLC
 535. K. Hovnanian DFW Wildridge, LLC
 536. K. Hovnanian Distribution Services, Inc.
 537. K. Hovnanian East Group, LLC
 538. K. HOVNaNIAN EDGEBROOK, LLC
 539. K. HOVNaNIAN ESTATES AT BROCK FARMS, LLC
 540. K. HOVNaNIAN ESTATES AT REGENCY, L.L.C.
 541. K. HOVNaNIAN ESTATES AT WEKIVA, LLC
 542. K. HOVNaNIAN FALLS POINTE, LLC
 543. K. HOVNaNIAN FIRST HOMES, L.L.C.
 544. K. HOVNaNIAN FLORESTA GARDENS, LLC
 545. K. HOVNaNIAN FLORIDA OPERATIONS, LLC
 546. K. HOVNaNIAN FLORIDA REALTY, L.L.C.
 547. K. HOVNaNIAN FOREST LAKES, LLC
 548. K. HOVNaNIAN FOREST VALLEY, LLC
 549. K. HOVNaNIAN FOUR SEASONS AT CHESTNUT RIDGE, LLC
 550. K. Hovnanian Four Seasons at Homestead, LLC
 551. K. HOVNaNIAN GEORGIA OPERATIONS, LLC
 552. K. HOVNaNIAN GRAND CYPRESS, LLC
 553. K. HOVNaNIAN GRANDEFIELD, LLC
 554. K. HOVNaNIAN GREAT WESTERN HOMES, LLC
 555. K. Hovnanian GT X Investment, llc
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556. K. HOVNANIAN HIDDEN HOLLOW, LLC
