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): October 1, 2020

CAPSTONE TURBINE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	001-15957	95-4180883
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

16640 Stagg Street, Van Nuys, California		91406
(Address of principal executive offices)		(Zip Code)

(818) 734-5300
(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

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 (see General Instruction A.2. below):

☐ 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
Common Stock, par value $.001 per share	CPST	NASDAQ Capital Market
Series B Junior Participating Preferred Stock Purchase Rights		

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

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

Amended & Restated Note Purchase Agreement

On October 1, 2020 (the "Closing Date"), Capstone Turbine Corporation (the "Company"), certain subsidiaries of the company, Goldman Sachs Specialty Lending Group, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.), as collateral agent (the "Collateral Agent"), and the Purchasers party thereto (the "Purchasers") entered into an Amended & Restated Note Purchase Agreement, dated October 1, 2020 (the "A&R Note Purchase Agreement"). The A&R Note Purchase Agreement amends and restates that certain Note Purchase Agreement, as amended, dated February 4, 2019, by and among the Company, the Collateral Agent and the other parties party thereto. Under the A&R Note Purchase Agreement, the Company issued $20 million in additional senior secured notes (together with the $30 million in senior secured notes that were issued prior to the Closing Date, the "Notes"). The Notes bear interest at the Adjusted LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum, payable on the last day of each interest period of one-, two-, three- or six-months (but, in the case of a six-month interest period, every three-months). The entire principal amount of the Notes is due and payable on October 1, 2023 (the "Maturity Date"). The Notes do not amortize and the entire principal balance is due in a single payment on the Maturity Date.

The Company's obligations under the A&R Note Purchase Agreement are unconditionally guaranteed by certain of the Company's subsidiaries and secured by a lien on substantially all of the present and future property and assets of the Company and such subsidiaries, in each case, subject to customary exceptions and exclusions.

The A&R Note Purchase Agreement contains customary covenants, including, among others, covenants that restrict the Company's ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends, repurchase equity interests, repay certain debt, amend certain contracts, enter into affiliate transactions and asset sales or make certain equity issuances, and covenants that require the Company to, among other things, provide annual, quarterly and monthly financial statements, together with the related compliance certificates, maintain its property in good repair, maintain insurance and comply with applicable laws. Among other things, the covenants require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 6.25 MW by the 9-month anniversary of the Closing Date, and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date. The A&R Note Purchase Agreement also includes financial covenants with respect to the Company's consolidated liquidity and consolidated adjusted EBITDA.

The A&R Note Purchase Agreement contains customary events of default, including, among other things, payment default, bankruptcy events, cross-default breaches of covenants and representations and warranties, change of control, judgement defaults and an ownership change within the meaning of Section 382 of the Internal Revenue Code. In the case of an event of default, the Purchaser may, among other remedies, accelerate the payment of all obligations under the Additional Notes.

Any prepayment of the Notes made prior to the second anniversary of the Closing Date must be accompanied by a yield maintenance premium.

The Notes issued on the Closing Date and the related guarantees have not be registered under the Securities Act, and have been offered and sold in reliance on the exemption from the registration provided by Rule 506 of Regulation D promulgated under the Securities Act. The Notes and the related guarantees may not be offered or sold in the United States without registration or an applicable exemption from registration requirements.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the A&R Note Purchase Agreement, which is filed as Exhibit 4.1 to this Current Report on Form 8-K, and incorporated herein by reference.

Purchase Warrant for Common Shares

On October 1, 2020, the Company entered into an Amendment No. 3 to the Purchase Warrant for Common Shares (the "Amendment No. 3") with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co.

LLC) (the "Warrant Holder") that amends that certain Purchase Warrant for Common Shares originally issued by the Company to Goldman Sachs & Co. LLC, dated February 4, 2019, as amended (the "Original Warrant").

The Amendment No. 3 amends the Original Warrant to amend Section 2.1, Section 2.2(c) and Section 18.1 of the Warrant to, among other things, make certain changes necessitated by the issuance of a second Warrant to the Warrant Holder on October 1, 2020 pursuant to the Company's entry into the A&R Note Purchase Agreement (the "New Warrant"). All other terms and provisions in the Original Warrant remain in effect, as previously reported in the Current Report on Form 8-K filed on February 5, 2019, which is incorporated herein by reference.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the Amendment No. 3, which is filed as Exhibit 4.2 to this Current Report on Form 8-K, and incorporated herein by reference.

New Purchase Warrant for Common Shares

On October 1, 2020, the Company sold to the Warrant Holder the New Warrant to purchase up to 291,295 shares (the "New Warrant Shares") of the Company's common stock, par value $0.001 per share (the "Common Shares"). The New Warrant was sold to the Warrant Holder at a purchase price of $10,000, in a private placement exempt from registration under the Securities Act. The Warrant Shares represent approximately two and two tenths percent (2.2%) of the Common Shares outstanding on a fully diluted basis as of the date of the Second Warrant.

The New Warrant may be exercised by the Warrant Holder at any time after October 1, 2020 at an exercise price equal to $4.76 and will expire on February 4, 2024. The New Warrant contains standard adjustment provisions in the event of additional stock issuances below the exercise price of the warrant, stock splits, combinations, rights offerings and similar transactions. The Warrant Holder will not have the right to exercise any portion of the Second Warrant if the Warrant Holder would beneficially own in excess of 4.9% of the Common Shares outstanding immediately after giving effect to such exercise. This percentage may, however, be raised or lowered to an amount not to exceed 19.99% of the Common Shares outstanding on the date the New Warrant was originally issued, at the option of the Warrant Holder upon at least 61 days' prior notice to the Company.

The New Warrant provides the Warrant Holder with a right to notice of certain specified corporate actions, including the selection of a record date for dividends or distributions. The Warrant also grants certain registration rights and indemnification rights to the Holder and requires that the Company continue filing reports with the SEC in order for the Holder to use Rule 144 of the Securities Act for the sale of the Common Shares issuable upon exercise of the Second Warrant.

The cash proceeds from the issuance of the New Warrant will be used by the Company for general corporate purposes.

The New Warrant issued on October 1, 2020 has not been registered under the Securities Act, and has been offered and sold in reliance on the exemption from registration provided by Rule 506 of Regulation D promulgated under the Securities Act. The New Warrant may not be offered or sold in the United States without registration or an applicable exemption from registration requirements.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the Second Purchase Warrant for Common Shares, which is filed as Exhibit 4.3 to this Current Report on Form 8-K and incorporated herein by reference.

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

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
4.1	Amended and Restated Note Purchase Agreement, dated as of October 1, 2020, by and among Capstone Turbine Corporation, certain subsidiaries of the company and Goldman Sachs Specialty Lending Group, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.)
4.2	Amendment No. 3 to the Purchase Warrant for Common Shares issued in favor of Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC), dated October 1, 2020
4.3	Purchase Warrant for Common Shares issued in favor of Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC), dated October 1, 2020

SIGNATURE

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.

CAPSTONE TURBINE CORPORATION

Date: October 5, 2020

By: /s/ Darren R. Jamison
Name: Darren R. Jamison
Title: President and Chief Executive Officer

Exhibit 4.1

AMENDED & RESTATED NOTE PURCHASE AGREEMENT

dated as of October 1, 2020

among

CAPSTONE TURBINE CORPORATION,
as Company,

and
CERTAIN SUBSIDIARIES,

as Guarantors,

VARIOUS PURCHASERS,

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.)**,**
as Collateral Agent

$50,000,000 Senior Secured Notes

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NOTE PURCHASE AGREEMENT

This **AMENDED & RESTATED NOTE PURCHASE AGREEMENT**, dated as of October 1, 2020, is entered into by and among **CAPSTONE TURBINE CORPORATION** (**"Company"**), as issuer , certain Subsidiaries of Company from time to time party hereto, the Purchasers party hereto from time to time, and **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.** (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.) (**"GSSLG"**), as collateral agent (in such capacity, **"Collateral Agent"**) and amends and restates and supersedes in its entirety that certain Note Purchase Agreement dated February 4, 2019 (the "**Original Agreement**"), as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and Amendment No. 5, by and among the Company and GSSLG as Initial Purchaser and Collateral Agent.

RECITALS:

WHEREAS, Purchasers have agreed to purchase senior secured notes from the Company in the amounts and upon the terms and conditions more particularly set forth herein, the proceeds of which will be used, among other things, for the p ur po ses set forth in Section 2.5, in each case to the extent permitted hereunder;

WHEREAS, Company and the other Guarantors party hereto have agreed to guarantee the Obligations of the other Note Parties hereunder and to secure all such Persons' respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on all of their respective assets, including a pledge of all of the Capital Stock issued by any Subsidiary of Company, in each case, other than Excluded Property and subject to the limitations set forth herein and in the Collateral Documents;

WHEREAS, the Original Agreement was amended by Amendment No. 1 on July 23, 2019, by Amendment No. 2 on December 9, 2019, by Amendment No. 3 on April 24, 2020, by Amendment No. 4 on May 14, 2020 and by Amendment No. 5 on June 16, 2020; and

WHEREAS, the parties hereto, which parties include each of the parties to the Original Agreement, have agreed pursuant to Section 10.5 of the Original Agreement to amend and restate the Original Agreement, as so amended, as set forth herein.

NOW, THEREFORE, to induce Purchasers to purchase the Notes from Company and in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1 DEFINITIONS AND INTERPRETATION

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

"Acceptable Auditor" means (i) Marcum LLP, (ii) a "Big Four" accounting firm, (iii) an independent certified public accountant of recognized national standing, (iv) a regional "mid-tier" firm of good public standing approved by the Public Company Accounting Oversight

Board selected by Company or (v) any other independent certified public accountant reasonably satisfactory to Requisite Purchasers.

"Accounts" means all "accounts" (as defined in the UCC) of Company (or, if referring to another Person, of such Person), including accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

"Acquisition" means the acquisition of, by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures, in each case in the ordinary course of business), the business, a substantial portion of the property or assets of, or a substantial portion of the Capital Stock or other evidence of beneficial ownership of, any Person, any division or line of business, or any other business unit of any Person.

"Acquisition Consideration" means, with respect to any Permitted Acquisition or any other acquisition of any property or assets by any Person (including in connection with an Asset Sale consummated by a Note Party), the aggregate purchase consideration for such Permitted Acquisition or other Acquisition and all other payments by Company or any of its Subsidiaries in exchange for, or as part of, or in connection with, such Permitted Acquisition or other Acquisition, whether paid in cash, by issuance of a note, or by exchange of Capital Stock or of other assets or otherwise, and, in each case, whether payable at or prior to the consummation of such Permitted Acquisition or other Acquisition or deferred for payment at any future time, and whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, Earn Out Obligations, Seller Financing Indebtedness, and agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow, profits or other performance (or the like) of any Person or business. For purposes of this Agreement, any such consideration not consisting of Cash paid or payable upon the closing of any such Permitted Acquisition or other Acquisition shall be valued at the principal amount thereof in the case of notes or other debt Securities, the stated amount thereof in the case of fixed post-closing installments or similar Seller Financing Indebtedness obligations, the maximum payout amount in the case of any capped Earn Out Obligations or similar deferred contingent payment obligations, and reasonably estimable fair market value in the case of any other non-Cash consideration; provided that, for the avoidance of doubt, Acquisition Consideration shall not include any Earn Out Obligations or similar consideration to the extent such amounts are no longer payable due to any failure to satisfy the conditions to payment of such Earn Out Obligations or similar consideration.

"Additional Notes" means an Additional Note purchased by a Purchaser pursuant to Section 2.1(b)(ii).

"Additional Notes Closing Date" means the date on which the Additional Notes were issued and purchased by the Purchasers, which occurred on October 1, 2020.

"Additional Notes Purchase Commitment" means the commitment of a Purchaser to purchase Additional Notes and "Additional Notes Purchase Commitments" means such commitments of all Purchasers in the aggregate. The amount of each Purchaser's Additional Notes Purchase Commitment, if any, is set forth on Appendix A-2 or in the applicable assignment agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Additional Notes Purchase Commitments as of the Additional Notes Closing Date is $20,000,000.

"Adjusted LIBO Rate" means, for any Interest Rate Determination Date, the greater of (x) 1.00% per annum, and (y) the rate per annum obtained by dividing (i)(a) the rate per annum equal to the rate determined by Requisite Purchasers to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other Person that takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on the ICE LIBOR USD page of the Reuters Screen (or any replacement Reuters page that displays such rate) or on the appropriate page of any other information service that publishes that rate from time to time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date (the rate referenced in this clause (a), the "Eurodollar Screen Rate"), or (b) in the event the Eurodollar Screen Rate is not available, the rate per annum equal to the offered rate, truncated at five decimal digits, that is set forth on or in such other available quotation page or service as is acceptable to Requisite Purchasers in their sole discretion and that provides an average ICE Benchmark Administration Limited Interest Settlement Rate or another London interbank offered rate administered by any other Person that takes over the administration of such rate for deposits (for delivery on the first day of the relevant period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available or if such information, in the reasonable judgment of Requisite Purchasers, shall cease to accurately reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Requisite Purchasers, the rate per annum equal to the rate determined by Requisite Purchasers to be the offered rate, truncated at five decimal digits, to first class banks in the London interbank market for deposits (for delivery on the first day of the relevant period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one, minus (b) the Applicable Reserve Requirement.

"Adverse Proceeding" means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Company or any of its Subsidiaries, threatened in writing against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries.

"Affected Portion" as defined in Section 2.17(c).

"Affected Purchaser" as defined in Section 2.17(c).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Capital Stock having ordinary voting power for the election of members of the Board of Directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ability to exercise voting power, by contract or otherwise. Notwithstanding anything in this definition to the contrary, neither the Warrant Holder nor any of its affiliates shall be considered an "Affiliate" of any Note Party or of any Subsidiary of any Note Party.

"Agent Affiliates" as defined in Section 10.1(b)(iii).

"Aggregate Amounts Due" as defined in Section 2.16.

"Aggregate Payments" as defined in Section 7.2.

"Agreement" means this Amended & Restated Note Purchase Agreement , as amended, restated, amended and restated, or otherwise modified from time to time.

"Amendment No. 1" means that certain Amendment No. 1 to this Note Purchase Agreement dated as of July 23, 2019 by and among the Issuer and the Purchaser.

"Amendment No. 2" means that certain Amendment No. 2 to this Note Purchase Agreement dated as of December 9, 2019 by and among the Issuer and the Purchaser.

"Amendment No. 3" means that certain Amendment No. 3 to this Note Purchase Agreement dated as of April 24, 2020 by and among the Issuer and the Purchaser.

"Amendment No. 4" means that certain Amendment No. 4 to this Note Purchase Agreement dated as of May 14, 2020 by and among the Issuer and the Purchaser.

"Amendment No. 5" means that certain Amendment No. 5 to this Note Purchase Agreement dated as of June 16, 2020 by and among the Issuer and the Purchaser.

"Amendment No. 1 Effective Date" means July 23, 2019.

"Amendment No. 2 Effective Date" means December 9, 2019.

"Amendment No. 3 Effective Date" means April 24, 2020.

"Amendment No. 4 Effective Date" means May 14, 2020.

"Amendment No. 5 Effective Date" means June 16, 2020.

"Anti-Corruption and Anti-Bribery Laws" means any and all requirements of law related to anti-bribery or anti-corruption matters, including the United States Foreign Corrupt Practices Act of 1977.

"Anti-Terrorism and Anti-Money Laundering Laws" means any and all requirements of law related to engaging in, financing, or facilitating terrorism or money laundering, including the PATRIOT Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq.), Executive Order 13224 (effective September 24, 2001) and each of the laws, regulations, and executive orders administered by OFAC (31 C.F.R., Subtitle B, Chapter V).

"Applicable Margin" means (i) in the case of Notes bearing interest at the Adjusted LIBO Rate, a percentage, per annum, equal to 8.75% and (ii) in the case of Notes bearing interest at the Base Rate, a percentage, per annum, equal to 7.75%

"Applicable Reserve Requirement" means, at any time, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities that includes deposits by reference to which the applicable Adjusted LIBO Rate or any other interest rate of a Note is to be determined, or (ii) any category of extensions of credit or other assets that include LIBO Rate Note. A LIBO Rate Note shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Purchaser. The rate of interest on a LIBO Rate Note shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"Approved Electronic Communications" means any notice, demand, communication, information, document or other material that any Note Party provides to Purchasers pursuant to any Note Document or the transactions contemplated therein that is distributed to Collateral Agent or Purchasers by means of electronic communications pursuant to Section 10.1(b).

"Asset Sale" means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer (including through a plan of division), exclusive license (as licensor or sublicensor), or other disposition to, or any exchange of property with, any Person (other than to or with Company or any other Note Party), in one transaction or a series of transactions, of all or any part of Company's or any of its Subsidiaries' respective businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased, or licensed, including the Capital Stock of any of Company's Subsidiaries, other than inventory sold or leased to unaffiliated customers in the ordinary course of business. For purposes of clarification, "Asset Sale" shall (x) include (A) the sale or other disposition for value of any contracts and (B) the early termination or

modification of any contract resulting in the receipt by Company or any of its Subsidiaries of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts that would have been due through the date of termination or modification without giving effect thereto) and (y) exclude a sale or issuance by Company of its own common stock (including, for the avoidance of doubt, in connection with any at the market offering of Company's Capital Stock).

"Asset Sale Reinvestment Amounts" as defined in Section 2.13(a).

"Authorized Officer" means, as applied to any Person that is an entity, any duly authorized individual natural Person holding the position of chairman of the Board of Directors (if an officer), chief executive officer, president, vice president, Chief Financial Officer, or, if approved by Requisite Purchasers, any other officer position with similar authority; provided, that the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Requisite Purchasers, shall have delivered an incumbency certificate to Purchasers verifying the authority of such Authorized Officer.

"Bankruptcy Code" means Title 11 of the United States Code.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) 4%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Base Rate Notes" means a Note bearing interest at a rate determined by reference to the Base Rate.

"Benchmark Delayed Discontinuance Event" means the occurrence of one or more of the following events with respect to the Adjusted LIBO Rate: (1) a public statement or publication of information by or on behalf of the administrator of the Adjusted LIBO Rate announcing that such administrator will cease at a future date to provide the Adjusted LIBO Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted LIBO Rate, a resolution authority with jurisdiction over the administrator for the Adjusted LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted LIBO Rate, which states that the administrator of the Adjusted LIBO Rate will cease to provide the Adjusted LIBO Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the Adjusted LIBO Rate; or (3) a public statement or publication of information by the administrator of the Adjusted LIBO Rate that it will invoke, permanently or indefinitely, its insufficient submissions policy.

"Benchmark Discontinuation Event" means a Benchmark Delayed Discontinuance Event or a Benchmark Immediate Discontinuance Event.

"Benchmark Immediate Discontinuance Event" means (1) a public statement by the regulatory supervisor for the administrator of the Adjusted LIBO Rate or any Governmental Authority having jurisdiction over the Purchasers announcing that the Adjusted LIBO Rate is no longer representative or may no longer be used; (2) a public statement or publication of information by or on behalf of the administrator of the Adjusted LIBO Rate announcing that such administrator has ceased to provide the Adjusted LIBO Rate, permanently or indefinitely, and there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted LIBO Rate, a resolution authority with jurisdiction over the administrator for the Adjusted LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted LIBO Rate, which states that the administrator of the Adjusted LIBO Rate has ceased to provide the Adjusted LIBO Rate permanently or indefinitely, and there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (4) the Adjusted LIBO Rate is not published by the administrator of the Adjusted LIBO Rate for five consecutive Business Days and such failure is not the result of a temporary moratorium, embargo or disruption declared by the administrator of the Adjusted LIBO Rate or by the regulatory supervisor for the administrator of the Adjusted LIBO Rate; (5) a public statement or publication of information by the administrator of the Adjusted LIBO Rate that it has invoked, permanently or indefinitely, its insufficient submissions policy; or (6) a Benchmark Delayed Discontinuance Event has occurred and the Adjusted LIBO Rate event about which a public statement or publication of information is made giving rise to such Benchmark Delayed Discontinuance Event has actually occurred or transpired.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance reasonably acceptable to the Purchasers.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Beneficiary" means Collateral Agent and each Purchaser.

"Board of Directors" means, (a) with respect to any corporation or company, the board of directors of the corporation or company or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors or equivalent governing body of the general partner of the partnership, (c) with respect to a limited liability company, the manager, the managing member or members or any controlling committee or board of managers (or equivalent governing body) of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the entity, individual, board or committee of such Person serving a similar function.

"Board of Governors" means the Board of Governors of the United States Federal Reserve System, or any successor Governmental Authority.

"Business Day" means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in any such state are authorized or required by law or other governmental action to close.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

"Capital Lease Obligation" means, as applied to any Person that is a lessee under any Capital Lease, that portion of obligations under such Capital Lease that is properly classified as a liability on a balance sheet in conformity with GAAP.

"Capital Stock" means any and all shares, stock, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership or profits interests in a Person that is another type of entity, including partnership interests, membership interests, voting trust certificates, certificates of interest, and profits interests, participations, or similar arrangements, and any and all warrants, rights or options to purchase, or other arrangements or rights to acquire, subscribe, convert to or otherwise receive or participate in the economic or other rights associated with any of the foregoing.

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act, and all regulations and guidance issued by any Governmental Authority with respect thereto, as in effect from time to time.

"CARES Act Account" has the meaning set forth in Section 5.16.

"CARES Act Indebtedness" has the meaning set forth in Section 6.1(o) of this Note Purchase Agreement.

"CARES Act Permitted Purposes" means, with respect to the use of proceeds of any CARES Act Indebtedness, the purposes set forth in Section 1106(b) of the CARES Act and otherwise in compliance with all other provisions or requirements of the CARES Act applicable in order for the CARES Act Indebtedness to be eligible for forgiveness.

"Cash" means money, currency or a credit balance in any demand or Deposit Account.

"Cash Equivalents" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the U.S. Federal Government, or (b) issued by any agency of the U.S., in each case of sub-clauses (a) and (b), the obligations of which are backed by the full faith and credit of the U.S., mature within one year after such date, and have, at the time of the acquisition thereof, a rating of at least A-1 from S&P and at least P-1 from Moody's; (ii) marketable direct obligations issued by any state of the U.S. or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) certificates of deposit or bankers' acceptances maturing within three months after such date and issued or accepted by any Purchaser or by any commercial bank organized under the laws of the U.S. or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary

federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $250,000,000; and (iv) shares of any money market mutual fund that (a) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" means the occurrence, after the date hereof, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means, at any time: (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than the Warrant Holder or any of its affiliates (a) shall have acquired beneficial ownership or control of 25% or more on a fully diluted basis of (1) the voting interests in the Capital Stock of Company and/or (2) the economic interests in the Capital Stock of Company, or (b) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors of Company; or (ii) the majority of the seats (other than vacant seats) on the Board of Directors of Company cease to be occupied by Persons who either (a) were members of the Board of Directors of Company on the Closing Date, or (b) were nominated for election by the Board of Directors of Company, a majority of whom were directors on the Closing Date or whose election or nomination for election was previously approved by a majority of such directors.

"Chief Financial Officer" means, as applied to any Person that is an entity, any duly authorized individual natural Person holding the position of chief financial officer or, if approved by Requisite Purchasers, any other officer position with similar financial responsibility; provided, that the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Requisite Purchasers, shall have delivered an incumbency certificate to the Purchasers verifying the authority of such Authorized Officer.

"Closing Date" means the date on which the Notes were issued and purchased by the Purchasers, which occurred on February 4, 2019.

"Closing Date Certificate" means a certificate dated as of the Closing Date or the Additional Notes Closing Date, as applicable, and substantially in the form of Exhibit F-1.

" Code" means the Internal Revenue Code of 1986 , as amended, and any Treasury regulations promulgated thereunder. For the avoidance of doubt, references to specific sections of the Code shall include references to Treasury regulations interpreting such sections.

"Collateral" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted and/or purported to be granted pursuant to the Collateral Documents as security for the Obligations , but excluding, for the avoidance of doubt, Excluded Property.

"Collateral Agent" as defined in the preamble hereto.

"Collateral Documents" means the Pledge and Security Agreement, any Intellectual Property Security Agreements, any Mortgages, any Deposit Account Control Agreements, any Securities Account Control Agreements, any Landlord Collateral Access Agreements, and all other instruments, documents and agreements that are expressly designated pursuant to their terms to be "Collateral Documents" or are otherwise executed and delivered by or on behalf of any Note Party or any other Person pursuant to this Agreement or any of the other Note Documents in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Note Party as security for the Obligations, in each case, as the same may be amended, restated, amended and restated or otherwise modified from time to time.

"Collateral Questionnaire" means the Perfection Certificate dated as of the date hereof or a collateral questionnaire and/or perfection certificate in form satisfactory to Collateral Agent, in each case, that provides information with respect to the personal or mixed property of each Note Party and their respective Subsidiaries and Controlled Entities.

"Commitment" means any Initial Notes Purchase Commitment or Additional Notes Purchase Commitment and "Commitments" means all of the Initial Notes Purchase Commitments and Additional Notes Purchase Commitments of all Purchasers.

"Company" as defined in the preamble hereto.

"Compliance Certificate" means a certificate of the Chief Financial Officer of Company substantially in the form of Exhibit C.

"Consolidated Adjusted EBITDA" means, for any period, an amount determined for Company and its Subsidiaries on a consolidated basis equal to (i) Consolidated Net Income plus (ii) in each case to the extent reducing Consolidated Net Income, the sum, without duplication, of the amounts for such period of (a) Consolidated Interest Expense, plus (b) provisions for taxes based on income, plus (c) total depreciation expense, plus (d) total amortization expense, plus (e) other non-Cash charges reducing Consolidated Net Income (excluding any such non-Cash charge to the extent that it represents an accrual or reserve for potential Cash charges in any future period or amortization of a prepaid Cash charge that was paid in a prior period) plus (f) restructuring charges and similar charges, fees, costs, expenses, and reserves related to severance, relocation, integration, the opening, closing or consolidation of facilities or lines of business (including contract and/or lease termination), subject to a cap of $500,000 for any Fiscal Year plus (g) changes in warrant valuation plus (h) fees, costs and expenses incurred in connection with the issuance of warrants, plus (i) the amount of non-controlling or minority interest expense consisting of income attributable to third parties in non-wholly owned Subsidiaries, plus (j) fees, costs and expenses associated with (x) the negotiation of this Agreement and the other Note Documents and

the consummation of the transactions contemplated herein and therein (including any Transaction Costs), and (y) all amendments, waivers, consents and other modifications hereto and thereto undertaken from time to time after the Closing Date, plus (k) non-ordinary course losses and extraordinary, unusual, or non-recurring charges, costs, expenses losses, or other items, subject to a cap of $250,000 for any Fiscal Year, minus (iii) in each case to the extent increasing Consolidated Net Income, the sum, without duplication, of the amounts for such period of (a) non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period), plus (b) interest income, plus (c) other non-ordinary course income plus (d) any Restricted Junior Payments by Company in the form of Cash distributions and/or dividends; provided that, to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA currency translation gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain resulting from Hedge Agreements for currency exchange risk) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-Cash items.