 557. K. HOVNANIAN HIGHLAND RIDGE, LLC
 558. K. HOVNANIAN HOLDINGS NJ, L.L.C.
 559. K. Hovnanian Homes - DFW II, L.L.C.
 560. K. Hovnanian Homes - DFW, L.L.C.
 561. K. HOVNANIAN HOMES AT BROOK MANOR, LLC
 562. K. HOVNANIAN HOMES AT BURKE JUNCTION, LLC
 563. K. HOVNANIAN HOMES AT CREEKSIDE, LLC
 564. K. Hovnanian Homes at Knollac Acres, LLC
 565. K. HOVNANIAN HOMES AT LEIGH MILL, LLC
 566. K. HOVNANIAN HOMES AT LIBERTY RUN, LLC
 567. K. HOVNANIAN HOMES AT PARKSIDE, LLC
 568. K. HOVNANIAN HOMES AT PENDER OAKS, LLC
 569. K. HOVNANIAN HOMES AT SALT CREEK LANDING, LLC
 570. K. HOVNANIAN HOMES AT SANDY CREEK LANDING, LLC
 571. K. HOVNANIAN HOMES AT SHELL HALL, LLC
 572. K. HOVNANIAN HOMES AT SHENANDOAH SPRINGS, LLC
 573. K. Hovnanian Homes at Summit Pointe, LLC
 574. K. HOVNANIAN HOMES AT THE ABBY, LLC
 575. K. HOVNANIAN HOMES AT THE PADDOCKS, LLC
 576. K. HOVNANIAN HOMES AT THOMPSON'S GRANT, LLC
 577. K. HOVNANIAN HOMES AT WILLOWSFORD GRANGE, LLC
 578. K. HOVNANIAN HOMES AT WILLOWSFORD GRANT II, LLC
 579. K. HOVNANIAN HOMES AT WILLOWSFORD GRANT, LLC
 580. K. HOVNANIAN HOMES AT WILLOWSFORD GREENS, LLC
 581. K. HOVNANIAN HOMES AT WILLOWSFORD NEW, LLC
 582. K. Hovnanian Homes Northern California, Inc.
 583. K. HOVNANIAN HOMES OF D.C., L.L.C.
 584. K. Hovnanian Homes of Delaware I, LLC
 585. K. HOVNANIAN HOMES OF FLORIDA I, LLC
 586. K. Hovnanian Homes of Longacre Village, L.L.C.
 587. K. HOVNANIAN HOMES OF MARYLAND I, LLC
 588. K. HOVNANIAN HOMES OF MARYLAND II, LLC
 589. K. HOVNANIAN HOMES OF MARYLAND, L.L.C.
 590. K. HOVNANIAN HOMES OF MINNESOTA AT ARBOR CREEK, LLC
 591. K. HOVNANIAN HOMES OF MINNESOTA AT AUTUMN MEADOWS, LLC
 592. K. HOVNANIAN HOMES OF MINNESOTA AT BRYNWOOD, LLC
 593. K. HOVNANIAN HOMES OF MINNESOTA AT CEDAR HOLLOW, LLC
 594. K. HOVNANIAN HOMES OF MINNESOTA AT FOUNDER'S RIDGE, LLC
 595. K. HOVNANIAN HOMES OF MINNESOTA AT HARPERS STREET WOODS, LLC
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596. K. HOVNIANIAN HOMES OF MINNESOTA AT OAKS OF OXBOW, LLC
 597. K. HOVNIANIAN HOMES OF MINNESOTA AT REGENT'S POINT, LLC
 598. K. HOVNIANIAN HOMES OF MINNESOTA, L.L.C.
 599. K. HOVNIANIAN HOMES OF NORTH CAROLINA, INC.
 600. K. HOVNIANIAN HOMES OF PENNSYLVANIA, L.L.C.
 601. K. Hovnianian Houston Balmoral Park Lakes East Section 8, LLC
 602. K. Hovnianian Houston Balmoral, LLC
 603. K. Hovnianian Houston Bayou Oaks at West Orem, LLC
 604. K. Hovnianian Houston Cambridge Heights, LLC
 605. K. Hovnianian Houston City Heights, LLC
 606. K. Hovnianian Houston Creek Bend, LLC
 607. K. Hovnianian Houston Division, LLC
 608. K. Hovnianian Houston Dry Creek Village, LLC
 609. K. Hovnianian Houston Eldridge Park, LLC
 610. K. Hovnianian Houston Fairchild Farms, LLC
 611. K. Hovnianian Houston Greatwood Lake, LLC
 612. K. Hovnianian Houston Katy Pointe II, LLC
 613. K. Hovnianian Houston Katy Pointe, LLC
 614. K. Hovnianian Houston Kingdom Heights, LLC
 615. K. Hovnianian Houston Lakes of Bella Terra West II, LLC
 616. K. Hovnianian Houston Lakes of Bella Terra West, LLC
 617. K. Hovnianian Houston Laurel Glen, LLC
 618. K. Hovnianian Houston Magnolia Creek, LLC
 619. K. Hovnianian Houston Midtown Park I, LLC
 620. K. Hovnianian Houston Park Lakes East, LLC
 621. K. Hovnianian Houston Parkway Trails, LLC
 622. K. Hovnianian Houston River Farms, LLC
 623. K. Hovnianian Houston Sunset Ranch, LLC
 624. K. Hovnianian Houston Terra Del Sol, LLC
 625. K. Hovnianian Houston Thunder Bay Subdivision, LLC
 626. K. Hovnianian Houston Tranquility Lake Estates, LLC
 627. K. Hovnianian Houston Westwood, LLC
 628. K. Hovnianian Houston Willowpoint, LLC
 629. K. Hovnianian Houston Woodshore, LLC
 630. K. HOVNIANIAN ILLINOIS OPERATIONS, LLC
 631. K. HOVNIANIAN INDIAN TRAILS, LLC
 632. K. HOVNIANIAN IVY TRAIL, LLC
 633. K. Hovnianian JV Holdings, L.L.C.
 634. K. Hovnianian JV Services Company, L.L.C.
 635. K. HOVNIANIAN KINGSTON AT WESTERN RESERVE, LLC
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636. K. HOVNANIAN LADUE RESERVE, LLC