Notwithstanding the foregoing or anything to the contrary in this Agreement, with respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a "Subject Transaction"), for purposes of determining compliance with the financial covenants set forth in Section 6.8 or any other calculation herein using Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDA shall be calculated with respect to such period on a pro forma basis (which pro forma adjustments shall be certified by a Chief Financial Officer of Company) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Company and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Notes incurred during such period); provided, that, notwithstanding anything to the contrary in this Agreement, the foregoing adjustments shall be subject to the approval of Requisite Purchasers in their sole discretion for all purposes of this Agreement.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures of Company and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment or similar items", or that should otherwise be capitalized, as reflected in the consolidated statement of cash flows of Company and its Subsidiaries.

"Consolidated Current Assets" means, as at any date of determination, the total assets of Company and its Subsidiaries on a consolidated basis that are properly classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of Company and its Subsidiaries on a consolidated basis that are properly classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Company and its Subsidiaries determined on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements, but excluding, however, any amounts referred to in Sections 2.10 payable on or before the Closing Date. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense for any period that would otherwise start before the Closing Date, such period shall instead start on the Closing Date and Consolidated Interest Expense shall be an amount equal to Consolidated Interest Expense from the Closing Date through the last day of such period multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the last day of such period.

"Consolidated Liquidity" means, at any time of determination, an amount determined for Company and its Subsidiaries on a consolidated basis equal to the Qualified Cash of Company and its Subsidiaries.

"Consolidated Net Income" means, for any period, (i) the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) in each case to the extent otherwise included in such net income (or loss) and without duplication, (a) the income (or loss) of any Person that is not a Wholly-Owned Subsidiary, (b) the income (or loss) of any Person accrued prior to the date it becomes a Note Party or is merged into or consolidated with any Note Party or that Person's assets are acquired by any Note Party, (c) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"Consolidated Working Capital" means, as at any date of determination, the difference of Consolidated Current Assets minus Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" means, for any period of determination on a consolidated basis, the amount (which may be a negative number) equal to the difference of (i) Consolidated Working Capital as of the beginning of such period minus (ii) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Permitted Acquisition during such period; provided that there shall be included with respect to any Permitted Acquisition during such period an amount (which may be a negative amount) equal to the difference of (a) the Consolidated Working Capital acquired in such Permitted Acquisition as at the time of such acquisition minus (b) Consolidated Working Capital at the end of such period.

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

"Contributing Guarantors" as defined in Section 7.2.

"Controlled Account" means (a) any Deposit Account of a Note Party that is subject to a Deposit Account Control Agreement, and (b) any Securities Account of a Note Party that is subject to a Securities Account Control Agreement.

"Controlled Entity" means any Note Party's Controlled Affiliates. As used in this definition, "Control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Note Party pursuant to Section 5.10.

"Credit Date" means the date of the issuance and purchase of Notes.

"Currency Agreement" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Company's and its Subsidiaries' operations and not for speculative purposes.

"Debtor Relief Laws" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the U.S., any state or territory thereof, the District of Columbia or any other applicable jurisdictions.

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

"Default Rate" means any interest payable pursuant to Section 2.9.

"Deposit Account" means any "deposit account" as defined in Article 9 of the UCC.

"Deposit Account Control Agreement" means, with respect to a Deposit Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i) is entered into among Collateral Agent, the financial institution or other Person at which such Deposit Account is maintained, and the Note Party maintaining such Deposit Account, and (ii) is effective for Collateral Agent to obtain "control" (within the meaning of Articles 8 and 9 of the UCC) of such Deposit Account.

"Director" means any natural Person constituting the Board of Directors or an individual member thereof.

"Dispose" means, with respect to any Person, any conveyance, sale, lease (as lessor), license (as licensor), exchange, assignment, transfer or other disposition by such Person of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of Cash, Cash Equivalents, Securities or any other property or assets. For purposes of clarification, "Dispose" shall include (a) the sale or other disposition for value of any contracts, (b) the early termination or modification of any contract by any Person resulting in the receipt by such Person of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for previously accrued and unpaid amounts due through the date of termination or modification) or (c) any sale of merchant accounts (or any rights thereto (including any rights to any residual payment stream with respect thereto)).

"Disqualified Capital Stock" means any Capital Stock, other than the Warrants, that, by its terms (or by the terms of any other instrument, agreement or Capital Stock into which it is convertible or for which it is exchangeable), or upon the occurrence of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder or beneficial owner thereof (other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments of dividends, distributions or other Restricted Junior Payments in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other obligation, instrument, agreement, or Capital Stock that would meet any of the conditions in clauses (i), (ii), or (iii) of this definition, in each case, prior to the date that is one hundred eighty days after the Latest Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior Payment in Full of all Obligations.

"Distribution" as defined in Section 7.7.

"Dollars" and the sign "$" mean the lawful money of the U.S.

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

"Earn Out Obligations" means any obligation or liability consisting of an earnout or similar deferred purchase price that is issued or otherwise incurred as consideration for any acquisition of any property.

"EDGAR System" means the Electronic Data Gathering Analysis and Retrieval System owned and operated by the SEC or any replacement system.

"Eligible CARES Act Indebtedness" means all CARES Act Indebtedness incurred by the Note Parties and their Subsidiaries, excluding any CARES Act Indebtedness that is denied forgiveness by the applicable lender or Governmental Authority or for which the Note Parties do not timely submit appropriate documents required to have such CARES Act Indebtedness forgiven.

"Eligible Transferee" means (i) (a) any Purchaser, any Affiliate of any Purchaser and any Related Fund (any two or more Related Funds being treated as a single Eligible Transferee for all purposes hereof) (in each case, other than a Natural Person), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and extends credit or buys notes as one of its businesses provided that with respect to subclause (b), Requisite Purchasers' consent shall be required for any such Person to become a Purchaser, and (ii) any other Person (other than a Natural Person) approved by Company (so long as no Default or Event of Default has occurred and is continuing, it being understood that Company shall be deemed to have approved such Person if Company fails to either approve or reject such Person within five (5) Business Days after any request for such approval by any Purchaser); provided, (x) neither Company nor any Affiliate of Company shall, in any event, be an Eligible Transferee and (y) no Person owning or controlling any trade obligations or Indebtedness of any Note Party (other than the Obligations) or any Capital Stock of any Note Party (in each case, other than (I) Warrant Holder and its affiliates, and (II) any other Person approved by Requisite Purchasers) shall, in any event, be an Eligible Transferee.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is or was sponsored, maintained or contributed to by, or required to be contributed by, Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Company or any of its Subsidiaries or any Facility.

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

be considered an ERISA Affiliate of Company or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Company or such Subsidiary and with respect to liabilities arising after such period for which Company or such Subsidiary could be liable under the Code or ERISA.

"ERISA Event" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Company, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission that could give rise to the imposition on Company, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Accounts" means (i) payroll accounts or employee benefits accounts as long as in the case of payroll accounts, the total amount on deposit at any time does not exceed the current expected amount of payroll obligations of the Note Parties, (ii) zero balance accounts maintained by the Note Parties, as long as any deposits or funds in any such accounts are transferred at least once each Business Day into a Controlled Account (including, for the avoidance of doubt, at any time following the exercise of exclusive control by Collateral Agent under the applicable control agreement with respect to such Controlled Account), (iii) accounts, the amounts on deposit in which do not exceed an average monthly balance of $50,000 for all such accounts in the aggregate at any one time and (iv) any segregated accounts holding solely Cash collateral for a third party to the extent such Lien is permitted under Section 6.2(n) hereof, the aggregate balance of which shall not at any time exceed 105% of the face value of such obligations.

"Excluded Property" has the meaning set forth in the Pledge and Security Agreement.

"Existing Indebtedness" means Indebtedness and other obligations outstanding under that certain Business Financing Agreement dated as of June 2, 2017 between Company and Western Alliance Bank, as amended on June 1, 2018 and as in effect on the Closing Date immediately prior to giving effect to any payment of such Indebtedness and other obligations on the Closing Date.

"Existing Note Purchase Agreement" means the Original Agreement as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and Amendment No. 5.

"Extraordinary Receipts" means any net Cash proceeds received by or paid for the account of Company or any of its Subsidiaries outside of the ordinary course of such Person's business and any such payments in respect of purchase price adjustments (excluding working capital adjustments), tax refunds, judgments, settlements for actual or potential litigation or similar c laims, pension plan reversions, indemnity payments, payments in respect of Earn Out Obligations or Seller Financing Indebtedness, and similar payments; provided, however, that "Extraordinary Receipts" shall not include (i) proceeds of any indemnity payment to the extent that no Event of Default exists at the time of receipt of such proceeds and such proceeds are promptly (and in any event within five Business Days) used to pay related third party claims and expenses, (ii) proceeds otherwise subject to Sections 2.13(a) through 2.13(g) or (iii) to the extent any such amounts are (A) immediately payable to a Person that is not an Affiliate of the Note Parties pursuant to an arrangement permitted under this Agreement or (B) received by the Note Party or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by a Note Party.

"Extraordinary Receipts Reinvestment Amounts" as defined in Section 2.13(h).

"Extraordinary Receipts Reinvestment Period" as defined in Section 2.13(h).

"Facility" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries.

"Fair Share" as defined in Section 7.2.

"Fair Share Contribution Amount" as defined in Section 7.2.

"FATCA" means (a) 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 promulgated thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, (b) any treaty, law, regulation or other official guidance enacted in any jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, with the purpose (in either case) of facilitating the implementation of clause (a) above, or (c) any agreement pursuant to the implementation of clauses (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority.

"Federal Funds Effective Rate" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the next Business Day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the preceding Business Day as so published on the next Business Day, and (ii) if no such rate is so published on such next Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to GSSLG.

"Fee Letter" means the letter agreements between Company and GSSLG dated February 4, 2019 with respect to the Initial Note Closing Date and October 1, 2020 with respect to the Additional Note Closing Date, as applicable.

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

"Financial Plan" as defined in Section 5.1(i).

"First Priority" means, (i) with respect to any Lien purported to be created in any Collateral not consisting of Capital Stock pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien, and (ii) with respect to any Lien purported to be created in any Collateral consisting of Capital Stock, that such Lien is the highest priority Lien to which such Collateral is subject, other than any non-consensual Permitted Liens for Taxes, statutory obligations, or other obligations that arise and have higher priority by operation of law.

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

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

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

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

"Flood Program" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004.

"Flood Zone" means areas having special flood hazards as described in the National Flood Insurance Act of 1968.

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

"Funding Guarantor" as defined in Section 7.2.

"Funding Notice" means a notice substantially in the form of Exhibit A-1.

"GAAP" means, subject to Section 1.2, U.S. generally accepted accounting principles in effect as of the date of determination thereof.

"Goldman Sachs" means Goldman Sachs & Co. LLC.

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the U.S., the U.S., or a foreign entity or government.

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

"Grantor" as defined in the Pledge and Security Agreement.

"GSSLG" as defined in the preamble hereto.

"Guaranteed Obligations" as defined in Section 7.1.

"Guarantor" means (a) Company, to the extent that Company is not already the primary obligor in respect of any Obligations, (b) each Subsidiary of Company that executes this

Agreement on the Closing Date, and (c) each other Person that guarantees, pursuant to Section 5.10, Section 7.1 or otherwise, all or any part of the Obligations.

"Guarantor Subsidiary" means each Guarantor (other than Company).

"Guaranty" means (a) the guaranty of each Guarantor set forth in Section 7, and (b) each other guaranty of the Obligations that is made by any other Guarantor in favor of Collateral Agent for the benefit of Secured Parties.

"Hazardous Materials" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or that may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

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

"Hedge Agreement" means any Interest Rate Agreement, any Currency Agreement, and any other derivative or hedging contract, agreement, confirmation, or other similar transaction or arrangement that is entered into by Company or any of its Subsidiaries, including any commodity or equity exchange, swap, collar, cap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or forward rate agreement, spot or forward foreign currency or commodity purchase or sale, listed or over-the-counter option or similar derivative right related to any of the foregoing, non-deliverable forward or option, foreign currency swap agreement, currency exchange rate price hedging arrangement, or other arrangement designed to protect against fluctuations in interest rates or currency exchange rates, commodity, currency, or Securities values, or any combination of the foregoing agreements or arrangements.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Purchaser that are in effect as of the Closing Date or, to the extent allowed by law, under such applicable laws that may be in effect after the Closing Date and allow a higher maximum nonusurious interest rate than applicable laws in effect as of the Closing Date.

"Historical Financial Statements" means as of the Closing Date, (i) the audited financial statements of Company and its Subsidiaries, for the Fiscal Year ended March 31 2018 and (ii) the unaudited financial statements of Company and its Subsidiaries, for the Fiscal Quarters ended June 30, 2018 and September 30, 2018, in each case as filed with the Securities and Exchange Commission.

"Home Page" means the Company's corporate home page on the World Wide Web accessible through the Internet via the universal resource locator (URL) identified as

http://www.capstoneturbine.com or such other universal resource locator that it shall designate in writing to the Purchasers as its corporate home page on the World Wide Web.

"Immaterial Fee-Owned Properties" means, as of any date of determination, any individual fee-owned Real Estate Asset having a fair market value less than $1,000,000; provided that, notwithstanding the foregoing, (a) if at any time Company and its subsidiaries own, in the aggregate, multiple fee-owned Real Estate Assets that, in the aggregate, have a fair market value in excess of $2,500,000, then Company shall notify Purchasers thereof and Requisite Purchasers shall have the option, exercisable in its sole discretion, to designate any such Real Estate Assets as Material Real Estate Assets, and (b) any fee-owned Real Estate Asset designated as a Material Real Estate Asset pursuant to clause (iii) of the definition thereof and any fee-owned Real Estate Asset set forth on Schedule 1.1(b) shall not constitute "Immaterial Fee-Owned Properties".

"Indebtedness," as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) Capital Lease Obligations; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA or any trade payable incurred in the ordinary course of business unless (a) more than forty-five (45) days past due, or (b) such obligation is evidenced by a note or a similar written instrument), including any Earn Out Obligations and Seller Financing Indebtedness; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit or similar instrument issued for the account of (or similar credit transaction entered into for the benefit of) that Person or as to which that Person is otherwise liable for reimbursement of drawings or is otherwise an obligor; (vii) Disqualified Capital Stock, with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price (for purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and as if such price were based upon, or measured by, the fair market value of such Disqualified Capital Stock); (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or provide any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as

described in clause (ix) above; and (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedge Agreement, in each case whether entered into for hedging or speculative purposes or otherwise, provided, the "principal" amount of obligations under any Hedge Agreement that has not been terminated shall be deemed to be the Net Mark-to-Market Exposure of Company and its subsidiaries thereunder.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), Taxes, expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special, or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out (i) this Agreement or the other Note Documents or the transactions contemplated hereby or thereby (including the Purchasers' agreement to purchase any Notes or the use or intended use of the proceeds thereof, or any enforcement of any of the Note Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); or (ii) any Environmental Claim or Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries.

"Indemnitee" means, each of Collateral Agent and any Purchaser, and each of their respective affiliates, officers, partners, members, Directors, trustees, employees, agents and sub-agents.

"Indemnitee Agent Party" as defined in Section 9.6.

"Initial Notes" means the Notes issued by Company and purchased by a Purchaser pursuant to Section 2.1(a)(i).

"Initial Notes Purchase Commitment" means the commitment of a Purchaser to make or otherwise purchase the Initial Notes and "Initial Notes Purchase Commitments" means such commitments of all Purchasers in the aggregate. The amount of each Purchaser's Initial Notes Purchase Commitment, if any, is set forth on Appendix A-1, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Notes Purchase Commitments as of the Closing Date immediately prior to giving effect to the purchasing of the Initial Notes was $30,000,000.

"Institutional Investor" means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance

company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any related fund of any holder of any Note.

"Insurance/Condemnation Reinvestment Amounts" as defined in Section 2.13(b).

"Insurance/Condemnation Reinvestment Period" as defined in Section 2.13(b).

"Intellectual Property" as defined in the Pledge and Security Agreement.

"Intellectual Property Security Agreement" as defined in the Pledge and Security Agreement.

"Intercompany Note" means a "global" intercompany promissory note and subordination that evidences and subordinates certain Indebtedness and other monetary liabilities owed among Note Parties and their Subsidiaries, substantially in the form of Exhibit I.

"Interest Payment Date" means with respect to (i) any Base Rate Note (a) the last day of each month, commencing on the Additional Notes Closing Date and (b) the final maturity date of such Notes; and (ii) any Note bearing interest at the Adjusted LIBO Rate, the last day of each Interest Period applicable to such Note; provided, in the case of each Interest Period of longer than six months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"Interest Period" means, in connection with any Note bearing interest at the Adjusted LIBO Rate, an interest period of one-, two-, three- or six-months, as selected by Company in the applicable Funding Notice, commencing on October 1, 2020; and thereafter, commencing on (and including) the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; and (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with Company's and its Subsidiaries' operations, (ii) approved by Requisite Purchasers, and (iii) not for speculative purposes.

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

"Investment" means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person, including the establishment or other creation of a Subsidiary or any other interest in the Securities of any Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person, of any Capital Stock of

such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for customary moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and consistent with past practice) or capital contributions by Company or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales of inventory to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any Wholly-Owned Subsidiary of any Person be considered to be a "Joint Venture" to which such Person is a party.

"Landlord Collateral Access Agreement" means a Landlord Waiver and Consent Agreement substantially in the form of Exhibit H (or such other form as agreed to by Collateral Agent).

"Latest Maturity Date" means, as of any time of determination, the latest possible maturity or expiration date applicable to any Note or Commitment hereunder at such time, in each case as extended in accordance with this Agreement from time to time, as the case may be.

"Leasehold Property" means any leasehold interest of any Note Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"Lien" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"Liquidation Event" means any voluntary or involuntary dissolution, liquidation or winding up of Company.

"Majority-in-Interest" means holders of Company's Capital Stock accounting for 50% or more of the voting power of all of the Capital Stock of Company.

"Margin Stock" as defined in Regulation U.

"Material Adverse Effect" means a material adverse effect on (i) the business operations, properties, assets or financial condition of Company and its Subsidiaries taken as a whole; (ii) the ability of any Note Party to fully and timely perform its Obligations; (iii) the legality, validity, binding effect, or enforceability against a Note Party of a Note Document to which it is a party; (iv) the validity, perfection or priority of a Lien in favor of Collateral Agent

for the benefit of Secured Parties on the Collateral, taken as a whole, or (vi) the rights, remedies and benefits available to, or conferred upon, Collateral Agent, any Purchaser or any other Secured Party under any Note Document.

"Material Contract" means any and all contracts or other arrangements to which Company or any of its Subsidiaries is a party (other than the Note Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect together with those contracts and arrangements that are otherwise listed on Schedule 4.16.

"Material Indebtedness" means (i) Indebtedness (other than the Obligations) of any one or more of Company and its Subsidiaries with an individual principal amount (or Swap Termination Value) of $250,000 or more or, solely for purposes of Section 8.1(b), that, collectively with any other Indebtedness in respect of which any relevant default or other specified event has occurred, has an aggregate principal amount of $500,000 or more and (ii) any CARES Act Indebtedness."

"Material Real Estate Asset" means any and all of the following: (i) all fee-owned Real Estate Assets other than any Immaterial Fee-Owned Properties, (ii) any Real Estate Asset that Requisite Purchasers determine after the Closing Date, in their sole discretion, to be material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of any of Company and its Subsidiaries and designate in writing to be a "Material Real Estate Asset", and (iii) any Real Estate Asset listed on Schedule 1.1(b).

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means a mortgage, deed of trust, or similar instrument in form and substance reasonably acceptable to Collateral Agent.

"Mortgaged Real Estate Documents" means, with respect to each Material Real Estate Asset that is required to be subject to a Mortgage pursuant to this Agreement:

one or more fully executed and notarized Mortgages encumbering such Material Real Estate Asset, in each case in proper form for recording in all appropriate places in all applicable jurisdictions;

(a) ALTA mortgagee title insurance policies or, solely to the extent that Collateral Agent in its sole discretion waives the requirement for a policy to be issued, unconditional commitments therefor, in each case issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to each Material Real Estate Asset (each, a "Title Policy"), each such Title Policy to be in amounts not less than the fair market value of each Material Real Estate Asset, together with a title report issued by a title company with respect thereto and dated not more than thirty days prior to the date of the applicable Mortgage, (b) copies of all documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent, and (c) evidence satisfactory to Collateral Agent that such Note Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes

(including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each such Material Real Estate Asset in the appropriate real estate records;

(A) a completed Flood Certificate with respect to each such Material Real Estate Asset, which Flood Certificate shall (x) be addressed to Collateral Agent and (y) otherwise comply with the Flood Program and be in form and substance satisfactory to Collateral Agent in its sole discretion; (B) if the Flood Certificate indicates that such Material Real Estate Asset is located in a Flood Zone, Company's written acknowledgment of receipt of written notification from Collateral Agent (x) as to the existence of such Material Real Estate Asset in a Flood Zone and (y) as to whether the community in which such Material Real Estate Asset is located is participating in the Flood Program; and (C) if such Material Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Company has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program or, solely to the extent agreed to by Collateral Agent in its sole discretion, excluded any structures existing in such Flood Zone from any such Mortgage in a manner satisfactory to Collateral Agent in its sole discretion;

ALTA surveys of such Material Real Estate Asset (other than any Leasehold Property), certified to Collateral Agent and dated not more than thirty days prior to the date of the applicable Mortgage and otherwise in form and substance satisfactory to Collateral Agent in its sole discretion;

an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in the state in which such Material Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgage to be recorded in such state and such other matters as Collateral Agent may reasonably request, in form and substance reasonably satisfactory to Collateral Agent; and

reports and other information, in each case in form, scope and substance satisfactory to Requisite Purchasers in their sole discretion, regarding environmental matters relating to such Material Real Estate Asset.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"NAIC" means The National Association of Insurance Commissioners, and any successor thereto.

"Natural Person" means a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person.

"Net Asset Sale Proceeds" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments received by Company or any of its Subsidiaries from such Asset Sale (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of a milestone payment, as applicable), but only as and when so received), minus (ii) any bona fide costs and expenses incurred in connection with such Asset Sale to the extent paid or payable to non-Affiliates, including (a) any income or gains taxes payable by Company or any of its Subsidiaries as a result of any gain

recognized in connection with such Asset Sale during the tax period in which the sale occurs and sales, transfer and other similar taxes payable in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Notes) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (c) amounts deposited in escrow pursuant to the terms of the agreement governing such Asset Sale (only to the extent such proceeds remain in escrow) and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Company or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any Cash payments or proceeds received by Company or any of its Subsidiaries (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, less any applicable taxes payable with respect thereto or (b) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof, and (b) any bona fide costs and expenses incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition to the extent paid or payable to non-Affiliates, including any income or gains taxes payable by Company or any of its Subsidiaries as a result of any gain recognized in connection therewith during the tax period the Cash payments or proceeds are received.

"Net Mark-to-Market Exposure" of a Person means, as of any time of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (xi) of the definition thereof. As used in this definition, "unrealized losses" means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the time of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that time).

"Non-U.S. Purchaser" as defined in Section 2.19(c).

"Note Document" means any of this Agreement, the Collateral Documents, the Fee Letter, the Notes and all other documents, certificates, instruments or agreements that are expressly designated pursuant to their terms to be "Note Documents" or are otherwise executed and delivered by or on behalf of a Note Party or any other Person for the benefit of Collateral Agent or any Purchaser in connection herewith, excluding, for the avoidance of doubt, the Warrants and any other documents related solely thereto.

"Note Party" means Company, as issuer, and each Guarantor.

"Notes" means the Initial Notes and any Additional Notes.

"Notes Maturity Date" means the earlier of (i) October 1, 2023 and (ii) the date that all Notes shall become due and payable in full hereunder, whether by acceleration or otherwise.

"Notice" means a Funding Notice.

"Obligations" means all obligations (whether now existing or hereafter arising, absolute or contingent, joint, several, or independent) of every nature of each Note Party from time to time owed to Collateral Agent (including former Collateral Agents), the Purchasers or any of them, under any Note Document, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to such Note Party, would have accrued on any Obligation, whether or not a claim is allowed against such Note Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

"Obligee Guarantor" as defined in Section 7.7.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury and any successor Governmental Authority.

"Organizational Documents" means (i) with respect to any corporation or company, its certificate, memorandum, or articles of incorporation or organization, and its by-laws, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement, and (iv) with respect to any limited liability company, its articles of organization and its operating agreement. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Taxes" means any and all present or future stamp, court, intangible, recording, filing or documentary, excise, property or similar Taxes arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Note Document.

"Paid in Full" and "Payment in Full" mean, with respect to any or all of the Obligations or Guaranteed Obligations, as the context requires, that each of the following events has occurred, as applicable: (a) the payment or repayment in full in immediately available funds of (i) the principal amount of all outstanding Notes, (ii) all accrued and unpaid interest, fees, premiums or other charges owing in respect of any Note or Commitment or otherwise under any Note Document, and (iii) all accrued and unpaid costs and expenses payable by any Note Party to Collateral Agent or Purchaser pursuant to any Note Document, whether or not demand has been made therefor (limited, in the case of indemnification and reimbursement claims to those claims that have been asserted by any such Person prior to such time), (b) the payment or repayment in full in immediately available funds or all other outstanding Obligations or Guaranteed Obligations other than unasserted contingent indemnification and contingent reimbursement obligations and (c) the termination in writing of all of the Commitments.

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001).

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

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Code or Section 302 of ERISA.

"Permitted Acquisition" means any Acquisition by Company or any of its Wholly-Owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

in the case of the Acquisition of Capital Stock, all of the Capital Stock (except for any such Capital Stock in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of Company in connection with such Acquisition shall be owned 100% by Company or a Wholly-Owned Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in Sections 5.10, 5.11 and/or 5.13, as applicable, when required pursuant to the terms thereof;

Company and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.8 on a Pro Forma Basis after giving effect to such Acquisition as of the last day of the Fiscal Quarter most recently ended;

Company shall have delivered to Purchasers (A) at least ten (10) Business Days prior to such proposed Acquisition (or such shorter period as may be agreed by Requisite Purchasers in their sole discretion), (1) a Compliance Certificate evidencing compliance with Section 6.8 as required under clause (iv) above, and (2) all relevant financial information with respect to such acquired assets, including the aggregate consideration for such Acquisition and any other information required to demonstrate compliance with Section 6.8, and (B) promptly upon request by Requisite Purchasers and in any event at least five (5) Business Days prior to closing such Acquisition (or such shorter period as may be agreed by Requisite Purchasers in their sole discretion) (1) a copy of the purchase agreement related to the proposed Acquisition (and any related documents reasonably requested by Requisite Purchasers), (2) quarterly and annual financial statements of the Person whose Capital Stock or assets are being acquired for the most recent twelve month period ending no more than forty-five (45) days prior to such Acquisition, including any audited financial statements that are available to Company and (3) to the extent available, a quality of earnings report (including cash proof analysis) with respect to the Person or assets or division to be acquired in accordance herewith;

any Person or assets or division as acquired in accordance herewith (x) shall be in same, similar or related business or lines of business in which Company and/or its Subsidiaries are engaged as of the Closing Date and (u) unless otherwise consented to by the Requisite Purchasers, for the four quarter period most recently ended prior to the date of such Acquisition, shall have generated earnings before income taxes, depreciation, and amortization during such period that shall exceed the amount of capital expenditures related to such Person or assets or division during such period (calculated in substantially the same manner as Consolidated Adjusted EBITDA and Consolidated Capital Expenditures are calculated);

the Acquisition shall be non-hostile and shall have been approved by the Board of Directors of the Person acquired or the Person from whom such assets or division is acquired, as applicable; and

Company and its Subsidiaries comply with Sections 5.10 and 5.11 with respect to such Acquisition.