 637. K. HOVNANIAN LAKE PARKER, LLC
 638. K. HOVNANIAN LAKES OF GREEN, LLC
 639. K. HOVNANIAN LANDINGS 40S, LLC
 640. K. HOVNANIAN LEGACY AT VIA BELLA, LLC
 641. K. HOVNANIAN LIBERTY ON BLUFF CREEK, LLC
 642. K. HOVNANIAN MAGNOLIA AT WESTSIDE, LLC
 643. K. HOVNANIAN MANALAPAN ACQUISITION, LLC
 644. K. HOVNANIAN MEADOW LAKES, LLC
 645. K. Hovnanian Meadow View at Mountain House, LLC
 646. K. HOVNANIAN MID-ATLANTIC DIVISION, LLC
 647. K. HOVNANIAN MONARCH GROVE, LLC
 648. K. HOVNANIAN MONTCLAIRE ESTATES, LLC
 649. K. Hovnanian New Jersey Operations, LLC
 650. K. HOVNANIAN NEW YORK OPERATIONS, LLC
 651. K. Hovnanian North Central Acquisitions, L.L.C.
 652. K. HOVNANIAN NORTH CENTRAL FLORIDA DIVISION, LLC
 653. K. HOVNANIAN NORTH CENTRAL FLORIDA HOLDINGS, LLC
 654. K. Hovnanian North Jersey Acquisitions, L.L.C.
 655. K. Hovnanian Northeast Division, Inc.
 656. K. HOVNANIAN NORTHEAST SERVICES, L.L.C.
 657. K. Hovnanian Northern California Division, LLC
 658. K. HOVNANIAN NORTHPOINTE 40S, LLC
 659. K. HOVNANIAN NORTHWEST OHIO, LLC
 660. K. HOVNANIAN NORTON PLACE, LLC
 661. K. HOVNANIAN OCOEE LANDINGS, LLC
 662. K. Hovnanian of Houston II, L.L.C.
 663. K. Hovnanian of Houston III, L.L.C.
 664. K. HOVNANIAN OHIO OPERATIONS, LLC
 665. K. HOVNANIAN OHIO REALTY, L.L.C.
 666. K. HOVNANIAN OHIO REGION, INC.
 667. K. Hovnanian Operations Company, Inc.
 668. K. HOVNANIAN ORLANDO DIVISION, LLC
 669. K. HOVNANIAN PA REAL ESTATE, INC.
 670. K. Hovnanian Parkview at Sterling Meadows, LLC
 671. K. HOVNANIAN PENNSYLVANIA BUILD ON YOUR LOT DIVISION, LLC
 672. K. HOVNANIAN PENNSYLVANIA OPERATIONS, LLC
 673. K. HOVNANIAN PHOENIX DIVISION, INC.
 674. K. HOVNANIAN PINWOOD GARDENS, LLC
 675. K. HOVNANIAN PRESERVE AT AVONLEA, LLC
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676. K. HOVNANIAN PRESERVE AT TURTLE CREEK LLC