"Permitted Liens" means each of the Liens permitted pursuant to Section 6.2.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Platform" as defined in Section 10.1(b).

"Pledge and Security Agreement" means the Pledge and Security Agreement dated as of the Closing Date , executed by Company and each Guarantor in favor of the Collateral Agent for the benefit of the Secured Parties, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Prime Rate" means the rate of interest quoted in the print edition of The Wall Street Journal, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty largest banks), as in effect from time to time, or, if such source or rate is unavailable, any replacement or successor source or rate as determined by Requisite Purchasers. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Purchasers may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Pro Forma Basis" means a calculation giving pro forma effect to (i) the adjustments related to Subject Transactions described in "Consolidated Adjusted EBITDA" and (ii) when used with respect to determining the permissibility of any specific transaction hereunder, such specific transaction as if it were a Subject Transaction.

"Pro Rata Share" means with respect to all payments, computations and other matters relating to the Initial Notes of any Purchaser, the percentage obtained by dividing (a) the outstanding principal amount of the Notes held by such Purchaser by (b) the aggregate outstanding principal amount of the Notes held by all Purchasers.

"Projections" as defined in Section 4.8.

"Purchaser" means each financial institution listed on the signature pages hereto as a Purchaser, and any other Person that becomes a party hereto pursuant to a Transfer Agreement.

"Qualified Cash" means, at any time of determination, the aggregate balance sheet amount of unrestricted Cash and, to the extent readily monetized, Cash Equivalents included in the consolidated balance sheet of Company and its Subsidiaries as of such time that (i) is free and clear of all Liens other than Liens in favor of Collateral Agent for the benefit of Secured Parties and non-consensual Permitted Liens, (ii) may be applied to payment of the Obligations without violating any law, contract, or other agreement, (iii) is in Controlled Accounts or solely in the case of any such account that is acquired pursuant to a Permitted Acquisition or other permitted Investment, the 30th day following the acquisition thereof, and (iv) is not Net Asset Sale Proceeds or Net Insurance/Condemnation Proceeds.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Institutional Buyer" means any Person who is a "qualified institutional buyer" within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

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

"Reduction" as defined in Section 2.11(b).

"Register" as defined in Section 2.6(b).

"Regulation D" means Regulation D of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"Related Fund" means any Fund that is managed, advised, or administered by (a) a Purchaser, (b) an Affiliate of a Purchaser, or (c) an entity or affiliate of an entity that manages, administers, or advises a Purchaser.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any

barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Rental Fleet" means microturbine assets owned by the Company or its Subsidiaries that are available to rent, or already on rent, to end-use customers for on-site power generation. As of the Additional Notes Closing Date, the total capacity of the Rental Fleet is 8.6 MW.

"Rental Unit Sales" means the sale or disposition of one or more of the microturbines identified in writing to the Purchasers as the "rental units" on or prior to the Closing Date .

"Required Prepayment Date" as defined in Section 2.14(c).

"Requisite Purchasers" means one or more Purchasers holding more than 50% of the aggregate outstanding principal amount of the Notes held by all Purchasers at such time.

"Restricted Junior Payment" means (i) any dividend, other distribution, or liquidation preference, direct or indirect, on account of any shares of any class of Capital Stock of Company or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock (other than any Disqualified Capital Stock) to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Company or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Company or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding, excluding any such payment in respect of the Warrants; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness or any Earn Out Obligations or Seller Financing Indebtedness.

"S&P" means S&P Global Ratings, or any successor to its rating agency business.

"Sale Transaction" means any transaction pursuant to which (a) Company sells or disposes (in one or a series of related sales or dispositions) of all or substantially all of the assets of Company on a consolidated basis (other than inventory in the ordinary course of business), including any sale or disposition of the securities or assets of the Subsidiaries of Company, (b) Company engages in any merger, consolidation, combination or similar transaction, (in one or a series of related transactions), such that the Majority-in-Interest immediately prior to the transaction or transactions will, immediately after such transaction or transactions, no longer constitute the Majority-in-Interest, (c) Company engages in any transaction or series of related transactions that results in any change of control of Company (as the term "control" is defined in Rule 405 the Securities Act), whether such change of control occurs through the sale of assets, Capital Stock or otherwise or (d) any other transaction constituting a Change of Control.

"Sanctioned Country" means, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions, including, as of the Closing Date, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria.

"Sanctioned Person" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in clause (i) or (ii) of this definition.

"Sanctions" means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by OFAC, U.S. Department of State, or U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury of the United Kingdom, or (iii) any other relevant sanctions authority.

"SBA" means the Small Business Act (Public Law 85-536, as amended).

"Section 382 Ownership Shift" means on any day on which Company undergoes an "owner shift", the aggregate increase in the percentage of Company's stock owned by each "5 -percent shareholder " over the lowest percentage of Company's stock owned by such shareholder at any time during the "testing period." For these purposes, the terms "owner shift," "5-percent shareholder" and "testing period," shall have the meanings accorded them under section 382 of the Code, and this clause shall be interpreted consistently with the intent of Company and Purchasers to avoid an "ownership change" of Company, within the meaning of section 382(g)(1) of the Code. The determination of the size of the Section 382 Ownership Shift shall be made by Requisite Purchasers in good faith and in accordance with the principles of the preceding sentence, after reasonable consultation with Company.

"Secured Parties" as defined in the Pledge and Security Agreement.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, including any Capital Stock and any Hedge Agreements or other derivatives.

"Securities Account" means any "securities account" as defined in Article 8 of the UCC and any "commodity account" as defined in Article 9 of the UCC.

"Securities Account Control Agreement" means, with respect to a Securities Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i) is entered into among Collateral Agent, the Securities Intermediary at which the applicable

Securities Account is maintained, and the Note Party having rights in or to the underlying financial assets credited to or maintained in such Securities Account, and (ii) is effective for Collateral Agent to obtain "control" (within the meaning of Articles 8 and 9 of the UCC) of such Securities Account.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Securities Intermediary" means any "securities intermediary" or "commodity intermediary" as such terms are defined in the UCC.

"Seller Financing Indebtedness" means any obligation or liability consisting of fixed deferred purchase price, installment payments, or promissory notes that, in each case, is issued or otherwise incurred as consideration for any acquisition of any property.

"Solvency Certificate" means a certificate of the Chief Financial Officer of Company substantially in the form of Exhibit F-2.

"Solvent" means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person's and its Subsidiaries' debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's and its Subsidiaries' present assets; (b) such Person's and its Subsidiaries' capital is not unreasonably small in relation to its business as contemplated on such date of determination and, with respect to the determination made on the Closing Date, reflected in the Projections provided on or prior to the Closing Date, or with respect to any transaction contemplated or to be undertaken after such date of determination; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under FASB Accounting Standards Codification Topic 450-20).

"Specified Debt Cure Deadline" as defined in Section 8.2.

"Specified Debt Prepayment" as defined in Section 8.2.

"Specified Financial Covenant" as defined in Section 8.2.

"Subject Transaction" as defined in "Consolidated Adjusted EBITDA".

"Subordinated Indebtedness" means any Indebtedness that is contractually or structurally subordinated in payment or lien ranking to the Obligations or related Liens.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than

50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election or appointment of the Person or Persons (whether Directors, trustees, or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

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

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) of any nature and whatever called, imposed, levied, collected, withheld or assessed by any Governmental Authority; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed on all or part of the overall net income (whether worldwide, or only insofar as such overall net income is considered to arise in or to relate to a particular jurisdiction, or otherwise), a franchise Tax, and a branch profits Tax of that Person (and/or, in the case of a Purchaser, its applicable investment office) by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Purchaser, its investment office) is located.

"Title Policy" as defined in the definition of Mortgaged Real Estate Documents.

"Transaction Costs" means the fees, costs and expenses payable by Company or any of Company's Subsidiaries to the extent paid or payable to non-Affiliates on or before the Closing Date or the Additional Notes Closing Date (as applicable) in connection with the transactions contemplated by the Note Documents.

"Transfer Agreement" means an Transfer Agreement substantially in the form of Exhibit D.

"Transfer Effective Date" as defined in Section 10.6(b).

"UCC" means the Uniform Commercial Code (or any similar or equivalent statute or law) as in effect in any applicable jurisdiction.

"Utilization" means any "rental unit" that is rented to an unaffiliated third party under an agreement on which the rent is not past due and is in good standing.

"U.S." means the United States of America.

"U.S. Purchaser" as defined in Section 2.19(c).

"U.S. Tax Compliance Certificate" means a certificate substantially in the form of one of Exhibits E-1, E-2, E-3 or E-4, as applicable.

"Waivable Mandatory Prepayment" as defined in Section 2.14(c).

"WARN" as defined in Section 4.19.

"Warrant Holder" means Goldman Sachs & Co. LLC.

"Warrants" means, collectively, that certain Purchase Warrant for Common Shares, dated as of the Closing Date, issued by Company to the Warrant Holder.

"Wholly-Owned" means, in reference to any Subsidiary of a specified Person, that 100% of the Capital Stock of such Subsidiary (other than (x) Directors' qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) is owned, directly or indirectly, by such Person and/or one or more of such specified Person's other Subsidiaries that also qualify as Wholly-Owned Subsidiaries under this definition.

"Yield Maintenance Premium" as defined in the Fee Letter.

1.2 Accounting Terms, Financials Statements, Calculations, Etc. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Purchasers pursuant to Section 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. For purposes of determining pro forma compliance with any financial covenant as of any date prior to the initial test date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such initial test date. Notwithstanding anything to the contrary in this Agreement, for purposes of determining compliance with any basket, test, or condition under any provision of this Agreement or any other Note Document, no Note Party may retroactively divide, classify, re-classify or deem or otherwise treat a historical transaction as having occurred in reliance on a basket or exception that was not available at the time of such historical transaction or if and to the extent that such basket or exception was relied upon for any later transaction. Notwithstanding any other provision contained herein and any change in GAAP after the date hereof, any lease that would be treated as an operating lease for purposes of GAAP as of the Closing Date (whether such lease is entered into before or after the Closing Date) shall continue to be treated as an operating lease and shall not constitute Indebtedness or a Capitalized Lease Obligation of Company or any Subsidiary under this Agreement and the other Note Documents. When used herein, the term "financial statements" shall be construed to include all notes and schedules thereto. Whenever the term "Company" is used in respect of a financial covenant or a related definition, it shall be construed to mean "Company and its Subsidiaries on a consolidated basis" unless the context clearly requires otherwise. Except as otherwise provided

therein, this Section 1.2 shall apply equally to each other Note Document as if fully set forth therein, *mutatis mutandis*.

1.3 Interpretation, Etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any requirement for a referenced agreement, instrument, certificate or other document to be in "substantially" the form of an Appendix, Schedule, or Exhibit hereto means that such referenced document shall be in the form of such Appendix, Schedule, or Exhibit with such modifications to such form as are approved by Requisite Purchasers, and, in the case of any Collateral Document, Collateral Agent, in each case in Collateral Agent's sole discretion. The words "hereof", "hereunder", "hereby", and words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The use herein of the words "include" 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, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The use herein of the words "continuing", "continuance", "existing", or any words of similar import or derivatives of any such words in reference to any Event of Default means that such Event of Default has not been expressly waived or, solely with respect to any Event of Default with respect to the financial covenant set forth in Section 6.8(a), deemed cured in accordance with the terms of Section 8.2. The word "will" shall be construed as having the same meaning and effect as the word "shall". The words "assets" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties of any relevant Person or Persons. The terms lease and license shall be construed to include sub-lease and sub-license. Whenever the context may require, any pronoun shall be construed to include the corresponding masculine, feminine, and neuter forms. References to Persons include their respective permitted successors and assigns. Except as otherwise expressly provided herein, references to statutes, legislative acts, laws, regulations, and rules shall be deemed to refer to such statutes, acts, laws, regulations, and rules as in effect from time to time, including any amendments of the same and any successor statutes, acts, laws, regulations, and rules, unless any such reference is expressly limited to refer to any statute, act, law, regulation, or rule "as in effect on" a specified date. Except as otherwise expressly provided herein, any reference in or to this Agreement (including any Appendix, Schedule, or Exhibit hereto), any other Note Document, or any other agreement, instrument, or other document shall be construed to refer to the referenced agreement, instrument, or document as assigned, amended, restated, supplemented, or otherwise modified from time to time, in each case in accordance with the express terms of this Agreement and any other relevant Note Document unless such reference is expressly limited to refer to such agreement, instrument, or other document "as in effect on" a specified date. Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Person but is intended to have substantially the same effects as the prohibited action. Except as otherwise

provided therein, this Section 1.3 shall apply equally to each other Note Document as if fully set forth therein, *mutatis mutandis*.

1.4 Amendment and Restatement of Existing Note Purchase Agreement; Reaffirmation of Obligations and Security Interests.

The Company agrees and, subject to the satisfaction or waiver of the conditions precedent set forth in Section 3.3 of this Agreement, each holder of the Initial Notes, by its execution of this Agreement, hereby agrees and consents to the amendment and restatement in its entirety of the Existing Note Purchase Agreement and, upon the satisfaction or waiver of such conditions precedent, the existing Note Purchase Agreement shall be deemed to be so amended, restated, superseded and replaced in its entirety by this Agreement. It is the intention of the parties hereto that this Agreement does not constitute a novation of the obligations and liabilities under the existing Note Purchase Agreement; that this Agreement does not constitute payment or satisfaction of the Initial Notes, all references in the Note Documents, including the Collateral Documents, to any agreement shall mean the version of such agreement and as amended to the date of this Agreement; and the Collateral Documents and the security interests granted pursuant thereto shall remain in full force and effect. Without limiting the generality of the foregoing, the Company, by its signature below, hereby affirms and confirms all of its obligations and liabilities under the Existing Note Purchase Agreement and each other Note Document, in each case after giving effect to the amendments and the transactions contemplated hereby, including the pledge of and/or grant of a security interest in its assets as Collateral pursuant to the Collateral Documents to secure such Obligations, all as provided in the Collateral Documents as originally executed, and acknowledges and agrees that such obligations, liabilities, guarantee, pledge and grant continue in full force and effect in respect of, and to secure, such Obligations under the Existing Note Purchase Agreement and the other Note Documents, in each case after giving effect to this Agreement and the transactions contemplated hereby. In addition, as security for the payment and performance in full of all Secured Obligations (as defined in the Collateral Documents), each Grantor hereby grants to the Collateral Agent a security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under the Collateral.

SECTION 2 NOTES

2.1 Issuance and Purchase of the Notes.

(a) Authorization of Notes. The Company will authorize the issue and sale of its $50,000,000 Senior Secured Notes due October 1, 2023. On the Additional Notes Closing Date, each Purchaser of the Initial Notes shall deliver to the Company for cancellation the Initial Notes held by it or a lost note affidavit, and, subject to the receipt thereof, the Company will issue and deliver a Note or Notes in the form attached hereto as Exhibit J in favor of such Purchaser in replacement of such Purchaser's Initial Note or a single Note in the principal amount of $50,000,000 evidencing both the Initial Notes and the Additional Notes.

(b) Note Purchase Commitments; Purchase and Sale of the Notes. Subject to the terms and conditions hereof:

(i) on the Closing Date, Company agrees that it will issue and sell to Purchasers, and each Purchaser severally agrees that it will purchase from Company, Notes in an aggregate original principal amount equal to such Purchaser's Initial Notes Purchase Commitment; and

(ii) on the Additional Notes Closing Date, Company agrees that it will issue and sell to Purchasers, and each Purchaser severally agrees that it will purchase from Company, one or more Additional Notes in an aggregate original principal amount not to exceed such Purchaser's Additional Notes Purchase Commitment immediately prior to giving effect to the purchase of any such Additional Notes.

Subject to Section 2.13, all amounts owed hereunder with respect to the Initial Notes and the Additional Notes shall be Paid in Full no later than the Maturity Date. Each Purchaser's Initial Notes Purchase Commitment shall terminate immediately and fully without further action by any Person upon the issuance by Company of such Notes and purchase pursuant to such Purchaser's Initial Notes Purchase Commitment on the Closing Date. Each Purchaser's Additional Notes Purchase Commitment shall terminate immediately and fully without further action by any Person upon the issuance by Company of such Additional Notes and purchase pursuant to such Purchaser's Additional Notes Purchase Commitment on the Additional Notes Closing Date.

(c) Funding Mechanics. For the Initial Notes, Company shall deliver to Purchasers a fully executed Funding Notice no later than 10:00 a.m. (New York City time) at least one Business Day prior to the Closing Date (or such later time as may be consented to by Purchasers). For the Additional Notes, Company shall deliver to Purchasers a fully executed Funding Notice no later than 10:00 a.m. (New York City time) at least three (3) Business Days prior to the Additional Notes Closing Date (or such later time as may be consented to by Purchasers).

2.2 Issuance of the Notes. The Notes will be delivered to each Purchaser in physical form and shall be issued in its name or the name of its nominee on the Closing Date, the Additional Notes Closing Date or date of purchase, as applicable. Each Purchaser's Initial Notes Purchase Commitment and Additional Notes Purchase Commitment, as applicable, shall terminate immediately and without further action on the Closing Date and Additional Notes Closing Date, respectively, after giving effect to the purchase by such Purchaser of the Notes on the Closing Date. Subject to Sections 2.12 and 2.13, all amounts owed hereunder with respect to the Notes shall be Paid in Full no later than the Notes Maturity Date.

2.3 [Reserved] .

2.4 [Reserved].

2.5 Use of Proceeds. The proceeds of the Initial Notes issued and sold on the Closing Date shall be applied by Company to fund the repayment in full of the Existing Indebtedness, with the remainder to be applied by the Company for working capital and general corporate purposes. The proceeds of the Additional Notes issued and sold on the Additional Notes Closing Date shall be applied by Company to expand its rental fleet by 12.5 megawatts (MW) and for general corporate purposes. Notwithstanding anything to the contrary in this Agreement, no proceeds of

the sale of the Notes may be used in any manner that conflicts with Section 4.18(b) or Section 4.26(a).

2.6 Evidence of Debt; Register; REPLACEMENT OF NOTES**.**

(a) Purchasers' Evidence of Debt. Each Purchaser shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Purchaser, including the amounts of the Notes held by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any applicable Notes; and provided further, in the event of any inconsistency between the Register and any Purchaser's records, the recordations in the Register shall govern.

(b) Register. Company(or an agent or sub-agent appointed by it) shall maintain at its principal executive office a register for the recordation of the names and addresses of Purchasers and principal amounts (and stated interest) of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the **"Register"**). The Register shall be available for inspection by any Purchaser (with respect to (i) any entry relating to such Purchaser's Notes, and (ii) the identity of the other Purchasers (but not any information with respect to such other Purchasers' Notes)) at any reasonable time and from time to time upon reasonable prior notice. Company shall record, or shall cause to be recorded, in the Register the Notes in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Notes; provided, failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Note. Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

(c) Replacement of Notes. Upon receipt by Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of any Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and (x)in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, a Purchaser party hereto on the Closing Date or another holder of a Note with a minimum net worth of at least $10,000,000 in excess of the amount of such Note or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or (y) in the case of mutilation, upon surrender and cancellation thereof, within ten Business Days thereafter Company at its own expense shall execute and deliver, in lieu thereof, a new Note to such Purchaser, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

2.7 Interest on Notes.

(a) Except as otherwise set forth herein, each Note shall bear interest on the unpaid principal amount thereof from the date issued and sold through the date of repayment (whether by acceleration or otherwise) thereof at the Adjusted LIBO Rate plus the Applicable

Margin or, in the case of temporary LIBOR unavailability, at the Base Rate plus the Applicable Margin.

(b) The Interest Period with respect to the Notes shall be selected by Company and notified to Purchaser pursuant to the applicable Funding Notice.

(c) In the event Company fails to specify an Interest Period in the Funding Notice (or fails to deliver a Funding Notice at the end of an Interest Period), Company shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Purchaser shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof to Company and each Purchaser.

(d) Interest payable pursuant to Section 2.7(a) shall be computed on the basis of a three hundred sixty-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Note, the date of the issuance and sale of such Note or the Interest Payment Date shall be included, and the date of payment of such Note, shall be excluded; provided, if a Note is repaid on the same day on which it is made, one day's interest shall be paid on that Note.

(e) Except as otherwise set forth herein, interest on each Note (i) shall accrue on a daily basis and shall be payable in Cash in arrears on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Note, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Notes, including final maturity of the Notes.

2.8 Conversion.

(a) Pursuant to Section 2.17(a), in the case of LIBOR unavailability, the interest rate shall default to the Base Rate and the Company shall convert all Notes outstanding accordingly.

2.9 Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Notes outstanding and, to the extent permitted by applicable law, any interest payments on the Notes or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under any Debtor Relief Laws) payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Notes (or, in the case of any such fees and other amounts, at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Notes). Payment or acceptance of (i) the increased rates of interest provided for in this Section 2.9 or (ii) any amount of interest that is less than the amount due, in each case is not a

permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of any Purchaser.

2.10 Fees. Company agrees to pay to Collateral Agent such fees in the amounts and at the times separately agreed upon, including the fees set forth in the Fee Letter.

2.11 Scheduled Payments. To the extent not previously paid, the Notes, together with all other amounts owed hereunder with respect thereto, shall, be Paid in Full no later than the Maturity Date.

2.12 Voluntary Prepayments.

(a) Any time and from time to time, Company may prepay Notes on any Business Day in whole or in part, in an aggregate minimum amount of $250,000 and integral multiples of $50,000 in excess of that amount; provided that all prepayments under this Section 2.12(a) made on or prior to the date that is the second anniversary of the Additional Notes Closing Date shall be accompanied by the Yield Maintenance Premium.

(b) All such prepayments shall be made upon not less than three Business Days' prior written or telephonic notice, given to Purchasers by 12:00 p.m. (New York City time) and, if given by telephone, promptly confirmed in writing to Purchasers. Upon the giving of any such notice, the principal amount of the Notes specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(b).

2.13 Mandatory Prepayments.

(a) Asset Sales. No later than the third Business Day following the date of receipt by any Note Party or any of its Subsidiaries of any Net Asset Sale Proceeds (it being understood that such Net Asset Sale Proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to such Net Asset Sale Proceeds; provided, that so long as no Event of Default shall have occurred and be continuing, upon delivery of a written notice to Purchasers, Company shall have the option, directly or through one or more Subsidiaries, to invest such Net Asset Sale Proceeds (the "**Asset Sale Reinvestment Amounts**") in assets of the general type used in the business of Company or Permitted Acquisitions within two hundred seventy (270) days following receipt of such Net Asset Sale Proceeds (or within three hundred sixty (360) days following receipt of such Net Asset Sale Proceeds if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such reinvestment all Asset Sale Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that the Asset Sale Reinvestment Amounts are not reinvested by Company in accordance with the immediately preceding sentence, Company shall apply such Asset Sale Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(b) Insurance/Condemnation Proceeds. No later than the third Business Day following the date of receipt by any Note Party or any of its Subsidiaries, or Collateral Agent as loss payee, of any Net Insurance/Condemnation Proceeds (it being understood that such Net

Insurance/Condemnation Proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof), Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, so long as no Event of Default shall have occurred and be continuing, (such amounts, the **"Insurance/Condemnation Reinvestments Amounts"**), Company shall have the option, directly or through one or more of its Subsidiaries to invest such Insurance/Condemnation Reinvestment Amounts within one hundred eighty days of receipt thereof (the **"Insurance/Condemnation Reinvestment Period"**) in assets of the general type used in the business of Company and its Subsidiaries (which investment may include the repair, restoration or replacement of the relevant assets in respect of which such Net Insurance/Condemnation Proceeds were received) within two hundred seventy (270) days following receipt thereof (or within three hundred sixty (360) days following receipt thereof if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such investment, all such Insurance/Condemnation Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that such Insurance/Condemnation Reinvestment Amounts are not reinvested by Company in accordance with the immediately preceding sentence, Company shall apply such Insurance/Condemnation Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(c) [Reserved].

(d) Issuance of Debt. On the date of receipt by any Note Party or any of its Subsidiaries of any Cash proceeds (it being understood that any such Cash proceeds shall be deposited into a Controlled Account within one Business Day following receipt thereof) from the incurrence of any Indebtedness of any Note Party or any of its Subsidiaries, excluding any Cash proceeds received with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1, Company shall prepay the Notes as set forth in Section 2.14(b) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) Extraordinary Receipts. No later than three (3) Business Days following receipt by Company or any of its Subsidiaries of any Extraordinary Receipts (it being understood that such Extraordinary Receipts shall be deposited in a Controlled Account within on e (1) Business Day following the receipt thereof) in excess of $250,000 in the aggregate in any trailing twelve month period, Company shall prepay Notes as set forth in Section 2.14(b) in the amount of such excess Extraordinary Receipts; provided, so long as no Event of Default shall have occurred and be continuing, (such amounts, the **"Extraordinary Receipts Reinvestments Amounts"**), Company shall have the option, directly or through one or more of its Subsidiaries to use such Extraordinary Receipts Reinvestment Amounts within one hundred eighty days of receipt thereof (the **"Extraordinary Receipts Reinvestment Period"**) in assets of the general type used in the

business of Company and its Subsidiaries within two hundred seventy (270) days following receipt thereof (or within three hundred sixty (360) days following receipt thereof if Company or Subsidiaries shall have entered into a binding commitment to invest within such initial two hundred seventy (270) day period); provided further, pending any such investment, all such Extraordinary Receipts Reinvestment Amounts shall, if requested by Requisite Purchasers, be held at all times prior to such reinvestment, in a Controlled Account. In the event that such Extraordinary Receipts Reinvestment Amounts are not reinvested by Company in accordance with the immediately preceding sentence, Company shall apply such Extraordinary Receipts Reinvestment Amounts to the Obligations as set forth in Section 2.14(b).

(i) Yield Maintenance Premium. Any mandatory prepayments under this Section 2.13 made on or prior to the date that is the second anniversary of the Additional Notes Closing Date shall be accompanied by the Yield Maintenance Premium.

(j) Prepayment Certificate. Concurrently with any prepayment of the Notes pursuant to Sections 2.13(a) through 2.13(h), Company shall deliver to Purchasers a certificate of a Chief Financial Officer demonstrating the calculation of the amount of the applicable net proceeds and compensation owing to Purchasers under any of the Note Documents, if any, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Notes in an amount equal to such excess, and Company shall concurrently therewith deliver to Purchasers a certificate of a Chief Financial Officer demonstrating the derivation of such excess.

2.14 Application of Prepayments/Reductions.

(a) [Reserved].

(b) Application of Prepayments. Any voluntary prepayments of Notes pursuant to Section 2.12 and any mandatory prepayment of any Notes pursuant to Section 2.13 shall be applied as follows:

first, to the payment of all fees other than any premium, and all expenses specified in Section 10.2, in each case to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the payment of the applicable premium, if any, on any Note;

fifth, except in connection with any Waivable Mandatory Prepayment as provided in Section 2.14(c), to prepay Notes on a pro rata basis (in accordance with the respective outstanding principal amounts thereof); and

sixth, to payment of any remaining Obligations then due and payable.

(c) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a **"Waivable Mandatory Prepayment"**) of the Notes, not less than three Business Days prior to the date (the **"Required Prepayment Date"**) on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Purchasers of the amount of such prepayment and each Purchaser's option to elect not to receive its Pro Rata Share of such Waivable Mandatory Prepayment. Each such Purchaser may exercise such option by giving written notice to Company of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Purchaser that does not notify Company of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Company shall pay to Purchasers the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Purchasers that have elected not to exercise such option, to prepay the Notes of such Purchaser, and (ii) to the extent of any excess, to Company for working capital and general corporate purposes.

2.15 General Provisions Regarding Payments.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Purchasers not later than 12:00 p.m. (New York City time) on the date due by wire transfer to an account designated by such Purchaser in writing (as may be updated by Purchaser from time to time). For purposes of computing interest and fees, funds received by Purchasers after that time on such due date shall be deemed to have been paid by Company on the next Business Day.

(b) All payments in respect of the principal amount of any Note shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payment received in respect of any Note on a date when interest or premium is due and payable with respect to such Note) shall be applied to the payment of interest and premium then due and payable before application to principal.

(c) [Reserved].

(d) [Reserved].

(e) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(f) [Reserved].

(g) Purchasers shall deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Purchasers until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Any non-conforming payment may constitute or become a Default or Event

of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next Business Day) at the Default Rate from the date such amount was due and payable until the date such amount is Paid in Full.

(h) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by Collateral Agent hereunder or under any Collateral Document in respect of any of the Obligations, including all proceeds received by Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Collateral Agent in connection therewith, and all amounts for which Collateral Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as an Agent and not as a Purchaser) and all advances made by Collateral Agent under any Collateral Document for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by Collateral Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Purchasers; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.16 Ratable Sharing. Purchasers hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Notes made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Note Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Purchaser hereunder or under the other Note Documents (collectively, the "Aggregate Amounts Due" to such Purchaser) that is greater than the proportion received by any other Purchaser in respect of the Aggregate Amounts Due to such other Purchaser, then the Purchaser receiving such proportionately greater payment shall (a) notify each other Purchaser of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Purchasers so that all such recoveries of Aggregate Amounts Due shall be shared by all Purchasers in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Purchaser is thereafter recovered from such Purchaser upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Purchaser ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies

owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.16 shall not be construed to apply to (a) any payment made by any Note Party pursuant to and in accordance with the express terms of any Note Document or (b) any payment obtained by any Purchaser as consideration for the transfer in any of its Notes or other Obligations owed to it.

2.17 Maintaining LIBO Rate.

(a) Changed Circumstances/Temporary LIBOR Unavailability. In the event that Requisite Purchasers determine (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to the LIBO Rate, that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBO Rate, (ii) by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBO Rate on the basis provided for in the definition of Adjusted LIBO Rate, or (iii) the Adjusted LIBO Rate does not adequately and fairly reflect the cost to Purchasers of making or maintaining such LIBO Rate during such Interest Period, Requisite Purchasers will reasonably promptly give notice to Company and each other Purchaser of such determination, whereupon (A) no Notes may be made as, or converted to, LIBO Rate until such time as Requisite Purchasers notifies Company and Purchasers that the circumstances giving rise to such notice no longer exist, (B) any Funding Notice given by Company with respect to the Notes in respect of which such determination was made shall be deemed to be rescinded by Company and (C) all Notes bearing interest at the LIBO Rate shall be converted to the Base Rate pursuant to Section 2.8.

(b) LIBOR Discontinuation.

(i) If at any time the Requisite Purchasers determine (which determination shall be final and conclusive absent manifest error) that (i) the circumstances set forth in clause (a) above have arisen and such circumstances are unlikely to be temporary or (ii) a Benchmark Discontinuation Event has occurred, the Requisite Purchasers and the Company shall negotiate in good faith to establish an alternate replacement rate of interest to the Adjusted LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for bank loans in the United States, at such time as well as to the Requisite Purchasers' operational requirements, and Requisite Purchasers and the Company shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. If such replacement rate of interest as so determined would be less than zero, such rate shall be deemed to be zero. In order to account for the relationship of the replacement interest rate to the Adjusted LIBO Rate, additional spread adjustment and/or other adjustments may be taken into account in the replacement rate of interest to preserve the economic yield of the Purchasers in effect as of, and as contemplated on, the Additional Notes Closing Date (for the avoidance of doubt, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed)).

(ii) Notwithstanding anything to the contrary in Section 10.5, the amendment referred to in clause (i) above shall become effective without any further action or consent of any other party to this Agreement so long as the Purchasers shall have received at least five Business Days' prior written notice of such amendment thereof and the Collateral Agent shall not have received, within five Business Days of the date of such notice to the Purchasers, a written notice from the Requisite Purchasers stating that the Requisite Purchasers object to such amendment.

(iii) To the extent that a Benchmark Immediate Discontinuance Event has occurred, until an alternate rate of interest shall be determined in accordance with this paragraph, the Notes shall bear interest at the Base Rate.

(c) Illegality or Impracticability of LIBO Rate. In the event that on any date any Purchaser shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Collateral Agent) that the making, maintaining, or continuation of its Notes with interest borne at the LIBO Rate (i) has become unlawful as a result of compliance by such Purchaser in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof that materially and adversely affect the London interbank market or the position of such Purchaser in that market, then, and in any such event, such Purchaser shall be an **"Affected Purchaser"** and such Affected Purchaser shall on that day give written or telephonic (promptly confirmed in writing) notice to Company and the Collateral Agent of such determination (which notice the Collateral Agent shall promptly transmit to each other Purchaser). Thereafter (1) the obligation of the Affected Purchaser to make Notes with interest borne at the LIBO Rate shall be suspended until such notice shall be withdrawn by the Affected Purchaser, (2) to the extent such determination by the Affected Purchaser relates to a Note with interest borne at the LIBO Rate then being requested by Company pursuant to a Funding Notice, the Affected Purchaser shall make such Note as (or continue such Note as) a Base Rate Note, (3) the Affected Purchaser's obligation to maintain its outstanding LIBO Rate (the **"Affected Portions"**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Portions or when required by law, and (4) the Affected Portions shall automatically convert into Base Rate Notes on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Purchaser as described above relates to a LIBO Rate then being requested by Company pursuant to a Funding Notice, Company shall have the option, subject to the provisions of Section 2.17(d), to rescind such Funding Notice as to all Purchasers by giving written or telephonic (promptly confirmed in writing) notice to Collateral Agent of such rescission on the date on which the Affected Purchaser gives notice of its determination as described above (which notice of rescission Collateral Agent shall promptly transmit to each other Purchaser). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(c) shall affect the obligation of any Purchaser other than an Affected Purchaser to make or maintain the Notes as, or to convert the Notes to, LIBO Rate Note in accordance with the terms hereof.

(d) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Purchaser, upon written request by such Purchaser (which request

shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Purchaser to Purchasers of funds borrowed by it to make or carry its LIBO Rate and any loss, expense or liability sustained by such Purchaser in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Purchaser may sustain: (i) if any prepayment or other principal payment of the Notes bearing interest at the LIBO Rate occurs on any day other than the last day of an Interest Period applicable to that Note (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (ii) if any prepayment of any of its LIBO Rate is not made on any date specified in a notice of prepayment given by Company.

(e) Booking of LIBO Rate Loans. Any Requisite Purchaser may make, carry or transfer Notes bearing interest at the LIBO Rate at, to, or for the account of any of its branch offices or the office of an Affiliate of such Requisite Purchaser.

(f) Assumptions Concerning Funding of LIBO Rate Loans. Calculation of all amounts payable to a Purchaser under this Section 2.17 and under Section 2.18 shall be made as though such Purchaser had actually funded its Notes with interest borne at the LIBO Rate through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted LIBO Rate in an amount equal to the amount of such Note with interest borne at the LIBO Rate and having a maturity comparable to the relevant Interest Period and through the transfer of such LIBOR deposit from an offshore office of such Purchaser to a domestic office of such Purchaser in the U.S.; provided, however, each Purchaser may fund its Notes with interest borne at the LIBO Rate in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.17 and under Section 2.18.

2.18 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to and without duplication of the provisions of Section 2.19 (which shall be controlling with respect to the matters covered thereby), in the event that any Purchaser shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law: (i) subjects such Purchaser (or its applicable investment office) or any company controlling such Purchaser to any additional Tax (other than any Tax on the overall net income of such Person or any other Tax for which additional amounts are specifically not payable under Section 2.19 below) with respect to this Agreement or any of the other Note Documents or any of its obligations hereunder or thereunder, any payments to such Purchaser (or its applicable investment office) of principal, interest, fees or any other amount payable hereunder, or its deposits, reserves, other liabilities or capital attributable thereto; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Purchaser (other than any such reserve or other requirements with respect to LIBO Rate Portions that are reflected in the definition of Adjusted LIBO Rate) or any company controlling such Purchaser; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Purchaser (or its applicable investment office) or any company controlling such Purchaser or such

Purchaser's obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Purchaser of agreeing to purchasing, holding or maintaining Notes hereunder or to reduce any amount received or receivable by such Purchaser (or its applicable investment office) with respect thereto; then, in any such case, Company shall promptly pay to such Purchaser, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Person in its sole discretion shall determine) as may be necessary to compensate such Person for any such increased cost or reduction in amounts received or receivable hereunder. Such Purchaser shall deliver to Company a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Person under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy and Liquidity Adjustment. In the event that any Purchaser shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any Change in Law regarding capital adequacy or liquidity, or (B) compliance by any Purchaser (or its applicable investment office) or any company controlling such Purchaser with any Change in Law regarding capital adequacy or liquidity, has or would have the effect of reducing the rate of return on the capital of such Purchaser or any company controlling such Purchaser as a consequence of, or with reference to, such Purchaser's Notes or other obligations hereunder with respect to the Notes to a level below that which such Purchaser or such controlling company could have achieved but for such Change in Law (taking into consideration the policies of such Purchaser or such controlling company with regard to capital adequacy and liquidity), then from time to time, within five Business Days after receipt by Company from such Purchaser of the statement referred to in the next sentence, Company shall pay to such Purchaser such additional amount or amounts as will compensate such Purchaser or such controlling company on an after-tax basis for such reduction. Such Purchaser shall deliver to Company a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Purchaser under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Delay in Requests. Failure or delay on the part of any Purchaser to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Purchaser's right to demand such compensation; provided that Company shall not be required to compensate a Purchaser pursuant to this Section 2.18 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Purchaser notifies Company of the Change in Law giving rise to such increased costs or reductions, and of such Purchaser's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.19 Taxes; Withholding, Etc.

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Note Party hereunder and under the other Note Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Purchaser).

(b) Withholding of Taxes. If any Note Party or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Note Party to any Purchaser under any of the Note Documents: (i) Company shall notify Purchasers of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company or any other Person (acting as a withholding agent) shall pay or cause to be paid any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Note Party) for its own account or (if that liability is imposed on such Purchaser, as the case may be) on behalf of and in the name of such Purchaser; (iii) unless otherwise provided in this Section 2.19 (other than a Tax on the "overall net income" of any Purchaser) the sum payable by such Note Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any such withholding Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), such Purchaser, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any such Tax that it is required by clause (ii) above to pay, Company shall deliver to such Purchaser evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, with respect to any U.S. federal withholding tax (including any withholding tax imposed under FATCA), no such additional amount shall be required to be paid to any Purchaser under clause (iii) above except to the extent that any change after the date hereof (in the case of each Purchaser listed on the signature pages hereof on the Closing Date) or after the effective date of the Transfer Agreement pursuant to which such Purchaser became a Purchaser (in the case of each other Purchaser) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Transfer Agreement, as the case may be, in respect of payments to such Purchaser; provided that additional amounts shall be payable to a Purchaser to the extent that such Purchaser's transferor was entitled to receive such additional amounts.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Purchaser that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a **"Non-U.S. Purchaser"**) shall, to the extent such Purchaser is legally entitled to do so, deliver to Company, on or prior to the Closing Date (in the case of each Purchaser listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Transfer Agreement pursuant to which it becomes a Purchaser (in the case of each other Purchaser), and at such other times as may be necessary in the determination of Company (in the reasonable exercise of its discretion), (i) two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to establish that such Purchaser is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Purchaser of principal, interest, fees or other amounts payable under any of the Note Documents, or (ii) if such Purchaser is not a "bank" or other Person described in Section 881(c)(3) of the Code, a U.S. Tax Compliance Certificate together with two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8IMY (or, in each case, any successor

form), properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to establish that such Purchaser is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Purchaser of interest payable under any of the Note Documents. Each Purchaser that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a **"U.S. Purchaser"**) shall deliver to Company on or prior to the Closing Date (or, if later, on or prior to the date on which such Purchaser becomes a party to this Agreement) two copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Purchaser, certifying that such U.S. Purchaser is entitled to an exemption from U.S. backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Purchaser required to deliver any forms, certificates or other evidence with respect to U.S. federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery by such Purchaser of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Purchaser shall promptly deliver to Company two new copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, and/or W-9 (or, in any case, any successor form), or a U.S. Tax Compliance Certificate and two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, or W-8IMY (or, in each case, any successor form), as the case may be, properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by Company to confirm or establish that such Purchaser is not subject to deduction or withholding of U.S. federal income tax with respect to payments to such Purchaser under the Note Documents, or notify Company of its inability to deliver any such forms, certificates or other evidence. Notwithstanding anything to the contrary, Company shall not be required to pay any additional amount to any Purchaser under Section 2.19(b) if such Purchaser shall have failed to deliver the forms, certificates or other evidence required by this Section 2.19(c).

(d) FATCA. Notwithstanding anything to the contrary therein, Company shall not be required to pay any additional amount pursuant to Section 2.19(b) with respect to any U.S. federal withholding tax imposed under FATCA. If a payment made to a Purchaser under any Note Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Purchaser 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 Purchaser shall deliver to Company at the time or times prescribed by law and at such time or times reasonably requested by Company 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 Company as may be necessary for Company to comply with their obligations under FATCA and to determine that such Purchaser has complied with such Purchaser's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of the preceding sentence of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

(e) Payment of Other Taxes by Company. Without limiting the provisions of Section 2.19(b), Company shall timely pay to the relevant Governmental Authorities in accordance with applicable law or, at the option of such Purchaser timely reimburse it for the payment of, all Other Taxes.

(f) Indemnification by Note Parties. Note Parties shall jointly and severally indemnify any Purchaser for the full amount of Taxes for which additional amounts are required to be paid pursuant to Section 2.19(b) arising in connection with payments made under this Agreement or any other Note Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) paid or payable by any Purchaser or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other 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 Note Party shall be conclusive absent manifest error. Such payment shall be due within ten days of such Note Party's receipt of such certificate.

(g) [Reserved].

(h) Evidence of Payments. As soon as practicable after any payment of Taxes by any Note Party to a Governmental Authority pursuant to this Section 2.19, such Note Party shall deliver to Purchasers 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 such Purchaser.

(i) Survival. Each party's obligations under this Section 2.19 shall survive any assignment of rights by, or the replacement of, a Purchaser, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Note Document.

2.20 Obligation to Mitigate. Each Purchaser agrees that, if such Purchaser requests payment under Section 2.18 or 2.19, then such Purchaser will , to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to hold or maintain its Notes, through another office of such Purchaser if, as a result thereof, the additional amounts payable to such Purchaser pursuant to Section 2.18 or 2.19, as the case may be, in the future would be eliminated or reduced and if, as determined by such Purchaser in its sole discretion, the purchasing, holding or maintaining of such Notes through such other office or in accordance with such other measures, as the case may be, would not otherwise materially adversely affect such Notes or the interests of such Purchaser; provided, such Purchaser will not be obligated to utilize such other office pursuant to this Section 2.20 unless Company agrees to pay all incremental expenses incurred by such Purchaser as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Purchaser to shall be conclusive absent manifest error.

2.21 [Reserved].

2.22 [Reserved].

2.23 Representations and Warranties by the Purchasers. Each Purchaser hereby represents and warrants to Company as follows:

(a) Organization and Qualification. Such Purchaser is a corporation, limited partnership or limited liability company, in either case duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Such Purchaser has all requisite power

and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of such Purchaser for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Note Parties, this Agreement constitutes the legal, valid and binding obligation of such Purchaser enforceable against such Purchaser in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(b) Investor Status. It (i) is an "accredited investor", as that term is defined in Regulation D under the Securities Act, (ii) has such knowledge, skill, sophistication and experience in business and financial matters, based on actual participation, that it is capable of evaluating the merits and risks of the purchase of the Notes from Company and the suitability thereof for Purchaser, (iii) is a sophisticated purchaser with respect to the purchase of the Notes, (iv) is able to bear the economic risk associated with the purchase of the Notes, (v) has had an opportunity to ask questions of the principal officers and representatives of Company and to obtain any additional information necessary to permit an evaluation of the benefits and risks associated with the investment made hereby, (vi) has been provided adequate information concerning the business and financial condition of Company to make an informed decision regarding the purchase of the Notes, (vii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the purchase of rights and assumption of liabilities of the type contemplated in this Agreement, (viii) has independently and without reliance upon Company, and based on such information as such Purchaser has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that such Purchaser has relied upon Company's express representations and warranties in this Agreement and other Note Documents, and (ix) is not an "affiliate" (as that term is defined in Rule 405 promulgated under the Securities Act) of Company or any of the Guarantors.

(c) Investment for Own Account. Such Purchaser is purchasing the Notes for investment for its own account, not as a nominee or agent, and not with a view towards the sale or distribution or public offering of any part thereof in violation of applicable securities laws of the United States or any state thereof. Such Purchaser acknowledges there are restrictions on its ability to resell the Notes under applicable securities laws.

(d) Transfer Restrictions. Such Purchaser understands that the offering and sale of the Notes by Company will not be registered under the Securities Act or any state securities laws, by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act and such laws and that the Notes may only be resold if they are subsequently registered under the Securities Act and such laws or a disposition or transfer thereof is exempt from registration; and there is no existing public or other market for the Notes. Such Purchaser understands that any certificate representing the Notes that are issued to such Purchaser may bear, in Company's discretion, the following restrictive legend and will be restricted from transfer in accordance with such legend:

> *"The sale of this Senior Secured Note has not been and will not be registered under the United States Securities Act 1933 (the "Securities Act") or with any securities regulatory authority of any state or other jurisdiction of the United States. The holder hereof, by purchasing or otherwise acquiring this security, acknowledges that the sale of this security*

has not been registered under the Securities Act. The holder agrees for the benefit of Company, any distributors or dealers and any such persons' affiliates that this security may be offered, resold, pledged or otherwise transferred only in compliance with the Securities Act and any applicable state securities laws and only (1) pursuant to Rule 144 under the Securities Act or (2) pursuant to another exemption from registration under the Securities Act, and in each case in accordance with any applicable securities laws of the states of the United States and other jurisdictions."

SECTION 3 CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of each Purchaser to enter into this Agreement and to purchase the Initial Notes on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date (in each case, except to the extent required to be satisfied as a condition subsequent in accordance with Section 5.15):

(a) Note Documents. Purchasers shall have received sufficient copies of this Agreement, the Fee Letter, its Note in the form of Exhibit J, the Security Agreement and each other Note Document to be dated as of the Closing Date, in each case as Purchasers shall request, in form and substance satisfactory to Purchasers, and executed and delivered by each applicable Note Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Purchasers shall have received in respect of each Note Party (i) copies of each Organizational Document as Purchasers shall request, in each case certified by an Authorized Officer of such Note Party and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Note Party executing any Note Documents to which it is a party; (iii) resolutions of the Board of Directors of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents, in each case, to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Note Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business to the extent the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, each dated a recent date prior to the Closing Date; and (v) such other documents as Purchasers may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Company and its Subsidiaries, shall be as set forth on Schedule 4.1. The Section 382 Ownership Shift (as of Company's last "owner shift") shall not exceed 46 percent; provided that this shall be determined without taking into account the issuance of, amendment to, or exercise of the Warrants. For the avoidance of doubt, with regard to this Section 3.1(c) and Section 6.21, the parties acknowledge that the amendment to or the issuance of the Warrants will not constitute an issuance of stock.

(d) [Reserved].

(e) [Reserved].

(f) Existing Indebtedness. On or prior to the Closing Date, Company and its Subsidiaries shall have , or substantially concurrently with the initial funding under this Agreement will have, (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, (iii) delivered to Purchasers all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Company and its Subsidiaries thereunder being repaid on the Closing Date, and (iv) made arrangements satisfactory to Purchasers with respect to the cancellation of any letters of credit outstanding thereunder.

(g) Transaction Costs. On or prior to the Closing Date, Company shall have delivered to Purchasers Company's reasonable best estimate of the Transaction Costs (other than fees payable to Collateral Agent).

(h) Governmental Authorizations and Consents. Each Note Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Note Documents to occur on or prior to the Closing Date (including the entering into of the Note Documents to be delivered on the Closing Date) and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Purchasers. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Note Documents to occur on or prior to the Closing Date or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(i) [Reserved].

(j) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, each Note Party shall have delivered to Collateral Agent:

(i) evidence satisfactory to Collateral Agent of the compliance by each Note Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts , in each case, to the extent provided therein);

(ii) a completed Collateral Questionnaire dated the Closing Date, together with all attachments contemplated thereby;

(iii) fully executed Intellectual Property Security Agreements, in proper form for filing or recording in all appropriate places in all applicable jurisdictions;

(iv) evidence that each Note Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including an Intercompany Note) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(k) Environmental Reports. Purchasers shall have received reports and other information, in form, scope and substance satisfactory to Purchasers, regarding environmental matters relating to the Facilities,.

(l) Financial Statements; Projections. Purchasers shall have received from Company (i) pro forma consolidated and consolidating balance sheets of Company and its Subsidiaries as at the Closing Date, and reflecting the consummation of the transactions contemplated by the Note Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance satisfactory to Purchasers, (ii) pro forma consolidated and consolidating income statements of Company and its Subsidiaries as at the Closing Date, and reflecting the consummation of the transactions contemplated by the Note Documents to occur on or prior to the Closing Date, and (iii) the Projections.

(m) Evidence of Insurance. Collateral Agent shall have received a certificate from each applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(n) Opinions of Counsel to Note Parties. Collateral Agent, Purchasers and their respective counsel shall have received originally executed copies of the favorable written opinions of Goodwin Procter LLP, counsel for Note Parties as to such matters as Purchasers may reasonably request, dated as of the Closing Date and in form and substance reasonably satisfactory to Purchasers (and each Note Party hereby instructs such counsel to deliver such opinions to Collateral Agent and Purchasers).

(o) Fees. Company shall have paid to Collateral Agent and Purchasers the fees payable on or before the Closing Date referred to in Section 2.10 and all expenses payable pursuant to Section 10.2 that have accrued to the Closing Date (to the extent invoiced prior to the Closing Date).

(p) Solvency Certificate. On the Closing Date, Purchasers shall have received a Solvency Certificate from Company dated as of the Closing Date and addressed to Purchasers.

(q) Closing Date Certificate. Company shall have delivered to Purchasers an originally executed Closing Date Certificate, together with all attachments thereto.

(r) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding, hearing, or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Purchasers, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(s) Due Diligence. Each Purchaser shall have completed, to its satisfaction, all legal, tax, environmental, business and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Note Parties in scope and determination satisfactory to Purchasers in their respective discretion (including satisfactory review of all Material Contracts), and, other than changes occurring in the ordinary course of business, no information or materials are or should have been available to the Note Parties as of the Closing Date that are materially inconsistent with the material previously provided to Purchasers for their respective due diligence review of the Note Parties.

(t) Minimum Liquidity. Company shall demonstrate in form and substance reasonably satisfactory to Purchasers that on the Closing Date and immediately after giving effect to the issuance and sale of the Notes on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash, Company shall have at least $12,000,000 of Cash.

(u) No Material Adverse Change. Since March 31, 2018, no Material Adverse Effect has occurred.

(v) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Purchasers and its counsel shall be satisfactory in form and substance to Purchasers and such counsel, and Purchasers and such counsel shall have received all such counterpart originals or certified copies of such documents as Purchasers may reasonably request.

(w) Cash Management Structure. The cash management structure of the Note Parties shall be satisfactory to Purchasers and, to the extent requested by Purchasers, shall include controlled account and sweep arrangements satisfactory to Collateral Agent in its sole discretion.

(x) Letter of Direction. Purchasers shall have received a duly executed letter of direction from Company addressed to Purchasers, on behalf of itself and Purchasers, directing the disbursement on the Closing Date of the proceeds of the Notes made on such date substantially in the form of Exhibit B hereto.

(y) KYC Documentation. (i) At least five days prior to the Closing Date, the Purchasers shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act to the extent requested by the Purchasers at least ten days prior to the Closing Date.

(ii) At least five days prior to the Closing Date, the Note Parties shall deliver a Beneficial Ownership Certification in relation to such Note Party.

Each Purchaser, by delivering its signature page to this Agreement and purchasing a Note on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by Collateral Agent or Purchasers, as applicable on the Closing Date.

3.2 Conditions to Credit Date.

(a) Conditions Precedent. The obligation of each Purchaser to purchase the Notes on the Closing Date and the Additional Notes Closing Date, as applicable, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Purchasers shall have received a fully executed and delivered Funding Notice;

(ii) As of such Credit Date, the representations and warranties contained herein and in the other Note Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof; and

(iii) As of such Credit Date, no event shall have occurred and be continuing or would result from the issuance and sale of the Notes that would constitute an Event of Default or a Default.

(b) Each request for the sale and purchase of a Note by Company hereunder shall constitute a representation and warranty by Company as of the applicable Credit Date that the conditions contained in Section 3.2(a) have been satisfied.