677. K. HOVNANIAN PROPERTIES OF RED BANK, LLC
678. K. HOVNANIAN REDFERN TRAILS, LLC
679. K. HOVNANIAN REYNOLDS RANCH, LLC
680. K. HOVNANIAN RIVENDALE, LLC
681. K. HOVNANIAN RIVERSIDE, LLC
682. K. HOVNANIAN RIVINGTON, LLC
683. K. HOVNANIAN SAN SEBASTIAN, LLC
684. K. HOVNANIAN SCHADY RESERVE, LLC
685. K. HOVNANIAN SERENITY WALK AT PLAINSBORO URBAN RENEWAL, LLC
686. K. HOVNANIAN SERENO, LLC
687. K. HOVNANIAN SHERWOOD AT REGENCY, LLC
688. K. HOVNANIAN SIENA AT SOLAERIS, LLC
689. K. HOVNANIAN SOLA VISTA, LLC
690. K. Hovnanian Sonterra, LLC
691. K. HOVNANIAN SOUTH CAROLINA OPERATIONS, LLC
692. K. HOVNANIAN SOUTH FORK, LLC
693. K. Hovnanian South Jersey Acquisitions, L.L.C.
694. K. HOVNANIAN SOUTHEAST COASTAL DIVISION, INC.
695. K. HOVNANIAN SOUTHEAST FLORIDA DIVISION, LLC
696. K. Hovnanian Southern California Division, LLC
697. K. HOVNANIAN SOUTHERN NEW JERSEY, L.L.C.
698. K. HOVNANIAN STERLING RANCH, LLC
699. K. HOVNANIAN SUMMIT HOLDINGS, L.L.C.
700. K. HOVNANIAN T&C HOMES AT FLORIDA, L.L.C.
701. K. HOVNANIAN T&C HOMES AT ILLINOIS, L.L.C.
702. K. HOVNANIAN TERRALARGO, LLC
703. K. Hovnanian Texas Operations, LLC
704. K. HOVNANIAN TIMBRES AT ELM CREEK, LLC
705. K. HOVNANIAN UNION PARK, LLC
706. K. HOVNANIAN VILLAGE GLEN, LLC
707. K. HOVNANIAN VILLAGES AT HAYS MILL CREEK URBAN RENEWAL, LLC
708. K. HOVNANIAN VIRGINIA OPERATIONS, INC.
709. K. HOVNANIAN WATERBURY, LLC
710. K. HOVNANIAN WATERFORD RESERVE, LLC
711. K. HOVNANIAN WEST GROUP, LLC
712. K. HOVNANIAN WEST VIRGINIA BUILD ON YOUR LOT DIVISION, LLC
713. K. HOVNANIAN WEST VIRGINIA OPERATIONS, LLC
714. K. HOVNANIAN WHITE ROAD, LLC
715. K. HOVNANIAN WINDING BAY PRESERVE, LLC

716. K. HOVNANIAN WINDWARD HOMES, LLC
717. K. HOVNANIAN WOODLAND POINTE, LLC
718. K. HOVNANIAN WOODRIDGE PLACE, LLC
719. K. HOVNANIAN'S AEGEAN AT ASBURY PARK URBAN RENEWAL, LLC
720. K. HOVNANIAN'S ASPIRE AT NEW HAMPSTEAD, LLC
721. K. Hovnanian's Aspire at Union Village, LLC
722. K. HOVNANIAN'S BALTIC AT ASBURY PARK URBAN RENEWAL, LLC
723. K. HOVNANIAN'S COVE AT ASBURY PARK URBAN RENEWAL, LLC
724. K. HOVNANIAN'S DELTA AT ASBURY PARK URBAN RENEWAL, LLC
725. K. HOVNANIAN'S ENCLAVE AT OLD TAPPAN, LLC
726. K. HOVNANIAN'S FOUR SEASONS AT ADDISON FARMS, LLC
727. K. HOVNANIAN'S FOUR SEASONS AT BAKERSFIELD, L.L.C.
728. K. Hovnanian's Four Seasons at Baymont Farms L.L.C.
729. K. Hovnanian's Four Seasons at Beaumont, LLC
730. K. HOVNANIAN'S FOUR SEASONS AT CANE BAY EXPANSION, LLC
731. K. HOVNANIAN'S FOUR SEASONS AT CHARLOTTESVILLE II, LLC
732. K. HOVNANIAN'S FOUR SEASONS AT COLTS FARM, LLC
733. K. HOVNANIAN'S FOUR SEASONS AT CROSSPRAIRIE, LLC
734. K. Hovnanian's Four Seasons at Hatteras Hills, LLC
735. K. HOVNANIAN'S FOUR SEASONS AT HILTON HEAD LAKES, LLC
736. K. HOVNANIAN'S FOUR SEASONS AT KENT ISLAND, L.L.C.
737. K. HOVNANIAN'S FOUR SEASONS AT LAKES OF CANE BAY LLC
738. K. Hovnanian's Four Seasons at Los Banos, LLC
739. K. HOVNANIAN'S FOUR SEASONS AT NEW KENT VINEYARDS, L.L.C.
740. K. HOVNANIAN'S FOUR SEASONS AT RUSH CREEK II, LLC
741. K. HOVNANIAN'S FOUR SEASONS AT SANDSTONE, LLC
742. K. Hovnanian's Four Seasons at Silver Maple Farm, L.L.C.
743. K. HOVNANIAN'S FOUR SEASONS AT THE MANOR II, LLC
744. K. HOVNANIAN'S FOUR SEASONS AT THE MANOR, LLC
745. K. HOVNANIAN'S FOUR SEASONS AT VIRGINIA CROSSING, LLC
746. K. HOVNANIAN'S FOUR SEASONS AT WYLDER, LLC
747. K. HOVNANIAN'S LAKES AT NEW RIVERSIDE EXPANSION, LLC
748. K. Hovnanian's Sonata at The Preserve, LLC
749. K. HOVNANIAN'S THE TOWNES AT WEST WINDSOR, LLC
750. K. Hovnanian's Veranda at RiverPark II, LLC
751. K. Hovnanian's Veranda at RiverPark, LLC
752. KHH Shell Hall Loan Acquisition, LLC
753. KHOV WINDING BAY II, LLC
754. LANDARAMA, INC.
755. LINKS AT CALUSA SPRINGS, LLC

- 756. M & M AT MONROE WOODS, L.L.C.
 - 757. M&M AT WEST ORANGE, L.L.C.
 - 758. MATZEL & MUMFORD AT EGG HARBOR, L.L.C.
 - 759. MCNJ, INC.
 - 760. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES OF PENNSYLVANIA, L.L.C.
 - 761. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES OF WEST VIRGINIA, L.L.C.
 - 762. MIDWEST BUILDING PRODUCTS & CONTRACTOR SERVICES, L.L.C.
 - 763. MM-BEACHFRONT NORTH I, LLC
 - 764. NEW HOME REALTY, LLC
 - 765. PARK TITLE COMPANY, LLC
 - 766. RIDGEMORE UTILITY L.L.C.
 - 767. Ridgemore Utility of Delaware, LLC
 - 768. ROUTE 1 AND ROUTE 522, L.L.C.
 - 769. SHELL HALL CLUB AMENITY ACQUISITION, LLC
 - 770. SHELL HALL LAND ACQUISITION, LLC
 - 771. STONEBROOK HOMES, INC.
 - 772. TERRAPIN REALTY, L.L.C.
 - 773. THE MATZEL & MUMFORD ORGANIZATION, INC
 - 774. Traverse Partners, LLC
 - 775. VISTAS AT SILVERSTONE LLC
 - 776. Washington Homes, Inc.
 - 777. WTC Ventures, L.L.C.
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[Form of Perfection Certificate]