3.3 Additional Notes Closing Date. The obligation of each Purchaser to enter into this Agreement and to purchase the Additional Notes on the Additional Notes Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Additional Notes Closing Date:

(a) Note Documents. Purchasers shall have received sufficient copies of this Agreement, the Fee Letter, its Note in the form of Exhibit J and each other Note Document to be dated as of the Additional Notes Closing Date, in each case as Purchasers shall request, in form and substance satisfactory to Purchasers, and executed and delivered by each applicable Note Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Purchasers shall have received in respect of each Note Party (i) copies of each Organizational Document as Purchasers shall request, in each case certified by an Authorized Officer of such Note Party and, to the extent applicable, certified as of the Additional Notes Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Note Party executing any Note Documents to which it is a party; (iii) resolutions of the Board of Directors of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents, in each case, to which it is a party or by which it or its assets may be bound as of the Additional Notes Closing Date, certified as of the Additional Notes Closing Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental

Authority of such Note Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business to the extent the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, each dated a recent date prior to the Additional Notes Closing Date.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Company and its Subsidiaries, as set forth on Schedule 4.1 on the Closing Date remains true and correct in all respects. The Section 382 Ownership Shift (as of Company's last "owner shift") shall not exceed 46 percent; provided that this shall be determined without taking into account the issuance of, amendment to, or exercise of the Warrants. For the avoidance of doubt, with regard to this Section 3.3(c) and Section 6.21, the parties acknowledge that the issuance of or amendment to the Warrants will not constitute an issuance of stock.

(d) Transaction Costs. On or prior to the Additional Notes Closing Date, Company shall have delivered to Purchasers Company's reasonable best estimate of the Transaction Costs (other than fees payable to Collateral Agent).

(e) Evidence of Insurance. Collateral Agent shall have received a certificate from each applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(f) Opinions of Counsel to Note Parties. Collateral Agent, Purchasers and their respective counsel shall have received an executed copy of a favorable written opinion of Goodwin Procter LLP, counsel for Note Parties as to such matters as Purchasers may reasonably request, dated as of the Additional Notes Closing Date and in form and substance reasonably satisfactory to Purchasers (and each Note Party hereby instructs such counsel to deliver such opinions to Collateral Agent and Purchasers).

(g) Fees. Company shall have paid to Collateral Agent and Purchasers the fees payable on or before the Additional Notes Closing Date referred to in Section 2.10 and all expenses payable pursuant to Section 10.2 that have accrued to the Additional Notes Closing Date (to the extent invoiced prior to the Additional Notes Closing Date).

(h) Closing Date Certificate. Company shall have delivered to Purchasers an executed Closing Date Certificate, together with all attachments thereto.

(i) Minimum Liquidity. Company shall demonstrate in form and substance reasonably satisfactory to Purchasers that on the Additional Notes Closing Date and immediately after giving effect to the issuance and sale of the Notes on the Additional Notes Closing Date, including the payment of all Transaction Costs required to be paid in Cash, Company shall have at least $9,000,000 of Cash.

(j) Letter of Direction. Purchasers shall have received a duly executed letter of direction from Company addressed to Purchasers, on behalf of itself and Purchasers, directing the disbursement on the Additional Notes Closing Date of the proceeds of the Notes made on such date substantially in the form of Exhibit B hereto.

Each Purchaser, by delivering its signature page to this Agreement and purchasing a Note on the Additional Notes Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by, or item or other matter required to be satisfactory to, the Collateral Agent or Purchasers, as applicable, on the Additional Notes Closing Date.

3.4 Conditions Subsequent to the Closing Date . Company shall fulfill, on or before the date applicable thereto (which date can be extended in writing by Requisite Purchasers in their sole discretion), each of the conditions subsequent specified in Section 5.15.

SECTION 4 REPRESENTATIONS AND WARRANTIES

In order to induce Collateral Agent and Purchasers to enter into this Agreement and to purchase the Notes, each Note Party represents and warrants to Agent and Purchaser, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. Each of Company and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Note Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of each of Company and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Company or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Company or any of its Subsidiaries outstanding that upon conversion or exchange would require, the issuance by Company or any of its Subsidiaries of any additional Capital Stock of Company or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, additional Capital Stock of Company or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Company and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 Due Authorization. The execution, delivery and performance of the Note Documents have been duly authorized by all necessary action on the part of each Note Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Company or any of its Subsidiaries, any of the Organizational Documents of Company or any of its Subsidiaries, or any order, judgment or decree of any court

or other agency of government binding on Company or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Material Contract or any other material Contractual Obligation of Company or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company or any of its Subsidiaries (other than Permitted Liens); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Material Contract or any other material Contractual Obligation of Company or any of its Subsidiaries, except for such approvals or consents that have been obtained on or before the Closing Date and have been disclosed in writing to Purchasers and except, in the case of Material Contracts or any other material Contractual Obligation, for any such consents and approvals the failure of which to obtain could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

4.5 Governmental Consents. The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (a) such approvals or consents which have been obtained and are in full force and effect, (b) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date and (c) any required EDGAR filings.

4.6 Binding Obligation. Each Note Document required to be delivered hereunder has been duly executed and delivered by each Note Party that is a party thereto and is the legally valid and binding obligation of such Note Party, enforceable against such Note Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, neither Company nor any of its Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements or the notes thereto and that in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company and any of its Subsidiaries taken as a whole.

4.8 Projections. On and as of the Additional Notes Closing Date, the projections of Company and its Subsidiaries for the period of Fiscal Year 2020 through and including Fiscal Year 2023, including monthly projections for each month during the Fiscal Year in which the Additional Notes Closing Date takes place, (the "Projections") are based on good faith estimates and assumptions made by the management of Company; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material; provided further, as of the

Additional Notes Closing Date, management of Company believed that the Projections were reasonable.

4.9 No Material Adverse Change. Since March 31, 2020, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10 [Reserved].

4.11 Adverse Proceedings, etc. There are no Adverse Proceedings that could reasonably be expected to result in a Material Adverse Effect or liability (except to the extent covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) of Company, any of its Subsidiaries or any of their respective Affiliates in excess of $250,000, individually, or $500,000, in the aggregate for all such Adverse Proceedings, in each case during the term of this Agreement. Neither Company nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that could reasonably be expected to result in a Material Adverse Effect or liability (except to the extent covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) of Company, any of its Subsidiaries or any of their respective Affiliates in excess of $250,000, individually, or $500,000, in the aggregate for all such defaults, in each case during the term of this Agreement.

4.12 Payment of Taxes. Except as otherwise permitted under Section 5.3, all income tax returns and other material tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes due and payable and all assessments, fees and other governmental charges upon Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable (other than any Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Company and/or its applicable Subsidiary, as the case may be). There is no proposed tax assessment against Company or any of its Subsidiaries that is not being actively contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties.

(a) Title. Each of Company and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in Intellectual Property), and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial

statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Note Party, regardless of whether such Note Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Company does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Note Party, enforceable against such Note Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.14 Environmental Matters. Neither Company nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Company nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of Company's and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Company nor any of its Subsidiaries nor, to any Note Party's knowledge, any predecessor of Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Company's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to Company or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity that individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15 No Defaults. Neither Company nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, could constitute such a default, except , in each case, where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.16 Material Contracts. Schedule 4.16 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and, together with any updates provided pursuant to Section 5.1(l), (a) all such Material Contracts are in full force and effect, (b) no defaults currently exist thereunder, and (c) each such Material Contract has not been amended, waived, or otherwise modified except as permitted under this Agreement. As of the Closing Date, true, correct and complete copies of all Material Contract s listed on Schedule 4.16 have been delivered to the Purchasers.

4.17 Governmental Regulation. Neither Company nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable. Neither Company nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18 Federal Reserve Regulations; Exchange Act.

(a) Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

(b) No portion of the proceeds of issuance and sale of Notes has or will be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such issuance and sale of Notes or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

4.19 Employee Matters. Neither Company nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to result in a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Company or any of its Subsidiaries, or to the best knowledge of Company, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Company or any of its Subsidiaries or to the best knowledge of Company, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving Company or any of its Subsidiaries, and (c) to the best knowledge of Company, no union representation question existing with respect to the employees of Company or any of its Subsidiaries and, to the best knowledge of Company, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect. No Note Party has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or any similar federal or state law that remains unpaid or unsatisfied and could reasonably be expected to result in a Material Adverse Effect.

4.20 Employee Benefit Plans. Except as, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, Company, each of its Subsidiaries

and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter that would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Company, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Company, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Company, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Company, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Company, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21 Certain Fees. No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by this Agreement, except as payable to Collateral Agent and Purchasers.

4.22 Solvency. On the Closing Date and on each Credit Date, the Note Parties are Solvent on a consolidated basis.

4.23 [Reserved].

4.24 Compliance with Statutes, Etc. Each of Company and its Subsidiaries is in compliance in all material respects with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Company or any of its Subsidiaries (it being understood, in the case of any statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities that are specifically referred to in any other provision of this Agreement, the Note Parties shall also be required to represent and/or comply with, as applicable, the express

terms of such provision). Each Note Party possesses all franchises, licenses and permits, patents, copyrights, trademarks and trade names, and rights in respect of the foregoing, material and necessary to the conduct of its business without known conflict with any rights of others. Without limiting the foregoing, on or prior to the Closing Date, Company has made all filings with the Securities and Exchange Commission required under the Securities Act, Exchange Act or the rules and regulations thereunder with respect to transactions contemplated by this Agreement to have occurred on or prior to the Closing Date, in each case, on or prior to the date required thereunder (without giving effect to any extension or possible extension of such dates permitted thereunder).

4.25 Disclosure. (a) Other than with respect to projections, estimates and other forward looking information and general economic and industry information, no representation or warranty of any Note Party contained in any Note Document or in any other documents, certificates or written statements furnished to Collateral Agent or any Purchaser by or on behalf of Company or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Purchasers that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or that should upon the reasonable exercise of diligence be known) to Company (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Purchasers for use in connection with the transactions contemplated hereby.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.26 Sanctions; Anti-Corruption and Anti-Bribery Laws; Anti-Terrorism and Anti-Money Laundering Laws; Etc.

(a) None of Company, any of its Subsidiaries, any Affiliate of any such Person, or any of their respective Directors, officers or, to the knowledge of any Note Party, employees, agents, advisors or other Affiliates is a Sanctioned Person. Each of Company and its Subsidiaries and their respective Directors, officers and, to the knowledge of any Note Party, employees, agents, advisors and Affiliates is in compliance with and has not violated (i) Sanctions, (ii) Anti-Corruption and Anti-Bribery Laws, and (iii) Anti-Terrorism and Anti-Money Laundering Laws. No part of the proceeds of any issuance and sale of Notes has or will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Sanctioned Person or in any Sanctioned Country, (B) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any Person in violation of any Anti-Corruption and Anti-Bribery Laws, or (C) otherwise in any manner that would result in a violation of Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, or Anti-Corruption and Anti-Bribery Laws by any Person.

(b) Company and its Subsidiaries have established and currently maintain policies, procedures and controls that are designed (and otherwise comply with applicable law) to ensure that each of Company, its Subsidiaries, and each Controlled Entity, and each of their respective Directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, and Anti-Corruption and Anti-Bribery Laws.

4.27 Private Offering . Subject to the accuracy of the representations and warranties of the Purchasers, the offer, sale, issuance and delivery of the Notes in accordance with the terms herein will be exempt from the registration provisions of the Securities Act and the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

SECTION 5 AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that until Payment in Full of all Obligations, each Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Unless otherwise provided below, Company will deliver to Purchasers:

(a) Monthly Reports. As soon as available, and in any event within thirty days after the end of each month (commencing with the month ending January 2019), the consolidated balance sheet of Company and its Subsidiaries as at the end of such month and the related consolidated statements of income, and consolidated statements of cash flows of Company and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(b) Quarterly Financial Statements. As soon as available, and in any event within forty-five days after the end of each Fiscal Quarter of each Fiscal Year (commencing with the Fiscal Quarter ending March 30, 2019), the consolidated balance sheets of Company and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of Company and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within ninety days after the end of each Fiscal Year , commencing with the Fiscal Year ending March 31, 2019, (i) the consolidated balance sheets of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such

consolidated financial statements a report thereon of an Acceptable Auditor (which report and accompanying financial statements shall be unqualified as to going concern and scope of audit (other than a going concern or like qualification resulting solely from an upcoming maturity date for the Notes occurring within one year from the time such opinion is delivered) , and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(d) Compliance Certificate. Together with each delivery of financial statements of Company and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) [Reserved].

(f) Notice of Default. Promptly and in any event within one Business Day after any officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Company with respect thereto; (ii) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(g) Notice of Adverse Proceedings. Promptly and in any event within two (2) Business Days after any officer of Company obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to the Purchasers, or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii) if adversely determined, could be reasonably expected to result in a Material Adverse Effect or liability of Company or any of its Subsidiaries in excess of $250,000, individually, or $500,000, in the aggregate for all such Adverse Proceedings or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Company to enable the Purchasers and their counsel to evaluate such matters;

(h) ERISA and Employment Matters. (i) Promptly and in any event within two (2) Business Days after becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that could be reasonably expected to result in a Material Adverse Effect or liability of Company, any of its Subsidiaries in excess of $ 250,000, individually, or $ 500,000, in the aggregate for all such ERISA Events, a written notice specifying the nature thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the

Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) promptly and in any event within one day after the same is available to any Note Party, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Company, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Requisite Purchasers shall reasonably request, and (iii) promptly and in any event within one day after any Note Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Note Party;

(i) Financial Plan. As soon as practicable and in any event no later than thirty days after the end of each Fiscal Year, a consolidated plan and financial forecast and updated model prepared for Company's Board of Directors for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Notes (a **"Financial Plan"**);

(j) Insurance Report. As soon as practicable and in any event by April 15th of each Fiscal Year, one or more certificates from the Note Parties' insurance broker(s) together with accompanying endorsements, in each case in form and substance satisfactory to Requisite Purchasers, and a summary outlining all material insurance coverage maintained as of the date of such summary by Company and its Subsidiaries and all material insurance coverage planned to be maintained by Company and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) [Reserved].

(l) Notice Regarding Material Contracts or Material Indebtedness. Promptly, and in any event within five (5) Business Days after (i)(A) any Material Contract of Company or any of its Subsidiaries is terminated or amended in a manner that is materially adverse to Company or such Subsidiary, as the case may be, or (B) any new Material Contract is entered into, or (ii) after any officer of any Note Party or any of its Subsidiaries obtaining knowledge of any condition or event that constitutes an event of default under any Material Contract or Material Indebtedness, a notice specifying the nature and period of existence of such condition or event and, in the case of clause (i), including copies of such material amendments or new contracts, delivered to Purchasers (to the extent such delivery is permitted by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by Company or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(l)) and, in the case of clause (ii), as applicable, explaining the nature of such claimed event of default, and including an explanation of any actions being taken or proposed to be taken by such Note Party or Company with respect thereto;

(m) Environmental Reports and Audits. As soon as practicable and in any event within ten (10) Business Days following receipt thereof, copies of all environmental audits, reports, and notices with respect to environmental matters at any Facility or that relate to any environmental liabilities of Company or its Subsidiaries that, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or in liabilities

that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, in each case, during the term of this Agreement;

(n) Information Regarding Collateral. (a) Company will furnish to Collateral Agent prior written notice of any change (i) in any Note Party's corporate name, (ii) in any Note Party's identity or corporate structure, (iii) in any Note Party's jurisdiction of organization or formation, or (iv) in any Note Party's Federal Taxpayer Identification Number or state organizational identification number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Company also agrees promptly to notify Collateral Agent if any material portion of the Collateral is lost, stolen, damaged or destroyed;

(o) Reserved.

(p) Reserved.

(q) Tax Information. As soon as practicable following the Purchaser's request therefor, any tax information of Company that is reasonably requested by such Purchaser; and

(r) KYC Documentation. (i) As soon as practicable and in any event within ten (10) Business Days following any Purchaser's request therefor after the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(ii) As soon as practicable and in any event within five (5) Business Days following any Purchaser's request therefor after the Closing Date in connection with any Permitted Acquisition or change in ownership of any Note Party, such Note Party shall deliver a Beneficial Ownership Certification in relation to such Note Party.

(s) Other Information. (A) Promptly and in any event within ten days of their becoming available, notice of (i) all periodic reports filed by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any Governmental Authority and (ii) all press releases and other statements made available generally by Company or any of its Subsidiaries to the public concerning material developments in the business of Company or any of its Subsidiaries, and (B) promptly after any request, such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by any Purchaser.

(t) Notwithstanding anything to the contrary, financial information required to be delivered pursuant to Section 5.1(b) and (c) shall be deemed to have been delivered to the Purchasers on the date on which such information has been posted on the Home Page or is available via the EDGAR System (in each case, solely to the extent such financial information is included in materials filed via the EDGAR System or posted on the Home Page, as the case may be); provided, that, to the extent such information is in lieu of information required to be provided

under Section 5.1(c), such materials are accompanied by the report of an Acceptable Auditor required pursuant to Section 5.1(c)(ii).

(u) CARES Act Indebtedness. No later than Tuesday of each calendar week, a schedule setting forth the aggregate amount of CARES Act Indebtedness received by the Note Parties and their Subsidiaries through the end of the prior week and a detailed description of how the proceeds thereof have been applied by the Note Parties and their Subsidiaries through the end of the prior week; promptly and in any event within one Business Day after submission, copies of all documents submitted by any Note Party or its Subsidiaries to request and justify forgiveness of any CARES Act Indebtedness; and promptly and in any event within one Business Day after receipt, copies of any notices received by the applicable lender or Governmental Authority with respect to the CARES Act Indebtedness.

5.2 Existence. Except as otherwise permitted under Section 6.9, each Note Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Note Party (other than Company with respect to its existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Purchasers.

5.3 Payment of Taxes and Claims. Each Note Party will, and will cause each of its Subsidiaries to, pay all federal and state income and other material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Note Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Company or any of its Subsidiaries).

5.4 Maintenance of Properties. Each Note Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Company and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5 Insurance. Company will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance and directors and officers insurance reasonably satisfactory to Requisite Purchasers (it being agreed that the business interruption insurance maintained on the Closing Date is reasonably satisfactory to the Requisite

Purchasers), and (ii) such casualty insurance, public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Company will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Program, in each case in compliance with any applicable regulations of the Board of Governors, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) in the case of each liability insurance policy, name Collateral Agent, for the benefit of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of Secured Parties as the loss payee thereunder, and (iii) in each case, provide for at least thirty days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6 Books and Records; Inspections. Each Note Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true, and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Note Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by Collateral Agent or any Purchaser to visit and inspect any of the properties of any Note Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable advance notice and at such reasonable times during normal business hours ; provided that, so long as no Event of Default has occurred and is continuing, the foregoing shall be limited to two (2) visits per Fiscal Year and that an Authorized Officer of the Company shall be afforded a reasonable opportunity to be present during all such meetings, inspections and discussions.

5.7 Meetings. Company will, upon the request of Requisite Purchasers, participate in a meeting of the Purchasers once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Requisite Purchasers or, if agreed to by Requisite Purchasers in their sole discretion, via a conference call or other teleconference) at such time as may be agreed to by Company and Requisite Purchasers.

5.8 Compliance with Laws. Each Note Party will comply, and shall cause each of its Subsidiaries to comply, with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws) in all material respects (it being understood, in the case of any laws, rules, regulations, and orders specifically referred to any other provision of this Agreement, the Note Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision) except, in each case, where such noncompliance could not reasonably be expected to have, individually or in the aggregate, a

Material Adverse Effect, and (ii) all Sanctions, Anti-Corruption and Anti-Bribery Laws, and Anti-Terrorism and Anti-Money Laundering Laws in accordance with Section 4.26(a). Each Note Party shall, and shall cause each of its Subsidiaries to, maintain the policies and procedures described in Section 4.26(b).

5.9 Environmental.

(a) Environmental Disclosure. Company will deliver to Purchasers:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (2) any remedial action taken by Company or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect or resulting in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect or in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, and (3) Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect or to liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Company or any of its Subsidiaries that could reasonably be expected to (A) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities or (B) adversely affect the ability of Company or any of its Subsidiaries to maintain in full force

and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by Company or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Company or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Purchasers in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Note Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Note Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities, and (ii) make an appropriate response to any Environmental Claim against such Note Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $250,000, individually, or $500,000, in the aggregate for all such liabilities.

5.10 Additional Guarantors. In the event that any Person becomes a Domestic Subsidiary of any Note Party, such Note Party shall, with in ten (10) Business Days following such Person becoming a Domestic Subsidiary, (a) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Purchasers and Collateral Agent a Counterpart Agreement, and (b) subject to the terms, provisions and limitations set forth in the Note Documents, take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in connection therewith, including such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(b), 3.1(i), 3.1(j), 3.1(k), 3.1(m), and 3.1(n). In addition, such Note Party shall deliver, or cause such Subsidiary to deliver, as applicable, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in order to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, in 100% of the Capital Stock (other than Capital Stock which is Excluded Property) of such Subsidiary under the Pledge and Security Agreement (including, as applicable, original certificates evidencing such Capital Stock and related powers or instruments of transfer executed in blank, as applicable). With respect to each such Subsidiary, Company shall send to Collateral Agent prior written notice setting forth with respect to such Person (i) the date on which such Person is intended to become a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof automatically upon such Person becoming a Subsidiary.

5.11 Additional Locations and Material Real Estate Assets.

(a) Fee-Owned Real Estate Assets. In the event that any Note Party acquires a fee-owned Material Real Estate Asset or a fee-owned Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Note Party shall promptly notify Collateral Agent thereof, and on the same date as acquiring or leasing such fee-owned Material Real Estate Asset, or within thirty days after any Real Estate Asset owned or leased on the Closing Date becomes a fee-owned Material Real Estate Asset (or at such later time as is approved by Collateral Agent in its sole discretion), shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgaged Real Estate Documents with respect to each such fee-owned Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such fee-owned Material Real Estate Asset.

(b) [Reserved]

(c) Appraisals. In addition to the foregoing, Company shall, at the request of Collateral Agent, deliver, from time to time, to Collateral Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Mortgage.

(d) Other New Locations. In the event (x) that any Note Party leases a new location where more than $100,000 in Collateral is located or enters into an arrangement with a third party for physical or electronic storage of any books and records or other information related to its business or operations (in each case, which cannot be obtained at another location of the Company that is subject to a Landlord Collateral Access Agreement) or (y) the Note Parties still hold a leasehold interest in the property at 21211 Nordhoff Street, Chatsworth, CA 91311 after December 31, 2019, such Note Party shall promptly commence using its commercially reasonably efforts for a period of no more than sixty (60) days to obtain a Landlord Collateral Access Agreement or a similar instrument executed by the relevant lessor or other counterparty in favor of Collateral Agent for the benefit of the Secured Parties with respect to such location.

5.12 [Reserved].

5.13 Further Assurances. At any time or from time to time upon the request of Collateral Agent or Requisite Purchasers, each Note Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Collateral Agent may reasonably request in order to effect fully the purposes of the Note Documents or to perfect, achieve better perfection of, or renew the rights of Collateral Agent for the benefit of Secured Parties with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by Company or any Subsidiary that may be deemed to be part of the Collateral). In furtherance and not in limitation of the foregoing, each Note Party shall take such actions as Requisite Purchasers or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by a First Priority Lien on substantially all of the assets of Company that would constitute Collateral, and its Subsidiaries and all of the outstanding Capital Stock of Company and each of its Subsidiaries (subject to limitations

contained in the Note Documents with respect to Foreign Subsidiaries). Notwithstanding anything to the contrary contained herein, (A) in no event shall Mortgages be required to be delivered in respect of any leasehold interest held by Copmany or any of its Subsidiaries in any Real Estate Asset and (B) in no event shall actions (including any filings or registrations) outside of the United States or security or pledge agreements governed by any foreign law be required.

5.14 Miscellaneous Covenants. **UNLESS OTHERWISE CONSENTED TO BY REQUISITE PURCHASERS:**

(a) Separateness. Company will and will cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other entity that is an Affiliate of such entity and (ii) not commingle its funds or assets with those of any other entity that is an Affiliate of such entity, in each case, other than an Affiliate that is a Subsidiary of Company.

(b) [Reserved].

(c) Broadridge Rights Agreement. Company and its Subsidiaries shall subject to obtaining the requisite approvals from the holders of Company's Capital Stock (and shall use their reasonable best efforts to obtain such approval), maintain in effect and continue (in substantially the same form as in effect on the Closing Date or as otherwise consented to by Requisite Purchasers) the NOL Rights Agreement, dated as of May 6, 2016, between Company and Broadridge Financial Solutions, Inc., successor-in-interest to Computershare Inc.

5.15 Post Closing Matters. Each Note Party shall, and shall cause each of its Subsidiaries to, as applicable, satisfy the requirements set forth on Schedule 5.15 on or before the respective date specified for each such requirement or such later date as is agreed to by the Collateral Agent in its sole discretion. The Company shall deliver to GSSLG the original of the Note containing the Company's "wet ink" signature issued pursuant to Section 2.1(a) hereto on the Additional Notes Closing Date no later than three (3) Business Days after the Additional Notes Closing Date.

5.16 CARES Act Indebtedness. Company agrees to, and will cause each of its Subsidiaries to (a) deposit all proceeds from CARES Act Indebtedness into a segregated Deposit Account (the "**CARES Act Account**"), (b) use funds from the CARES Act Account solely for CARES Act Permitted Purposes and before using any other cash on hand to pay expenses that are CARES Act Permitted Purposes and (c) apply for, and submit all documents required to obtain, forgiveness or other relief of all CARES Act Indebtedness that is eligible for forgiveness by all deadlines required by the CARES Act. Each Note Party represents and agrees that it has determined in good faith, after consultation with counsel on all matters related to CARES Act Indebtedness, that it is eligible to apply as a borrower under the SBA's Paycheck Protection Program, including the application of SBA affiliation rules, and has taken into consideration in making such determination the Interim Final Rule and all FAQs issued by the SBA, including determining that the current economic uncertainty makes the loan request necessary to support its ongoing operations taking into account its current business activity and its ability to access other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to the business. All applications, documents and other information submitted to any Governmental Authority with respect to the CARES Act Indebtedness shall be true and correct.

No Purchaser or any of its Affiliates is deemed an "affiliate" of any Note Party or any of its Subsidiaries for any purpose related to the CARES Act Indebtedness, including the eligibility criteria with respect thereto. Each Note Party acknowledges and agrees that (x) it has consulted its own legal and financial advisors with respect to all matters related to CARES Act Indebtedness (including eligibility criteria) and the CARES Act, (y) it is responsible for making its own independent judgment with respect to CARES Act Indebtedness and the process leading thereto, and (z) it has not relied on Collateral Agent or any Purchaser or any of their affiliates with respect to any of such matters. Each Note Party agrees that it will not make any claim that Collateral Agent or any Purchaser or any of their affiliates have rendered advisory services of any nature or respect in connection with any CARES Act Indebtedness, the CARES Act or the process leading thereto.

5.17 Rental Fleet. From the date that is the nine (9) month anniversary of the Additional Notes Closing Date, subject to the satisfaction, or waiver in accordance with Section 10.5, the Company shall:

(a) Expand its Rental Fleet by at least:

(i) 6.25 MW by the 9 month anniversary of the Additional Notes Closing Date; and

(ii) 12.50 MW by the 18 month anniversary of the Additional Notes Closing Date;

(b) As of the last day of each month, maintain 50% Utilization of its Rental Fleet for the six (6) month period ending on such date; and

(c) Maintain no more than 60% Utilization of the Rental Fleet, with respect to any single counterparty.

SECTION 6 NEGATIVE COVENANTS

Each Note Party covenants and agrees that until Payment in Full of all Obligations, such Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 Indebtedness. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Guarantor Subsidiary to Company or to any other Guarantor Subsidiary, or of Company to any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be evidenced by the Intercompany Note, and shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement, (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of the Intercompany Note, and (iii) any payment by any such Guarantor Subsidiary under

any guaranty of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Guarantor Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made;

(c) [Reserved];

(d) Indebtedness incurred by Company or any of its Subsidiaries arising from agreements providing for customary indemnification or from customary guaranties or letters of credit, surety bonds or performance bonds securing the performance of Company or any such Subsidiary pursuant to such agreements in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of Company or any of its Subsidiaries;

(e) Indebtedness that may be deemed to exist pursuant to any performance, surety, appeal or similar bonds or statutory obligations incurred in the ordinary course of business, and guarantee obligations in respect of any such Indebtedness;

(f) Indebtedness in respect of treasury, depositary, cash management and netting services, automatic clearinghouse arrangements, overdraft protections , employee credit card programs and similar arrangements or otherwise arising in connection with securities accounts and deposit accounts , in each case, in the ordinary course of business;

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Company and its Subsidiaries;

(h) guaranties by Company of Indebtedness of a Guarantor Subsidiary or guaranties by a Subsidiary of Company of Indebtedness of Company or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; provided, that if the Indebtedness that is being guaranteed is unsecured and/or subordinate to the Obligations (in payment or Lien priority), then such guaranties shall also be unsecured and/or subordinated to the Obligations to the same extent as such guaranteed Indebtedness;

(i) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to the Purchasers than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) Indebtedness in an aggregate amount (taken together with the amount of any other Indebtedness secured by Liens pursuant to Section 6.2(o)) not to exceed at any time

outstanding an aggregate principal amount equal to (A) $500,000 minus (B) the aggregate outstanding principal amount of all CARES Act Indebtedness (but in no event less than zero).

(k) obligations under Hedge Agreements which are not for speculative purposes;

(l) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(m) bankers' acceptances, bank guarantees, letters of credit, warehouse receipt or similar facilities, in each case incurred or issued, as applicable, in the ordinary course of business ;

(n) Indebtedness owed to (including obligations in respect of letters of credit for the benefit of) any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to Company and its Subsidiaries, pursuant to reimbursement or indemnification obligations to such Person;

(o) prepaid or deferred revenue, deferred tax liabilities, liabilities associated with customer prepayments and deposits and other similar accrued obligations (including accruals for payroll and other operating expenses accrued in the ordinary course of business) and customary obligations under employment agreements and deferred compensation, in each case, incurred in the ordinary course of business; and

(p) unsecured Indebtedness incurred by Company or any of its Subsidiaries incurred pursuant to paragraph 36 of Section 7(a) of the SBA and Section 1102 of the CARES Act (the "**CARES Act Indebtedness**"), when taken together with the amount of Indebtedness outstanding under Section 6.1(j),in an aggregate outstanding amount not to exceed $10,000,000 (or such greater amount as the Requisite Purchasers agree in writing in their sole discretion), so long as (x) the proceeds thereof are applied in accordance with the CARES Act Permitted Purposes and (y) CARES Act Indebtedness is not incurred under any other clause of this Section 6.1.

6.2 Liens. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or any income, profits, or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits, or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Note Document;

(b) Liens for Taxes if obligations with respect to such Taxes are not yet due or are being contested in good faith by appropriate proceedings promptly instituted and diligently

conducted and adequate reserves have been made in accordance with GAAP so long as the aggregate amount of such Taxes does not exceed $500,000 at any time outstanding;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case that do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries and that, in the aggregate for any parcel of real property subject thereto, do not materially detract from the value of such parcel

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any customary cash earnest money deposits made by Company or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by Company or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Company or such Subsidiary;

(l) Liens described in Schedule 6.2;

(m) Liens securing Indebtedness permitted pursuant to Section 6.1(j);

(n) Liens on Cash collateral supporting letters of credit, banking products and other credit support obligations not to exceed $250,000 in the aggregate at any time outstanding; and

(o) other Liens on assets that secure Indebtedness in an aggregate amount (taken together with the amount of any Indebtedness incurred pursuant to Section 6.1(j) that is not secured by a Lien) not to exceed $500,000 at any time.

Notwithstanding anything in this Section 6.2 to the contrary, in no event shall any obligations of any Note Party under any Hedge Agreement be secured by any Lien.

6.3 Equitable Lien. If any Note Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Purchasers to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4 No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other disposition permitted under Section 6.9, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (c) agreements with respect to Liens permitted pursuant to Section 6.2 (m) (provided that such restrictions are limited to the property or assets secured by such Liens), no Note Party shall enter into or permit any of its Subsidiaries to enter into any agreement prohibiting, or triggering any requirement for equitable and ratable sharing of Liens or any similar obligations upon, the creation or assumption of any Lien upon any Note Party's properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

6.5 Restricted Junior Payments. No Note Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that any Subsidiary of Company may declare and pay dividends or make other distributions to Company or any Note Party that is a Wholly-Owned Guarantor Subsidiary.

Notwithstanding anything in this Section 6.5 to the contrary, no amount shall be permitted to be distributed by any Note Party to pay, or otherwise in connection with, any Tax resulting from the cancellation or discharge of Indebtedness.

6.6 Restrictions on Subsidiary Distributions. Except as provided herein, no Note Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (c) make Note or advances to Company or any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or any other Subsidiary of Company, in each case, other than restrictions (i) in agreements evidencing any purchase money Indebtedness permitted by Section 6.1(j) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement.

6.7 Investments. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment (including if made as an Acquisition) in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date in any Wholly-Owned Guarantor Subsidiaries of Company;

(c) Investments (i) in any Securities voluntarily accepted in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Company and its Subsidiaries;

(d) intercompany loan to the extent permitted under Section 6.1(b);

(e) Investments in Company or any of its Guarantor Subsidiaries for purposes of making Consolidated Capital Expenditures permitted by Section 6.8(e) in respect of fixed assets directly owned by Company or any of its Guarantor Subsidiaries;

(f) loans and advances to employees of Company and its Subsidiaries (i) made in the ordinary course of business and described on Schedule 6.7, and (ii) any refinancings of such loan after the Closing Date in an aggregate principal amount not to exceed $250,000 at any time outstanding;

(g) Permitted Acquisitions, the aggregate Acquisition Consideration for which constitutes less than $2,500,000 in the aggregate from the Closing Date to the date of determination;

(h) Investments described in Schedule 6.7; and

(i) Investments made by any Note Party or any of its Subsidiaries in another Note Party or any of its Subsidiaries directly from the proceeds of any CARES Act Indebtedness so long as such proceeds are applied by the Note Parties and their Subsidiaries for the CARES Act Permitted Purposes.

Notwithstanding anything in this Section 6.7 to the contrary, in no event shall any Note Party make any Investment that results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.5.

6.8 Financial Covenants.

(a) Consolidated Adjusted EBITDA. Company shall not permit Consolidated Adjusted EBITDA as at the end of any Fiscal Quarter for the four Fiscal Quarter period then ended to be less than the correlative amount indicated below (with corresponding calendar quarters also included as reference):

Fiscal Quarter Ending	Consolidated Adjusted EBITDA (in thousands)
September 30, 2020	($11,179)
December 31, 2020	($10,858)
March 31, 2021	($10,970)
June 30, 2021	($10,888)
September 30, 2021	($11,401)
December 31, 2021	($11,038)
March 31, 2022	($11,347)
June 30, 2022	($10,788)
September 30, 2022	($10,573)
December 31, 2022	($10,527)
March 31, 2023	($10,694)
June 30, 2023	($10,274)

(b) Minimum Consolidated Liquidity. Company shall not permit Consolidated Liquidity on any date to be less than $9,000,000.

6.9 Fundamental Changes; Disposition of Assets; Acquisitions. No Note Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation (including through a plan of division), or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or

mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or make any Acquisition, except:

(a) any Subsidiary of Company may be merged with or into Company or any Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Guarantor Subsidiary; provided, in the case of such a merger involving Company, Company shall be the continuing or surviving Person, and in the case of any other such merger, a Wholly-Owned Guarantor Subsidiary shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (i) are less than $1,000,000 with respect to any single Asset Sale or series of related Asset Sales, and (ii) when aggregated with the proceeds of all other Asset Sales made within the trailing twelve month period, are less than $2,500,000; provided (1) the proceeds received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the Board of Directors of Company), (2) no less than 90% thereof shall consist of Cash paid upon the closing of each applicable Asset Sale, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.13(a);

(d) sales and other disposals of used, surplus, obsolete or worn out property;

(e) Acquisitions consisting of Investments made in accordance with Section 6.7;

(f) the granting of Permitted Liens;

(g) the licensing or sublicensing, on intellectual property in the ordinary course of business to the extent that they do not materially interfere with the ordinary conduct of business of Company or any Subsidiary;

(h) dispositions of Cash and Cash Equivalents in the ordinary course of business in a manner not otherwise prohibited by this Agreement or the other Note Documents;

(i) the lapse or abandonment of any registrations or applications for registration of any immaterial intellectual property, so long as such lapse or abandonment is not adverse to the interests of Collateral Agent and the Purchasers;

(j) the surrender or waiver of litigation rights or settlement, release or surrender of tort or other litigation claims of any kind in the ordinary course of business;

(k) the discount of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business; and

(l) any Rental Unit Sales.

6.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Note Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify Directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Note Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify Directors if required by applicable law.

6.11 Sales and Lease-Backs. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, that such Note Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Company or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by such Note Party to any Person (other than Company or any of its Subsidiaries) in connection with such lease.

6.12 Transactions with Shareholders and Affiliates. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 10% or more of any class of Capital Stock of Company or any of its Subsidiaries (or any Affiliate of such holder) or with any Affiliate of Company or of any such holder; provided, however, that the Note Parties and their Subsidiaries may enter into or permit to exist any such transaction if either (i) Requisite Purchasers have consented thereto in writing prior to the consummation thereof or (ii) the terms of such transaction are not less favorable to Company or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further; provided, that the foregoing restrictions shall not apply to (a) any transaction among Company and any Wholly-Owned Guarantor Subsidiary or any of them; (b) reasonable and customary fees paid to members of the Board of Directors of Company or any of its Subsidiaries; (c) reasonable and customary compensation arrangements for officers and other employees of Company or any of its Subsidiaries entered into in the ordinary course of business; (d) transactions described in Schedule 6.12; and (e) the issuance of the Warrants and the exercise of any and all related rights by the Warrant Holder in connection therewith. Company shall disclose in writing each transaction with any holder of 10% or more of any class of Capital Stock of Company or any of its Subsidiaries to Purchasers.

6.13 Conduct of Business. From and after the Closing Date, no Note Party shall, nor shall it permit any of its Subsidiaries to, engage in (i) any business other than (A) the businesses engaged in by such Note Party on the Closing Date or any other businesses that is reasonably related, complementary or ancillary thereto, and (B) such other lines of business as may be consented to by Requisite Purchasers, or (ii) any business or activities that conflict with Section 4.26(a).

6.14 [Reserved].

6.15 Compliance with Reporting Requirements. Company shall comply with the Securities Act, Exchange Act, the rules and regulations promulgated thereunder and each other law, rule and regulation applicable to Company due to its status as a publicly traded company. Company shall at all times maintain systems of internal controls and corporate governance standards consistent with best practices for a publicly traded company of its size. Without limiting the foregoing, Company shall ensure that all filings with the Securities and Exchange Commission required under the Securities Act, Exchange Act or the rules and regulations thereunder are made on or prior to the date required thereunder.

6.16 Fiscal Year; Accounting Policies. No Note Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from March 31 or make any change in its accounting policies that is not required under GAAP.

6.17 Deposit Accounts and Securities Accounts. No Note Party will establish or maintain a Deposit Account or a Securities Account that is not a Controlled Account, deposit proceeds in a Deposit Account that is not a Controlled Account or deposit, acquire, or otherwise carry any security entitlement or commodity contract in a Securities Account that is not a Controlled Account , in each case, (a) on or after the 30th day following the Closing Date, or solely in the case of any such account that is acquired pursuant to a Permitted Acquisition or other permitted Investment, the 30th day following the acquisition of such Deposit Account or Securities Account and (b) other than with respect to Excluded Accounts.

6.18 Amendments to Organizational Agreements and Material Contracts. No Note Party shall (a) amend or permit any amendments to any Note Party's or any of its Subsidiaries' Organizational Documents; or (b) amend, terminate, or waive or permit any amendment, termination, or waiver of any provision of, any Material Contract or Material Indebtedness if such amendment, termination, or waiver would be adverse to the Purchasers.

6.19 Prepayments of Certain Indebtedness. No Note Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness of any Note Party or any of its Subsidiaries for borrowed money prior to its scheduled maturity (or the date when such payments are due), other than (i) the Obligations, (ii) Capital Leases permitted hereunder and (iii) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.9. In addition, in no event shall any Note Party or any of its Affiliates directly or indirectly purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any CARES Act Indebtedness prior to its scheduled maturity date as required under the CARES Act, other (a) than the cancellation and forgiveness of such Indebtedness in accordance with the CARES Act, (b) any repayment with the proceeds of CARES Act Indebtedness and (c) to the extent that any CARES Act Indebtedness is not Eligible CARES Act Indebtedness, any repayment on or prior to May 14, 2020 with the proceeds of CARES Act Indebtedness or cash on hand.

6.20 Use of Proceeds. No Note Party shall use the proceeds from the issuance and sale of the Notes except as set forth in Section 2.5.

6.21 Equity Issuances. No Note Party shall, nor shall it permit any of its Subsidiaries to, issue any Capital Stock (other than any issuance the proceeds of which are used for the Payment in Full of the Obligations (including any Yield Maintenance Premium) and other than in connection with the exercise of the Warrants) if such issuance would cause the Section 382 Ownership Shift to exceed (x) until April 1, 2021, 42.0% and (y) thereafter, 40%; provided that such threshold shall be increased to 45.0% if Company amends its Organizational Documents to the satisfaction of Requisite Purchasers such that (i) any transfer of Capital Stock of Company by a "5% shareholder" (as defined under Section 382 of the Code) that would create an "ownership change" within the meaning of Section 382(g)(2) of the Code shall be null and void *ab initio* unless specifically approved in writing by Company's Board of Directors, and (ii) so long as any Obligations are outstanding (other than indemnification and reimbursement claims for which no claims been asserted), Company's Board of Directors may not provide such approval without the prior written approval of Requisite Purchasers.

6.22 Additional Matters. Except as otherwise expressly permitted by this Agreement, no Note Party shall, nor shall it permit any of its Subsidiaries to, do any of the following actions without Requisite Purchasers' prior written consent (in their sole discretion): (i) permit the occurrence of any Sale Transaction, (ii) permit the occurrence of any Liquidation Event, (iii) select or change Company's independent auditor to any entity other than an Acceptable Auditor, or (iv) reclassify any debt securities or Capital Stock or undertake any other corporate restructuring or reorganization, including any alteration of the rights, preferences or privileges of Capital Stock (excluding any stock splits).

SECTION 7 GUARANTY

7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2 and any limitations set forth in the definition of the term Guarantor, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to each Beneficiary the due and punctual Payment in Full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "Funding Guarantor") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent

transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right that any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest that, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than Payment in Full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Collateral Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor)

of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid. Without limiting the generality of the foregoing, if any Beneficiary is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Note Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Note Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Note Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security

for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to depart from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Note Documents, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Note Document, or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Note Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Company or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral that secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims that Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, that may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than Payment in Full of all Obligations; (c) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any

of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

7.6 Guarantors' Rights of Subrogation, Contribution, Etc. Until the Guaranteed Obligations shall have been Paid in Full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any other Note Party with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any other Note Party, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been Paid in Full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against any Note Party, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been Paid in Full, such amount shall be held in trust for the benefit of Beneficiaries and shall forthwith be paid over to of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7 Subordination of Other Obligations. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any Distribution collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the benefit of Beneficiaries and shall forthwith be paid over to Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof. For purposes of this Section 7.7, "Distribution" means, with respect to any Indebtedness subordinated pursuant to this Section 7.7, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such Indebtedness, (b) any redemption of or purchase or other acquisition of such Indebtedness from the Obligee Guarantor by any other Person, and (c) the granting of any lien or security interest to or for the benefit of the Obligee Guarantor or any other Person in or upon any property of any Person to secure such Indebtedness.

7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been Paid in Full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9 Authority of Guarantors or Company. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, Directors or any agents acting or purporting to act on behalf of any of them.

7.10 Financial Condition of Company. Any credit extension by Purchasers to Company pursuant to this Agreement or continued from time to time, without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Note Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Requisite Purchasers, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense that Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations that are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order that may relieve any Note Party of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Collateral Agent, or allow the claim of Collateral Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Note Party, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments that are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12 Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale (provided that Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of Company certifying that such transaction is permitted pursuant to the Note Documents, execute and deliver any documentation reasonably requested by Company in writing to further evidence or reflect any such release, all at the expense of Company).

SECTION 8 EVENTS OF DEFAULT

8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) the principal of and premium, if any, on any Note when due whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Note, by notice of voluntary prepayment, by mandatory prepayment or otherwise when due or (iii) any interest on any Note or any fee or any other amount due hereunder , in each case, within one (1) Business Day after the due when due hereunder.

(b) Default in Other Agreements. (i) Failure of any Note Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Material Indebtedness, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by any Note Party or any of its Subsidiaries with respect to any other term of (1) one or more items of Material Indebtedness, or (2) any loan agreement, mortgage, note, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Material Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, that Material Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or other redemption) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; (iii) after May 14, 2020, the principal amount of outstanding CARES Act Indebtedness of the Note Parties and their Subsidiaries exceeds $1,950,000 or (iv) more than 10% of the outstanding CARES Act Indebtedness of the Note Parties and their Subsidiaries does not constitute Eligible CARES Act Indebtedness (any such amount in excess of 10%, the "Excess CARES Act Indebtedness Amount"), unless (and only for so long as) (x) the Cash balance in the CARES Act Account is

equal to or greater than the Excess CARES Act Indebtedness Amount or (y) the Excess CARES Act Indebtedness Amount has been repaid in compliance with Section 6.19 hereof; or

(c) Breach of Certain Covenants. (i) Failure of any Note Party to perform or comply with any term or condition contained in Section 5.1, Section 5.2, Section 5.3, Section 5.4, Section 5.5, Section 5.6, Section 5.8, Section 5.10, Section 5.11, Section 5.14(c), Section 5.15, Section 5.16 or Section 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Note Party in any Note Document or in any statement or certificate at any time given by any Note Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false or misleading in any material respect as of the date made or deemed made; provided that such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof; or

(e) Other Defaults Under Note Documents. Any Note Party shall default in the performance of or compliance with any term contained herein or any of the other Note Documents, other than any such term referred to in any other paragraph of this Section 8.1 or consisting of a condition or status that is expressly required to exist or be satisfied at a specific time, and such term has not been fully and permanently performed or complied with within thirty days after the earlier of (i) an officer of such Note Party becoming aware of such default, or (ii) receipt by Company of notice from any Purchaser of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under any Debtor Relief Law, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or any of its Subsidiaries under any Debtor Relief Law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Company or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such

debts become due; or the Board of Directors of Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $250,000 or (ii) in the aggregate at any time an amount in excess of $500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Note Party or any of its Subsidiaries decreeing the dissolution or split up of such Note Party or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events that individually or in the aggregate results in or might reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $500,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Note Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the Payment in Full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Payment in Full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral with a value in excess of $50,000 in the aggregate purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Note Party shall contest the validity or enforceability of any Note Document in writing or deny in writing that it has any further liability, including with respect to future advances by Purchasers, under any Note Document to which it is a party or shall contest the validity of or perfection of any Lien in any Collateral granted or purported to be granted pursuant to the Collateral Documents; or

(m) Ownership Changes. Company undergoes an “ownership change” within the meaning of Section 382 of the Code as determined by Requisite Purchasers in good faith after consultation with Company, other than as a direct result of any exercise of the Warrants.

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to Company by Requisite Purchasers, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party: (I) the unpaid principal amount of and accrued interest and premium on the Notes and (II) all other Obligations; (B) Requisite Purchasers may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents; and (C) Collateral Agent may enforce any other rights and remedies available to it under any Note Document or under applicable law.

8.2 Company's Right to Cure . For purposes of determining whether an Event of Default has occurred under the financial covenant set forth in Section 6.8(a) (the "**Specified Financial Covenant**"), Company may make a prepayment of the Notes pursuant to Section 2.12 in an amount equal to the amount that the required level for Consolidated Adjusted EBITDA for such Fiscal Quarter exceeds Consolidated Adjusted EBITDA for such Fiscal Quarter (any such prepayment, a "**Specified Debt Prepayment**"), which prepayment may be made after the last day of the fiscal reporting period for the Specified Financial Covenant and on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered for such fiscal reporting period under Section 5.1(b) (the "**Specified Debt Cure Deadline**"); provided that each of the following requirements are satisfied:

(i) no more than five Specified Debt Prepayments may be made during the term of this Agreement; and

(ii) a Specified Debt Prepayment shall not be deemed to increase Consolidated Adjusted EBITDA for any purpose other than such for purposes of determining compliance with the Specified Financial Covenant for subsequent periods that include such Fiscal Quarter in which the Specified Debt Prepayment was made.

Until the expiration of the Cure Deadline in respect of any prospective default with respect to the Specified Financial Covenant, neither Collateral Agent or any Purchaser shall not be permitted to (and shall not) accelerate any Notes held by them or exercise any rights or remedies against any Note Party or any of the Collateral on the basis of a failure to comply with the requirements of the Specified Financial Covenant.

Upon satisfying the requirements in the previous sentence, the Note Parties shall be deemed to have satisfied the requirements of such Specified Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith on such date of determination.

SECTION 9 COLLATERAL AGENT

9.1 Appointment of Collateral Agent. GSSLG is hereby appointed Collateral Agent hereunder and under the other Note Documents and each Purchaser hereby authorizes GSSLG, in such capacity, to act as Collateral Agent in accordance with the terms hereof and the other Note Documents. Collateral Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Note Documents, as applicable. The provisions of this

Section 9 are solely for the benefit of Collateral Agent and Purchasers and no Note Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Collateral Agent shall act solely as an agent of Purchasers and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any of its Subsidiaries. It is understood and agreed that the use of the term "agent" herein or in any other Note Documents (or any other similar term) with reference to Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.2 Powers and Duties. Each Purchaser irrevocably authorizes Collateral Agent to take such action on such Purchaser's behalf and to exercise such powers, rights and remedies hereunder and under the other Note Documents as are specifically delegated or granted to Collateral Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. In the event that any obligations are permitted to be incurred and subordinated in right of payment to the Obligations hereunder and/or are permitted to be secured by Liens on all or a portion of the Collateral, each Purchaser authorizes Collateral Agent, as applicable, to enter into intercreditor agreements, subordination agreements and amendments to the Collateral Documents to reflect such arrangements on terms that are acceptable to Collateral Agent, in its sole discretion. Collateral Agent shall have only those duties and responsibilities that are expressly specified herein and the other Note Documents. Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Collateral Agent shall not have, by reason hereof, any of the other Note Documents, a fiduciary relationship in respect of any Purchaser or any other Person; and nothing herein or any of the other Note Documents, expressed or implied, is intended to or shall be so construed as to impose upon Collateral Agent any obligations in respect hereof or any of the other Note Documents except as expressly set forth herein or therein.

9.3 General Immunity.

(a) No Responsibility for Certain Matters. Collateral Agent shall not be responsible to any Purchaser for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Note Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Collateral Agent to Purchasers or by or on behalf of any Note Party to Collateral Agent or any Purchaser in connection with the Note Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Note Party or any other Person liable for the payment of any Obligations, nor shall Collateral Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Note Documents or as to the use of the proceeds of the Notes or as to the existence or possible existence of any Event of Default or Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in Section 3 or elsewhere herein (other than confirm receipt of items expressly required to be delivered to Collateral Agent) or to inspect the properties, books or records of Company or any of its Subsidiaries or to make any disclosures with respect to the foregoing.

(b) Exculpatory Provisions. Neither Collateral Agent nor any of its officers, partners, Directors, employees or agents shall be liable to Purchasers for any action taken or omitted by Collateral Agent (i) under or in connection with any of the Note Documents or (ii) with the consent or at the request of Requisite Purchasers (or, if so specified by this Agreement, all Purchasers or any other instructing group of Purchasers specified by this Agreement), in each case except to the extent caused by Collateral Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Collateral Agent shall not, except as expressly set forth herein and in the other Note Documents, have any duty to disclose or be liable for the failure to disclose, any information relating to Company or any of its Affiliates that is communicated to or obtained by Collateral Agent or any of its Affiliates in any capacity. Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Note Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Collateral Agent shall have received instructions in respect thereof from Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Purchasers (or such other Purchasers, as the case may be), Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability, may be in violation of the automatic stay under any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Purchaser shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or (where so instructed) refraining from acting hereunder or any of the other Note Documents in accordance with the instructions of Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Note Document by or through any one or more sub-agents appointed by Collateral Agent. Such appointing Collateral 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 Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any Affiliates of Collateral Agent and shall apply to their respective activities in connection with activities as Collateral Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Collateral 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 Note Parties and the Purchasers, (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 applicable Agent and not to any Note Party, Purchaser or any other Person and no Note Party, Purchaser or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Notice of Default or Event of Default. Collateral Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to Collateral Agent by a Note Party or a Purchaser. In the event that Collateral Agent shall receive such a notice, Collateral Agent will endeavor to give notice thereof to the Purchasers; provided, that failure to give such notice shall not result in any liability on the part of Collateral Agent.

9.4 Collateral Agent Entitled to Act as Purchaser. 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, Collateral Agent in its individual capacity as a Purchaser hereunder. With respect to its participation in the Notes, Collateral Agent shall have the same rights and powers hereunder as any other Purchaser and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Purchaser" shall, unless the context clearly otherwise indicates, include Collateral Agent in its individual capacity. Collateral Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Purchasers. The Purchasers acknowledge that pursuant to such activities, Collateral Agent and its Affiliates may receive information regarding any Note Party or any Affiliate of any Note Party (including information that may be subject to confidentiality obligations in favor of such Note Party or such Affiliate) and acknowledge that Collateral Agent and its Affiliates shall be under no obligation to provide such information to them.

9.5 [Re served].

9.6 Right to Indemnity. Each Purchaser, in proportion to its Pro Rata Share, severally agrees to indemnify Collateral Agent, its Affiliates and their respective officers, partners, directors, trustees, employees and agents of Collateral Agent (each, an **"Indemnitee Agent Party"**), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Note Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Note Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Note Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF**

THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY; provided, no Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Purchaser's Pro Rata Share thereof; provided, further, this sentence shall not be deemed to require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence

9.7 Successor Collateral Agent.

(a) [Reserved]

(b) Collateral Agent may resign at any time by giving prior written notice thereof to Purchasers and the Note Parties. Requisite Purchasers shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Company and Collateral Agent's resignation shall become effective on the earliest of (i) thirty days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Company and Requisite Purchasers or (iii) such other date, if any, agreed to by Requisite Purchasers. Until a successor Collateral Agent is so appointed by Requisite Purchasers, any collateral security held by Collateral Agent for the benefit of the Purchasers under any of the Note Documents shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Collateral Agent under this Agreement and the Collateral Documents, and the resigning or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such resigning or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any resigning or removed Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was Collateral Agent hereunder.

(c) [Reserved].

(d) Notwithstanding anything herein to the contrary, Collateral Agent may assign its rights and duties as Collateral Agent hereunder to an Affiliate of GSSLG without the prior written consent of, or prior written notice to, Company or the Purchasers; provided, that Company and the Purchasers may deem and treat such assigning Collateral Agent as Collateral Agent for all purposes hereof, unless and until Collateral Agent provides written notice to Company and the Purchasers of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Collateral Agent hereunder and under the other Note Documents.

9.8 Collateral Documents and Guaranty.

(a) Agent under Collateral Documents and Guaranty. Each Purchaser hereby further authorizes Collateral Agent on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Collateral Agent may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented. Upon request by Collateral Agent at any time, the Purchasers will confirm in writing Collateral Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.8. Upon the reasonable request of Company and/or Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of Company certifying that such transaction is permitted pursuant to the Note Documents, execute and deliver any such release documentation reasonably requested by Company in connection with such permitted releases as described above, all at the expense of Company.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Note Documents to the contrary notwithstanding, Company, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the other Note Documents may be exercised solely by Collateral Agent for the benefit of Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent for the benefit of Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii), or otherwise of the Bankruptcy Code), Collateral Agent or any Purchaser may be the purchaser of any or all of such Collateral at any such sale or disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Purchaser or Purchasers in its or their respective individual capacities unless Requisite Purchasers shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement

or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) [Reserved].

(d) Release of Collateral and Guarantees, Termination of Note Documents. Notwithstanding anything to the contrary contained herein or any other Note Document, when all Obligations have been Paid in Full, upon request of Company, Collateral Agent shall take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Note Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) No Duty. Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Note Party in connection therewith, nor shall Collateral Agent be responsible or liable to the Purchasers for any failure to monitor or maintain any portion of the Collateral.

(f) Agency for Perfection. Collateral Agent and each Purchaser hereby appoints Collateral Agent and each other Purchaser as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a Secured Party with possession or control has priority over the security interest of another Secured Party) and Collateral Agent and each Purchaser hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the other Secured Parties, except as otherwise expressly provided in this Agreement. Should any Purchaser obtain possession or control of any such Collateral, such Purchaser shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent's instructions. Each Note Party by its execution and delivery of this Agreement hereby consents to the foregoing.

9.9 [**Reserved**].

9.10 Collateral Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Note Party, Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any demand shall have been made on Company) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its respective agents and counsel and all other amounts due the Purchasers and Collateral Agent under Sections 2.10, 10.2 and 10.3 allowed in such judicial proceeding); and

(c) 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 Purchaser to make such payments to Collateral Agent and, in the event that Collateral Agent shall consent to the making of such payments directly to the Purchasers, to pay to Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its agents and counsel, and any other amounts due Collateral Agent under Sections 2.10, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Collateral Agent, its agents and counsel, and any other amounts due Collateral Agent under Sections 2.10, 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Purchasers may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing contained in this Section 9.10 shall be deemed to authorize Collateral Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Purchaser or to authorize Collateral Agent to vote in respect of the claim of any Purchaser in any such proceeding.

SECTION 10 MISCELLANEOUS

10.1 Notices.

(a) Notices Generally**.** Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Note Party or Collateral Agent, shall be sent to such Person's mailing address as set forth on Appendix B or in the other relevant Note Document, and in the case of any Purchaser, the mailing address as indicated on Appendix B or otherwise indicated to Company in writing. Each notice hereunder shall be in writing and may be personally served or sent by facsimile (excluding any notices to Collateral Agent in its capacity as such) or U.S. mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the U.S. mail with postage prepaid and properly addressed; provided, no notice to Collateral Agent in its capacity as

such shall be effective until received by Collateral Agent; provided, further, any such notice or other communication shall, at the request of Collateral Agent, be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Collateral Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to Collateral Agent, Purchasers and any Note Party hereunder may be delivered or furnished by other electronic communication (including e mail and Internet or intranet websites, including Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the **"Platform"**)) pursuant to procedures approved by Requisite Purchasers in their sole discretion, provided that, notwithstanding the foregoing, in no event will notices by electronic communication be effective to Collateral Agent, any Purchaser pursuant to Section 2 if any such Person has notified Company that it is incapable of receiving notices under such Section 2 by electronic communication. Collateral Agent may, in its sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. In the case of any notices by electronic communication permitted in accordance with this Agreement, unless any Purchaser otherwise prescribes, (A) any notices and other communications permitted to be sent to an e-mail address shall be delivered during normal business hours and deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment, but excluding any automatic reply to such e-mail), except that, if such notice or other communication is not sent prior to noon, local time at the location of the recipient, then such notice or communication shall be deemed not to have been received until the opening of business on the next Business Day for the recipient, at the earliest, and (B) notices or communications permitted to be posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and clearly identifying an accessible website address therefor.

(ii) Each Note Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of Collateral Agent or any of its officers, Directors, employees, agents, advisors or representatives (the "Agent Affiliates") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved

Electronic Communications. In no event shall the Agent Affiliates have any liability to any of the Note Parties, any Purchaser or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Note Party's or Collateral Agent's transmission of communications through the Platform. Each party hereto agrees that Collateral Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform.

(iv) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

10.2 Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Note Parties agree to pay promptly (a) all of Purchasers' actual and reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Note Documents and any consents, amendments, waivers or other modifications thereto; (b) all of Collateral Agent's costs of furnishing all opinions by counsel for Company and the other Note Parties; (c) all the reasonable and documented fees, expenses and disbursements of counsel to Collateral Agent in connection with the negotiation, preparation, execution and administration of the Note Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (d) all the actual costs and reasonable and documented expenses of creating, perfecting, recording, maintaining, and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented fees, expenses and disbursements of counsel to Collateral Agent and of counsel providing any opinions that Collateral Agent or Requisite Purchasers may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) Collateral Agent's actual costs and reasonable and documented fees, expenses, and disbursements of any auditors, accountants, consultants or appraisers'; (f) all the actual costs and reasonable and documented expenses (including the reasonable and documented fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable and documented costs and expenses incurred by Agent in connection with the transactions contemplated by the Note Documents and any consents, amendments, waivers or other modifications thereto; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable and documented attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Collateral Agent and Purchasers in enforcing or preparing for enforcement of any Obligations of or in collecting or preparing to collect any payments due from any Note Party hereunder or under the other Note Documents by reason of such Default or Event of Default (including in connection with any actual or prospective sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any actual or prospective refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or

pursuant to or in contemplation of any insolvency or bankruptcy cases or proceedings, including the engagement of a restructuring advisor or consultant satisfactory to Requisite Purchasers in their sole discretion.

10.3 Indemnity and Related Reimbursement.

(a) In the event that an Indemnitee becomes involved in any capacity in any action, proceeding or investigation brought by or against any Person relating to or arising out of any Indemnified Liabilities and whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees that on demand it will reimburse such Indemnitee for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith.

(b) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Indemnitee, from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided, no Note Party shall have any obligation to any Indemnitee under this Section 10.3(b) with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise directly from the gross negligence or willful misconduct of such Indemnitee, in each case as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Note Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(c) To the fullest extent permitted by applicable law, no Note Party shall assert, and each Note Party hereby waives, any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company hereby waives, releases and agrees not to sue upon any such claim or such damages whether or not accrued and whether or not known or suspected to exist in its favor.

(d) Each Note Party also agrees that no Indemnitee will have any liability to any Note Party or any person asserting claims on behalf of or in right of any Note Party or any other Person in connection with or as a result of this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Note, or the use of the proceeds thereof, or any act or omission or event occurring in connection therewith, in each case, except in the case of any Note Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such

Note Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Purchaser in performing its purchase obligations under this Agreement; provided, however, that in no event will any such Purchaser or Collateral Agent have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Purchaser's, or Agent's, or their respective Affiliates', Directors', employees', attorneys', agents' or sub-agents' activities arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Purchaser and its Affiliates are each hereby authorized by each Note Party at any time or from time to time subject to the consent of Requisite Purchasers (such consent not to be unreasonably withheld or delayed), without notice to any Note Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other obligations or Indebtedness at any time held or owing by such Purchaser to or for the credit or the account of any Note Party against and on account of the Obligations of any Note Party to such Purchaser hereunder and under the other Note Documents, including all claims of any nature or description arising out of or connected hereto and participations therein or with any other Note Document, irrespective of whether or not (a) such Purchaser shall have made any demand hereunder or (b) the principal of or the interest on the Notes or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. The rights of each Purchaser and its Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of set off) that such Purchaser or its Affiliates may otherwise have.

10.5 Amendments and Waivers.

(a) Requisite Purchasers' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Note Documents (excluding the Fee Letter), or consent to any departure by any Note Party therefrom, shall in any event be effective without the written concurrence of Requisite Purchasers.

(b) Affected Purchasers' Consent. Subject to Section 10.5(d), without the written consent of each Purchaser that would be directly and adversely affected thereby, no amendment, modification, termination, waiver or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Note (other than any waiver of any increase in the interest rate applicable to any Note pursuant to Section 2.9) or any fee or premium payable under this Agreement;

(iv) waive or extend the time for payment of any such interest, fees, or premiums;

(v) reduce or forgive the principal amount of any Note;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Purchasers or any specific Purchasers is required;

(vii) amend the definition of "Requisite Purchasers" or "Pro Rata Share"; provided, with the consent of Requisite Purchasers, additional issuances and purchases of notes pursuant to this Agreement (if any) may be included in the determination of "Requisite Purchasers" or "Pro Rata Share" on substantially the same basis as the Commitments and the Notes are included on the Additional Notes Closing Date;

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except (A) as expressly provided in the Note Documents on the Closing Date, (B) in connection with a "credit bid" undertaken by Collateral Agent with the consent or at the direction of Requisite Purchasers pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other provision of the Bankruptcy Code or any other Debtor Relief Law, or (C) in connection with any other sale or disposition of assets in connection with an enforcement action with respect to the Collateral that is permitted pursuant to the Note Documents and consented to or directed by Requisite Purchasers; or

(ix) consent to the assignment or transfer by any Note Party of any of its rights and obligations under any Note Document, except as expressly provided in any Note Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Note Documents (excluding the Fee Letter), or consent to any departure by any Note Party therefrom, shall:

(i) amend, modify, or waive any provision of this Agreement or the Pledge and Security Agreement so as to alter the ratable treatment of Obligations arising under the Note Documents or the definitions of "Obligations" or "Secured Obligations" (as such term or any similar term is defined in any relevant Collateral Document) in each case in a manner adverse to any Purchaser with Obligations then outstanding without the written consent of any such Purchaser; or

(ii) amend, modify, terminate or waive any provision of Section 9 as the same directly or indirectly applies to Collateral Agent, or any other provision hereof as the same directly or indirectly applies to the rights or obligations of Collateral Agent, in

each case in any manner adverse to Collateral Agent without the consent of Collateral Agent.

(d) [Reserved].

(e) Effect of Amendments, Etc. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Note Party in any case shall entitle any Note Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Purchaser at the time outstanding, each future Purchaser, each Note Party, and each future Note Party.

(f) Compensation for Amendments. Notwithstanding anything to the contrary in any Note Document, unless otherwise agreed to by Requisite Purchasers in their sole discretion no Note Party may, nor may it permit any of its Subsidiaries to, directly or indirectly (including by being complicit in or otherwise facilitating any such action by any of their respective Affiliates or Subsidiaries or any direct or indirect holders or beneficial owners of any such Person's Capital Stock) pay or otherwise transfer any consideration, whether by way of interest, fee, or otherwise, to or for the benefit of any current or prospective Purchaser or any of its Affiliates (other than customary upfront fees to be received by any new purchaser providing new commitments) for or as an inducement to any action or inaction by such Purchaser or any of its Affiliates, including any consent, waiver, approval, disapproval, or withholding of any of the foregoing in connection with any required or requested approval, amendment, waiver, consent, or other modification of or under any Note Document or any provision thereof unless such consideration is first offered to all then existing Purchasers in accordance with their respective Pro Rata Shares and is paid to any such Purchasers that act in accordance with such offer.

(g) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Purchaser may exchange, continue, or rollover all or a portion of its Notes in connection with any refinancing, extension, modification, or similar transaction permitted by the terms of this Agreement pursuant to a cashless settlement mechanism approved by Company and such Purchaser.

10.6 Successors and Assigns; Transferees.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Purchasers. No Note Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Note Party without the prior written consent of all Purchasers. 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 and, to the extent expressly contemplated hereby, Indemnitee Agent Parties, Affiliates of Collateral Agent, and Purchasers, and any other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company and Purchasers shall deem and treat the Persons listed as Purchasers in the Register as the holders and owners of the corresponding Commitments and

Notes (including principal and stated interest) listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Note shall be effective, in each case, unless and until recorded in the Register following Company's acceptance of a fully executed an Transfer Agreement, together with the forms and certificates regarding tax matters and any fees payable in connection with such transfer, in each case, as provided in Section 10.6(e). Each transfer shall be recorded in the Register promptly following acceptance by Company of the fully executed Transfer Agreement and all other necessary documents and approvals, and a copy of such Transfer Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the **"Transfer Effective Date"**. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Purchaser shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Notes. It is intended that the Register be maintained such that the Notes are in "registered form" for the purposes of the Code.

(c) Right to Transfer. Subject to the transfer restrictions referred to in the legend therein and Section 2.23 hereof, each Purchaser shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Notes owing to it or other Obligations (provided, however, that pro rata transfers shall not be required and each transfer shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Note):

(i) to any Person meeting the criteria of clause (i)(a) or clause (ii) of the definition of the term of "Eligible Transferee" upon the giving of notice to Company; and

(ii) to any Person otherwise constituting an Eligible Transferee with the consent of Requisite Purchasers; provided, each such transfer pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount (x) as may be agreed to by Company, (y) as shall constitute the aggregate amount of the Notes of the transferring Purchaser or (z) as is transferred by a transferring Purchaser to an Affiliate or Related Fund of such Purchaser) with respect to the transfer of Notes.

(d) Mechanics. Transfers of the Notes by Purchasers shall be effected by execution and delivery to Company of an Transfer Agreement. Transfers made pursuant to the foregoing provision shall be effective as of the Transfer Effective Date. In connection with all transfers there shall be delivered to Company such forms, certificates or other evidence, if any, with respect to U.S. federal income tax withholding matters as the transferee under such Transfer Agreement may be required to deliver pursuant to Section 2.19(c).

(e) Notice of Transfer. Upon its receipt and acceptance of a duly executed and completed Transfer Agreement, any forms, certificates or other evidence required by this Agreement in connection therewith, Company shall record the information contained in such Transfer Agreement in the Register and shall maintain a copy of such Transfer Agreement.

(f) Representations and Warranties of Transferee. Each Purchaser, upon execution and delivery hereof or upon succeeding to an interest in the Notes, as the case may be,

represents and warrants as of the Closing Date or as of the Transfer Effective Date that (i) it is an Eligible Transferee; (ii) it is making the representations and warranties set forth in Section 2.23; (iii) it will purchase or invest in, as the case may be, its Commitments or Notes for its own account in the ordinary course of its business and without a view to distribution of such Notes within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Notes or any interests therein shall at all times remain within its exclusive control); (iv) it will not provide any information obtained by it in its capacity as a Purchaser to any Note Party or any of its Affiliates; and (v) neither such Purchaser nor any of its Affiliates owns or controls any trade obligations or Indebtedness of any Note Party (other than the Obligations and obligations owing to Warrant Holder or any of its affiliates in respect of the Warrants) or any Capital Stock of any Note Party (other than the Warrants and any Capital Stock received in connection therewith).

(g) Effect of Transfer. Subject to the terms and conditions of this Section 10.6, as of the Transfer Effective Date: (i) the transferee thereunder shall have the rights and obligations of a "Purchaser" hereunder to the extent of its interest in the Notes as reflected in the Register and shall thereafter be a party hereto and a "Purchaser" for all purposes hereof; (ii) the transferring Purchaser thereunder shall, to the extent that rights and obligations hereunder have been transferred to the transferee, relinquish its rights (other than any rights that survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of a transfer covering all or the remaining portion of an transferring Purchaser's rights and obligations hereunder, such Purchaser shall cease to be a party hereto on the Transfer Effective Date; provided, anything contained in any of the Note Documents to the contrary notwithstanding and (y) such transferring Purchaser shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such transferring Purchaser as a Purchaser hereunder); and (iii) the transferring Purchaser shall, upon the effectiveness of such transfer or as promptly thereafter as practicable, surrender its existing Note to Company for cancellation, and thereupon Company shall issue and deliver a new Note to such transferee and/or to such transferring Purchaser, with appropriate insertions, to reflect the outstanding Notes of the transferee and/or the transferring Purchaser.

(h) [Reserved].

(i) Certain Other Transfers. In addition to any other transfer permitted pursuant to this Section 10.6, but subject to the restrictions referred to in the legend therein and applicable securities laws, any Purchaser may assign, pledge and/or grant a security interest in, all or any portion of its Notes, the other Obligations owed by or to such Purchaser, and its Notes, to secure obligations of such Purchaser including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Purchaser, as between Company and such Purchaser, shall be relieved of any of its obligations hereunder as a result of any such transfer and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Purchaser" or be entitled to require the transferring Purchaser to take or omit to take any action hereunder.

10.7 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact

that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the occurrence of any Credit Date. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Note Party set forth in Sections 2.17(c), 2.18, 2.19, 10.2, 10.3, 10.4, and 10.10 and the agreements of Purchasers set forth in Sections 2.16, 9.3(b) and 9.6 shall survive the Payment in Full of the Obligations.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Collateral Agent or any Purchaser in the exercise of any power, right or privilege hereunder or under any other Note Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Collateral Agent and each Purchaser hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Note Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. None of Collateral Agent nor any Purchaser shall be under any obligation to marshal any assets in favor of any Note Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Note Party makes a payment or payments to Purchasers, or Collateral Agent or Purchaser enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or under any Note Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction). The parties hereto shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions the economic effect of which comes as close as reasonably possible to that of the invalid, illegal or unenforceable provisions.

10.12 Obligations Several; Actions in Concert. The obligations of Purchasers hereunder are several and no Purchaser shall be responsible for the obligations or Commitment of any other Purchaser hereunder. Nothing contained herein or in any other Note Document, and no action taken by Purchasers pursuant hereto or thereto, shall be deemed to constitute Purchasers as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Note Document to the contrary notwithstanding, each Purchaser hereby agrees with each other Purchaser that no Purchaser shall take any action to protect or enforce its rights arising out of this Agreement or any Note or otherwise with respect to the Obligations without first obtaining the prior written consent of Requisite Purchasers (as applicable), it being the intent of Purchasers that any such action to protect or enforce rights under this Agreement or any other Note Document with respect to the Obligations shall be taken in concert and at the direction or with the consent of Requisite Purchasers (as applicable).

10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 Applicable Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

10.15 Consent to Jurisdiction. SUBJECT TO CLAUSE (V) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER NOTE DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE U.S. SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH NOTE PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (V) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE NOTE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE NOTE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT AGENTS, AND PURCHASERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY NOTE PARTY IN THE COURTS OF ANY OTHER

JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY NOTE DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

10.16 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER NOTE DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE PURCHASER/ISSUER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE NOTES MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17 Confidentiality. Collateral Agent and each Purchaser shall hold all non-public information regarding Company and its Subsidiaries and their businesses identified as such by Company and obtained by Collateral Agent or such Purchaser pursuant to the requirements hereof in accordance with Collateral Agent's or such Purchaser's customary procedures for handling confidential information of such nature, it being understood and agreed by each Note Party that, in any event, Collateral Agent and any Purchaser may make (i) disclosures of such information to Affiliates of such Purchaser or Collateral Agent and to their respective officers, Directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts, or agents on a confidential basis (and to other Persons authorized by a Purchaser or Collateral Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any potential or prospective assignee or transferee in connection with the contemplated assignment or transfer of any Notes or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Note Party and its obligations (provided, such assignees, transferees, counterparties and advisors are advised of and agree to be

bound by either the provisions of this Section 10.17 or other substantially similar confidentiality restrictions), (iii) disclosure on a confidential basis to any rating agency when required by it,(iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Notes, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Note Document or any action or proceeding relating to this Agreement or any other Note Document or the enforcement of rights hereunder or thereunder, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Company promptly thereof to the extent not prohibited by law), (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority (including the NAIC) purporting to have jurisdiction over such Person or any of its Affiliates, (viii) disclosure to any Purchasers' financing sources; provided that prior to any disclosure such financing source is informed of the confidential nature of the information, (ix) disclosure to rating agencies and (x) disclosures with the consent of the relevant Note Party. Notwithstanding the foregoing, on or after the Closing Date, GSSLG may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Note Parties) (collectively, "Trade Announcements"). No Purchaser (other than GSSLG or its Affiliates) or Note Party shall (a) issue any Trade Announcement, (b) use or reference in advertising, publicity, or otherwise the name of Goldman Sachs, any Purchaser or any of their respective Affiliates, partners, or employees, or (c) represent that any product or any service provided has been approved or endorsed by Goldman Sachs, any Purchaser, or any of their respective Affiliates, except (i) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (ii) with the prior approval of Requisite Purchasers.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Notes issued hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Notes issued hereunder are Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Purchasers an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Purchasers and Company to conform strictly to any applicable usury laws. Accordingly, if any Purchaser contracts for, charges, or receives any consideration that constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Purchaser's option be applied to the outstanding amount of the Notes issued hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by a Purchaser exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment

that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19 Effectiveness; Counterparts. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Collateral Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

10.20 Entire Agreement. This Agreement, together with the other Note Documents (including any such other Note Document entered into prior to the date hereof), reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, made prior to the date hereof.

10.21 PATRIOT Act . Each Purchaser hereby notifies each Note Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Note Party, which information includes the name and address of each Note Party and other information that will allow such Purchaser to identify such Note Party in accordance with the PATRIOT Act.

10.22 Electronic Execution of Transfers and Note Documents. The words "execution," "signed," "signature," and words of like import in this Agreement, in any Transfer Agreement or any other Note Document shall in each case be deemed to include electronic signatures, signatures exchanged by electronic transmission, 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; provided, that Collateral Agent may request, and upon any such request the Note Parties shall be obligated to provide, manually executed "wet ink" signatures to any Note Document.

10.23 No Fiduciary Duty. Collateral Agent, each Purchaser, and their Affiliates (collectively, solely for purposes of this paragraph, the "Purchasers"), may have economic interests that conflict with those of the Note Parties, their equity holders and/or their affiliates. Each Note Party agrees that nothing in the Note Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Purchaser, on the one hand, and such Note Party, its equity holders or its affiliates, on the other. The Note Parties acknowledge and agree that (i) the transactions contemplated by the Note Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Purchasers, on the one hand, and the Note Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Purchaser has assumed an

advisory or fiduciary responsibility in favor of any Note Party, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Purchaser has advised, is currently advising or will advise any Note Party, its equity holders or its Affiliates on other matters) or any other obligation to any Note Party except the obligations expressly set forth in the Note Documents and (y) each Purchaser is acting solely as principal and not as the agent or fiduciary of any Note Party, its management, stockholders, creditors or any other Person. Each Note Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Note Party agrees that it will not claim that any Purchaser has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Note Party, in connection with such transaction or the process leading thereto.

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

CAPSTONE TURBINE CORPORATION

By: /s/ Darren Jamison
Name: Darren R. Jamison
Title: President and Chief Executive Officer

CAPSTONE TURBINE INTERNATIONAL, INC.

By: /s/ Darren Jamison
Name: Darren R. Jamison
Title: President and Chief Executive Officer

CAPSTONE TURBINE FINANCIAL SERVICES, LLC

By: /s/ Darren Jamison
Name: Darren R. Jamison
Title: President and Chief Executive Officer

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Collateral Agent

By: /s/ Justin Betzen
Name: Justin Betzen
Title: Senior Vice President

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Purchaser

By: /s/ Justin Betzen
Name: Justin Betzen
Title: Senior Vice President

[*Signature Page to Capstone A&R Note Purchase Agreement*]

APPENDIX A-1
TO NOTE PURCHASE AGREEMENT

Initial Notes Purchase Commitments

Purchaser	Initial Notes Purchase Commitment	Pro Rata Share
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.	$30,000,000.00	100%
Total	**$30,000,000.00**	**100%**

APPENDIX A-2
TO NOTE PURCHASE AGREEMENT

Additional Notes Purchase Commitments

Purchaser	Additional Notes Purchase Commitment	Pro Rata Share
GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.	$20,000,000.00	100%
Total	**$20,000,000.00**	**100%**

Notice Addresses

CAPSTONE TURBINE CORPORATION
16640 Stagg Street
Van Nuys, CA 91406
Attention: Frederick S. Hencken III, Chief Financial Officer
Email: ehencken@capstoneturbine.com

CAPSTONE TURBINE INTERNATIONAL, INC.
16640 Stagg Street
Van Nuys, CA 91406
Attention: Frederick S. Hencken III, Chief Financial Officer
Email: ehencken@capstoneturbine.com

CAPSTONE TURBINE FINANCIAL SERVICES, LLC
16640 Stagg Street
Van Nuys, CA 91406
Attention: Frederick S. Hencken III , Chief Financial Officer
Email: ehencken@capstoneturbine.com

in each case, with a copy to:
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Jocelyn Arel, Esq.
Email: jarel@goodwinlaw.com

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.
as Collateral Agent,
and a Purchaser, to its address set forth below

Goldman Sachs Specialty Lending Group, L.P.
100 Crescent Court
Suite 1000
Dallas, TX 75201
Attention: Capstone Turbine Corporation, Account Manager
Email: Vikas.Agrawal@gs.com; Kevin.Swartz@gs.com; and gs-slg-notices@gs.com

And, in any event, with a copy (which copy shall not constitute notice) to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Sean O'Neal
Email: soneal@cgsh.com

CAPSTONE TURBINE CORPORATION
AMENDMENT NO. 3
TO
PURCHASE WARRANT FOR COMMON SHARES

This Amendment No. 3 to Purchase Warrant for Common Shares, dated as of October 1, 2020 (the "Third Amendment"), amends that certain Purchase Warrant for Common Shares, dated as of February 4, 2019 (as amended from time to time, the "Warrant"), issued by Capstone Turbine Corporation, a Delaware corporation (the "Company").

WHEREAS, Goldman Sachs & Co. LLC has transferred the Warrant to Special Situations Investing Group II, LLC (the "Purchaser");

WHEREAS, the Purchaser is the sole Holder of the Warrant; and

WHEREAS, on the date hereof, the Company and the Purchaser have entered into an additional Purchase Warrant Agreement for Common Shares, entitling the Purchaser to purchase from the Company up to 291,295 Warrant Shares (the "Second Warrant").

WHEREAS, subject to the terms and conditions set forth herein, the Company and the Purchaser desire to amend Section 1.2, Section 2.1, Section 2.2(c) and Section 18.1 of the Warrant.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms**. Capitalized terms used but not defined herein will have the meanings given to them in the Warrant.

2. **Current Number of Warrant Shares.** The Company hereby represents and warrants to the Purchaser that, immediately prior to giving effect to the Third Amendment and after giving effect to all adjustments required by Section 2 of the Warrant and the execution of the Second Warrant, the number of Warrant Shares issuable upon exercise of the Warrant and the Second Warrant in full is 754,362.

3. **Amendments**.

(a) Section 1.2 of the Warrant is hereby amended and restated in its entirety as follows:

> **"Beneficial Ownership Limitation; Trading Exchange Limitation**. Notwithstanding anything herein to the contrary, the Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise, and shall be deemed not to have exercised, any portion of this Warrant, to the extent that, after giving effect to an attempted exercise, such Holder (together with any Persons whose beneficial ownership of Common Shares would be aggregated with the Holder's for purposes of Section 13(d) or Section 16 of the Exchange Act and the applicable regulations of the Commission, including any

"group" of which the Holder is a member (the foregoing, "**Attribution Parties**")) would beneficially own in the aggregate a number of Common Shares in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the aggregate number of Common Shares beneficially owned by such Holder and its Attribution Parties shall include the number of Common Shares issuable upon exercise of this Warrant subject to the Notice of Exercise with respect to which such determination is being made, but shall exclude the number of Common Shares which are issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Holder or any of its Attribution Parties, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Holder or any of its Attribution Parties that, in the case of both (A) and (B), are subject to a limitation on conversion or exercise similar to the limitation contained herein.

For purposes of this Section 1.2, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In order to ensure that a Holder and its Attribution Parties do not exceed the Beneficial Ownership Limitation in connection with any Notice of Exercise, upon delivery of any Notice of Exercise, such Holder shall inform the Company in such Notice of Exercise of the number of Common Shares then beneficially owned by such Holder and its Attribution Parties as determined in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission, and such notice shall be deemed not to be delivered to the extent (and only to the extent) such Beneficial Ownership Limitation would be exceeded.

The Company shall be entitled to rely on representations made to it by the Holder in any Notice of Exercise regarding its beneficial ownership of Common Shares. Upon the written request of a Holder (which may be by email), the Company shall, within two (2) Business Days thereof, confirm in writing to such Holder (which may be via email) the number of Common Shares then outstanding.

The "**Beneficial Ownership Limitation**" shall initially be 4.9% of the number of Common Shares outstanding immediately after giving effect to the issuance of Common Shares pursuant to such Notice of Exercise (to the extent permitted pursuant to this Section 1.2). Notwithstanding the foregoing, by written notice to the Company, which will not be effective until the sixty-first (61st) day after such notice is delivered to the Company, the Holder may reset the Beneficial Ownership Limitation percentage to a higher or lower percentage; provided that any such higher or lower percentage will apply only to the Holder delivering such notice and not to any other Holder of Warrants. The foregoing notwithstanding, in no event shall the Warrant Shares issuable upon the exercise of the Warrants, when taken together with the warrant shares issuable upon the exercise of the Second Warrants, in the aggregate exceed 2,213,549 Common Shares, which Common Shares represent 19.99% of the number of Common Shares outstanding on the date of execution of this Third Amendment (the "**Trading Exchange Limitation**"). Upon such a change by a Holder of the

Beneficial Ownership Limitation, the Beneficial Ownership Limitation may not be further amended by such Holder without first providing the minimum 61-day notice required by this Section 1.2. Notwithstanding the foregoing, at any time following notice of a Sale Transaction, the Holder may waive and/or change the Beneficial Ownership Limitation effective immediately upon written notice to the Company and may reinstitute a Beneficial Ownership Limitation at any time thereafter effective immediately upon written notice to the Company. The Trading Exchange Limitation contained in this paragraph may not be waived and shall apply to any successor Holder of this Warrant.

(b) Section 2.1 of the Warrant is hereby amended and restated in its entirety as follows:

"**Anti-Dilution Ratio**. The number of Warrant Shares issuable to the Holder upon exercise of this Warrant at the Per Share Warrant Exercise Price shall be adjusted, from time to time, by multiplying the (a) the number of Warrant Shares by (b) the Anti-Dilution Ratio (as defined below) in effect at the time of such adjustment. The Anti-Dilution Ratio shall be a fraction, the numerator of which shall be the Per Share Warrant Exercise Price and the denominator of which shall be the Per Share Anti-Dilution Price (calculated and adjusted as set forth below) in effect at the time of such adjustment (the "Anti-Dilution Ratio"); provided that the Per Share Anti-Dilution Price in effect on the date of execution of the Third Amendment shall be deemed to be equal to the Per Share Warrant Exercise Price; provided further that the Per Share Anti-Dilution Price shall be provided to Holder, calculated in accordance with the provision of Section 2.2(a) below, by the Company on a quarterly basis. Notwithstanding anything to the contrary in this Warrant, while the aggregate number of Warrant Shares issuable upon the exercise of this Warrant may increase, the aggregate purchase price for all Warrant Shares issuable upon exercise of this Warrant shall not be increased."

(c) Section 2.2(c) of the Warrant is hereby amended and restated in its entirety as follows:

"Notwithstanding the foregoing, no adjustment will be made under this Section 2.2 in respect of: (i) any Common Shares which, as of the date hereof, are (A) issuable upon exercise of Options outstanding or (B) issuable upon conversion or exchange of Convertible Securities (including this Warrant) outstanding (assuming exercise of any outstanding Options therefor), (ii) the issuance of securities upon the exercise or conversion of any Common Shares or Common Shares equivalents issued by the Company prior to the date hereof, (iii) Common Shares, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on the Common Shares covered by Sections 2.2(b)(iv) (other than as set forth in such section), 2.3, or 3.1, or (iv) the issuance of Common Shares as a result of any holder of the Second Warrant exercising such Second Warrant (collectively, "**Excluded Issuances**")."

(d) Section 18.1 of the Warrant is hereby amended and restated in its entirety as follows:

"**General**. In recognition and anticipation i)that the Purchaser will be a significant equityholder of the Company, ii)that the Purchaser Group may, directly or indirectly, through ownership interests in a variety of enterprises, engage in activities that overlap with or compete with those in which the Company Group, directly or indirectly, may engage, iii)that the Purchaser Group may have an interest in the same areas of corporate opportunity as the Company Group and iv)that, as a consequence of the foregoing, it is in the best interests of the Company Group that the respective rights and duties of the Company Group and of the Purchaser Group, and the duties of any other Person in service to the Company Group who are also directors, officers or employees of the Purchaser Group, be determined and delineated in respect of any transactions between, or opportunities that may be suitable for both, the Company Group, on the one hand, and the Purchaser Group, on the other hand, the provisions of this Section 18 shall to the fullest extent permitted by law regulate and define the conduct of certain of the business and affairs of the Company Group in relation to the Purchaser Group and the conduct of certain affairs of the Company Group as they may involve the Purchaser Group, their respective officers, directors and employees, and the power, rights, duties and liabilities of the Company Group and its officers, directors and equityholders in connection therewith. The Stockholders and any Person purchasing or otherwise acquiring this Warrant or any Warrant Shares, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Section 18."

4. **All Other Terms Unchanged**. Except as expressly provided in this Third Amendment, all of the provisions, terms and conditions of the Warrant remain in full force and effect.

5. **Conflicting Provisions**. Should any of the provisions of this Third Amendment conflict with any of the provisions of the Warrant, then the provisions of this Amendment shall apply.

6. **Counterparts**. This Third Amendment may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

7. **Effectiveness**. This Third Amendment will become effective immediately upon execution thereof by the Company and the Purchaser.

[Signature page follows.]

IN WITNESS WHEREOF, each of the undersigned has caused this Third Amendment to Purchase Warrant for Common Shares to be signed by its duly authorized officer.

CAPSTONE TURBINE CORPORATION

By: /s/ Darren Jamison
Name: Darren Jamison
Title: President & CEO

SPECIAL SITUATIONS INVESTING GROUP II, LLC

By: /s/ Justin Betzen
Name: Justin Betzen
Title: Authorized Signatory

Capstone Turbine Corporation

Purchase Warrant for Common Shares

October 1, 2020

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE PLEDGED, SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS.

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THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE PLEDGED, SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS.

CAPSTONE TURBINE CORPORATION

Purchase Warrant for Common Shares

No. W-1 New York, New York
October 1, 2020

CAPSTONE TURBINE CORPORATION, a **Delaware corporation** (the "**Company**"), for payment of $10,000 received on the date hereof, hereby certifies that **Special Situations Investing Group II, LLC** (the "**Purchaser**") and the other Holders (if any), are entitled to purchase from the Company (i) up to 291,295 Warrant Shares (as defined below), which Warrant Shares represent approximately two and two tenths percent (2.2%) of the Common Shares outstanding on a fully diluted basis as of the date hereof (the "**Aggregate Warrant Shares**"), (i) at an exercise price per share equal to $4.76 (the "**Per Share Warrant Exercise Price**"), (i) at any time on or after October 1, 2020 and on or before 5:00 P.M., New York, New York time on February 4, 2024 (the " **Expiration Date**"). Certain capitalized terms used herein are defined in Section 13.

1. EXERCISE OF WARRANT

1.1 Manner of Exercise; Payment. The Holder may exercise this Warrant (or portion thereof owned by the Holder, as the case may be), in whole or in part, during normal business hours on any Business Day on or prior to the Expiration Date, by surrender of this Warrant to the Company at its Chief Executive Office, accompanied by a subscription (in the form attached to this Warrant as Exhibit I (the "**Notice of Exercise**")) duly executed by the Holder and accompanied by payment, at the Holder's election, (a) in cash, (b) by certified check payable to the order of the Company, (c) by wire transfer of immediately available funds, (d) on and after February 4, 2021 by cancellation of Warrant Shares, with any such Warrant Shares so cancelled being credited against such payment in an amount equal to the last Weighted Average Price immediately preceding the time of delivery of the Notice of Exercise pursuant to this clause (d) (to clarify, the "last Weighted Average Price" will be the last Weighted Average Price as calculated over an entire Trading Day such that, in the event that this Warrant is exercised at a time that the Principal Trading Market is open, the prior Trading Day's Weighted Average Price shall be used in this calculation) (a "**Cashless Exercise**"), or (e) if the Holder is the Purchaser or any of its Affiliates, by the surrender by the Holder to the Company of any indebtedness of the Company held by the Holder, with any such indebtedness of the Company so surrendered being credited against such payment in an amount equal to the then outstanding principal amount thereof plus accrued interest thereon through the date of surrender, or by any combination of any of the foregoing methods, of the amount obtained by multiplying (i) the number of Warrant Shares designated in such subscription by (ii) the Per Share Warrant Exercise Price, and the Holder shall thereupon be entitled to receive the number and type of duly authorized Warrant Shares, determined as provided in Sections 2 through 4.The Company acknowledges that the provisions of clauses (d) and (e) are intended, in part, to ensure that a full or partial exchange of this Warrant will qualify as a conversion, within the meaning of paragraph (d)(3)(ii) of Rule 144 promulgated by the Commission under the Securities Act ("**Rule 144**"). At the request of the Holder, the Company will accept reasonable modifications to the exchange procedures provided for in this Section 1.1 in order to accomplish such intent. For the avoidance of doubt, this Warrant shall only be exercisable at the Per Share Warrant Exercise Price.

1.2 Beneficial Ownership Limitation; Trading Exchange Limitation. Notwithstanding anything herein to the contrary, the Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise, and shall be deemed not to have exercised, any portion of this Warrant, to the extent that, after giving effect to an attempted exercise, such Holder (together with any Persons whose beneficial ownership of Common Shares would be aggregated with the Holder's for purposes of Section 13(d) or Section 16 of the Exchange Act and the applicable regulations of the Commission, including any "group" of which the Holder is a member (the foregoing, "**Attribution Parties**")) would beneficially own in the aggregate a number of Common Shares in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the aggregate number of Common Shares beneficially owned by such Holder and its Attribution Parties shall include the number of Common Shares issuable upon exercise of this Warrant subject to the Notice of Exercise with respect to which such determination is being made, but shall exclude the number of Common Shares which are issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Holder or any of its Attribution Parties, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Holder or any of its Attribution Parties that, in the case of both (A) and (B), are subject to a limitation on conversion or exercise similar to the limitation contained herein.

For purposes of this Section 1.2, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In order to ensure that a Holder and its Attribution Parties do not exceed the Beneficial Ownership Limitation in connection with any Notice of Exercise, upon delivery of any Notice of Exercise, such Holder shall inform the Company in such Notice of Exercise of the number of Common Shares then beneficially owned by such Holder and its Attribution Parties as determined in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission, and such notice shall be deemed not to be delivered to the extent (and only to the extent) such Beneficial Ownership Limitation would be exceeded.

The Company shall be entitled to rely on representations made to it by the Holder in any Notice of Exercise regarding its beneficial ownership of Common Shares. Upon the written request of a Holder (which may be by email), the Company shall, within two (2) Business Days thereof, confirm in writing to such Holder (which may be via email) the number of Common Shares then outstanding.

The "**Beneficial Ownership Limitation**" shall initially be 4.9% of the number of Common Shares outstanding immediately after giving effect to the issuance of Common Shares pursuant to such Notice of Exercise (to the extent permitted pursuant to this Section 1.2). Notwithstanding the foregoing, by written notice to the Company, which will not be effective until the sixty-first (61st) day after such notice is delivered to the Company, the Holder may reset the Beneficial Ownership Limitation percentage to a higher or lower percentage; provided that any such higher or lower percentage will apply only to the Holder delivering such notice and not to any other Holder of Warrants. The foregoing notwithstanding, in no event shall the Warrant Shares issuable upon the exercise of the Warrants, when taken together with the warrant shares issuable upon the exercise of that certain purchase warrant agreement for common shares between the Company and the Purchaser dated as of February 4, 2019, in the aggregate exceed 2,213,549 Common Shares, which Common Shares represent 19.99% of the number of Common Shares outstanding on the date hereof (the "**Trading Exchange Limitation**"). Upon such a change by a Holder of the Beneficial Ownership Limitation, the Beneficial Ownership Limitation may not be further amended by such Holder without first providing the minimum 61-day notice required by this Section 1.2. Notwithstanding the foregoing, at any time following notice of a Sale Transaction, the Holder may waive and/or change the Beneficial Ownership Limitation effective immediately upon written notice to the Company and may reinstitute a Beneficial Ownership Limitation at any time thereafter effective immediately upon written

notice to the Company. The Trading Exchange Limitation contained in this paragraph may not be waived and shall apply to any successor Holder of this Warrant.

1.3 **When Exercise Effective**. Subject to Section 1.2, each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the Business Day on which this Warrant shall be deemed to have been surrendered to the Company as provided in Section 1.1, and, at such time, the Person or Persons in whose name or names any Warrant Shares shall be issuable upon such exercise as provided in Section 1.5 shall be deemed to have become the holder or holders of record thereof.

1.4 **Automatic Cashless Exercise**. To the extent that there has not been an exercise of any portion of this Warrant by the Holder pursuant to Section 1.1 hereof, any such portion of the Warrant that remains unexercised shall, to the extent such portion of the Warrant has positive intrinsic value as of the Expiration Date, be exercised automatically in whole (not in part), upon the Expiration Date through a Cashless Exercise; provided, that, in lieu of any fractional Warrant Share to which the Holder would otherwise be entitled, the Company shall deliver to the Holder an amount in cash equal to the same fraction of the Closing Sale Price per Warrant Share on the Business Day next preceding the date of such exercise.

1.5 **Delivery of Stock Certificates and New Warrant**. As soon as practicable after each exercise of this Warrant, in whole or in part, the Company at its sole expense (including the payment by it of any issue taxes) will cause to be issued in the name of and delivered to the Holder or, subject to Section 11, as the Holder (upon payment by the Holder of any applicable transfer taxes) may direct:

(a) (i) stock certificate or certificates for the number of duly authorized Warrant Shares to which the Holder shall be entitled upon such exercise free of restrictive legends, or (ii) an electronic delivery of the Warrant Shares to the Holder's account at the Depository Trust Company ("**DTC**") or a similar organization, unless in the case of clause (i) and (ii) a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, in which case such Holder shall receive a certificate for the Warrant Shares issuable upon such exercise with appropriate restrictive legends (it being understood that following the issuance of a legal opinion reasonably acceptable to the Company (if such an opinion is requested by the Company), the Holder may request book entry notation at the Company's transfer agent). If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its commercially reasonable efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through DTC or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation;

(b) in lieu of any fractional Warrant Share to which the Holder would otherwise be entitled, cash in an amount equal to the same fraction of the Closing Sale Price per Warrant Share on the Business Day next preceding the date of such exercise; and

(c) in case such exercise is in part only, a new Warrant or Warrants of like tenor, dated the date hereof, and calling for (in the aggregate on the face or faces thereof) the number of Warrant Shares equal (without giving effect to any subsequent adjustment thereof) to the number of such Common Shares called for on the face of this Warrant (as adjusted pursuant to the terms hereof through the applicable exercise date) minus the number of such Common Shares designated by the Holder upon such exercise.

1.6 Company to Reaffirm Obligations. The Company will, at the time of each exercise of this Warrant, upon the request of the Holder, acknowledge in writing its continuing obligation to afford to the Holder all rights to which the Holder is entitled after such exercise in accordance with the terms of this Warrant; provided, however, that if the Holder shall fail to make any such request, then such failure shall not affect the continuing obligation of the Company to afford such rights to the Holder. Additionally, upon request of the Holder, the Company shall provide to the Holder its calculation of the Aggregate Warrant Shares as of the date of the Holder's request (or such other date provided for in such request), along with supporting documentation relating thereto.

1.7 Continuation of Rights in Warrant Shares Following Exercise. Upon any exercise of this Warrant, all Warrant Shares issued in connection therewith shall continue to have the benefit of all of the rights set forth in this Warrant, and all of such rights shall inure to the benefit of the holder thereof with respect thereto, as if this Warrant had not been exercised and the holder thereof was the Holder with respect thereto. The Holder agrees and undertakes that if the Holder proposes to Transfer any Warrants or Warrant Shares issuable upon exercise thereof to persons other than the Affiliates of the Holder that are controlled by The Goldman Sachs Group, Inc., and if such Warrant or Warrant Shares are not then registered for resale pursuant to an effective registration statement under the Securities Act and bears a restrictive legend, then the Holder proposing to make such Transfer shall give written notice to the Company describing briefly the manner in which any such proposed Transfer is to be made, and no such Transfer shall be made unless the Company shall have received an opinion of counsel for the Holder reasonably acceptable to the Company that registration under the Securities Act is not required with respect to such Transfer. For the avoidance of doubt, in the event of a transfer of any Warrants or Warrant Shares issuable upon exercise thereof bear a restrictive legend to Affiliates of the Holder that are controlled by the Goldman Sachs Group, Inc., the Company will not be required to remove such restrictive legend as a result of such transfer unless the Company receives an opinion of counsel for the Holder reasonably acceptable to the Company to the effect that such restrictive legend may be removed.

2. CERTAIN ADJUSTMENTS

2.1 Anti-Dilution Ratio. The number of Warrant Shares issuable to the Holder upon exercise of this Warrant at the Per Share Warrant Exercise Price shall be adjusted, from time to time, by multiplying the (a) the number of Warrant Shares by (b) the Anti-Dilution Ratio (as defined below) in effect at the time of such adjustment. The Anti-Dilution Ratio shall be a fraction, the numerator of which shall be the Per Share Warrant Exercise Price and the denominator of which shall be the Per Share Anti-Dilution Price (calculated and adjusted as set forth below) in effect at the time of such adjustment (the "**Anti-Dilution Ratio**"); provided that the Per Share Anti-Dilution Price in effect on the date of execution of the Note Purchase Agreement shall be deemed to be equal to the Per Share Warrant Exercise Price; provided further that the Per Share Anti-Dilution Price shall be provided to Holder, calculated in accordance with the provision of Section 2.2(a) below, by the Company on a quarterly basis. Notwithstanding anything to the contrary in this Warrant, while the aggregate number of Warrant Shares issuable upon the exercise of this Warrant may increase, the aggregate purchase price for all Warrant Shares issuable upon exercise of this Warrant shall not be increased.

2.2 Subsequent Equity Sales.

(a) Except as provided in Section 2.2(d) if and whenever the Company shall issue or sell, or is, in accordance with any of Sections 2.2(b)(i) through 2.2(b)(vii) deemed to have issued or sold, any Common Shares for no consideration or for a consideration per share less than the Per Share Warrant Exercise Price on the Business Day on which such issuance or sale occurred or was deemed to occur, then and in each such case (a "**Trigger Issuance**") the Per Share Anti-Dilution Price shall be reduced as of the close of business on the effective date of the Trigger Issuance, to a price determined as follows:

$$AD2 = AD1 \times \frac{(A + B)}{(A + C)}$$

where

"AD2" shall mean the Per Share Anti-Dilution Price in effect immediately after such issuance or deemed issuance of Additional Common Shares

"AD1" shall mean the Per Share Anti-Dilution Price in effect immediately prior to such issuance or deemed issuance of Additional Common Shares

"A" shall mean the number of Common Shares outstanding immediately prior to such issuance or deemed issuance of Additional Common Shares (treating for this purpose as outstanding, without duplication, all Common Shares (i) issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or (ii) issuable upon conversion or exchange of Convertible Securities (including this Warrant) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue;

"B" shall mean the number of Common Shares that would have been issued if such Additional Common Shares had been issued or deemed issued at a price per share equal to AD1 (determined by dividing the aggregate consideration received by the Company in respect of such issue by AD1); and

"C" shall mean the number of such Additional Common Shares issued in such transaction.

For purposes of this Section 2.2, "**Additional Common Shares**" shall mean all Common Shares issued by the Company or deemed to be issued pursuant to this Section 2.2, other than Excluded Issuances as defined in Section 2.2(c). For purposes of this Section 2.2, all sales made by the Company in "at-the-market" offerings during any one quarter shall be aggregated and deemed one sale which shall be deemed to have occurred on the last day of such quarter (such aggregated sales, the "**Quarterly ATM Issuance**") and, for purposes of determining whether a Trigger Issuance has occurred, each Quarterly ATM Issuance shall be deemed to have been sold at a price equal to the weighted average price of all sales made by the Company in "at-the-market" offerings during such quarter.

(b) For purposes of this Section 2.2, the following Sections 2.2(b)(i) through 2.2(b)(vii) shall also be applicable:

(i) Issuance of Rights or Options. In case at any time the Company shall in any manner grant (directly and not by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Shares or any stock or security convertible into or exchangeable for Common Shares (such warrants, rights or options being called "**Options**" and such convertible or exchangeable stock or securities being called " **Convertible Securities**"), whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Shares are issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the sum (which sum shall constitute the applicable consideration) of (x) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus (y) the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus (z), in the case of such Options that relate to Convertible Securities, the minimum

aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of Common Shares issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options, without taking into account potential anti-dilution adjustments) shall be less than the Per Share Anti-Dilution Price in effect immediately prior to the issuance of such Options, then the total number of Common Shares issuable upon the exercise of such Options or upon conversion or exchange of the total amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Per Share Anti-Dilution Price. Except as otherwise provided in Section 2.2(b)(iii), no adjustment of the Per Share Anti-Dilution Price shall be made upon the actual issue of such Common Shares or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Shares upon conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. In case the Company shall in any manner issue (directly and not by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Shares are issuable upon such conversion or exchange (determined by dividing (A) the sum (which sum shall constitute the applicable consideration) of (x) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus (y) the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (B) the total number of Common Shares issuable upon the conversion or exchange of all such Convertible Securities without taking into account potential anti-dilution adjustments) shall be less than the Per Share Anti-Dilution Price in effect immediately prior to the issuance of such Convertible Securities, then the total maximum number of Common Shares issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Per Share Anti-Dilution Price, provided that (A) except as otherwise provided in Section 2.2(b)(iii), no adjustment of the Per Share Anti-Dilution Price shall be made upon the actual issuance of such Common Shares upon conversion or exchange of such Convertible Securities and (B) no further adjustment of the Per Share Anti-Dilution Price shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Per Share Anti-dilution Price have been made pursuant to the other provisions of this Section 2.2.

(iii) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in Section 2.2(b)(i), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Sections 2.2(b)(i) or 2.2(b)(ii), or the rate at which Convertible Securities referred to in Sections 2.2(b)(i) or 2.2(b)(ii) are convertible into or exchangeable for Common Shares shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Per Share Anti-Dilution Price in effect at the time of such event shall forthwith be readjusted to the Per Share Anti-Dilution Price that would have been in effect

at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Stock Splits and Combinations. If the Company shall at any time or from time to time after the date hereof effect a subdivision of the outstanding Common Shares, the Per Share Anti-Dilution Price in effect immediately before that subdivision shall be proportionately decreased so that the number of Common Shares issuable on conversion of each Common Share shall be increased in proportion to such increase in the aggregate number of Common Shares outstanding. If the Company shall at any time or from time to time after the date hereof combine the outstanding Common Shares, the Per Share Anti-Dilution Price in effect immediately before the combination shall be proportionately increased so that the number of Common Shares issuable on conversion of each Common Share shall be decreased in proportion to such decrease in the aggregate number of Common Shares outstanding. Any adjustment under this Section 2.2(b)(iv) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(v) Consideration. In case any Common Shares, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the gross amount received by the Company therefor. In case any Common Shares, Options or Convertible Securities shall be issued or sold for consideration other than cash, the amount of consideration other than cash received by the Company shall be the Fair Market Value of such consideration. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board. If Common Shares, Options or Convertible Securities shall be issued or sold by the Company and, in connection therewith, other Options or Convertible Securities (the "**Additional Rights**") are issued, then the consideration received or deemed to be received by the Company shall be reduced by the Fair Market Value of the Additional Rights.

(vi) Record Date. In case the Company shall take a record of the holders of its Common Shares for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Shares, Options or Convertible Securities or (ii) to subscribe for or purchase Common Shares, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the Common Shares deemed to have been issued or sold (in accordance with this Section 2.2(b) upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vii) Treasury Shares. The number of Common Shares outstanding at any given time shall not include shares owned or held by or for the account of the Company or any of its wholly-owned subsidiaries, and the disposition of any such shares (other than the cancellation or retirement thereof) shall be considered an issue or sale of Common Shares for the purpose of this Section 2.2.

(c) Notwithstanding the foregoing, no adjustment will be made under this Section 2.2 in respect of: (i) any Common Shares which, as of the date hereof, are (A) issuable upon exercise of Options outstanding or (B) issuable upon conversion or exchange of Convertible Securities

(including this Warrant) outstanding (assuming exercise of any outstanding Options therefor), (ii) the issuance of securities upon the exercise or conversion of any Common Shares or Common Shares equivalents issued by the Company prior to the date hereof, or (iii) Common Shares, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on the Common Shares covered by Sections 2.2(b)(iv) (other than as set forth in such section), 2.3, or 3.1 (collectively, "**Excluded Issuances**").

(d) Trading Exchange Limitation. In no event shall the Per Share Anti-Dilution Price be reduced so as to not comply with the Trading Exchange Limitation.

(e) **No adjustment pursuant to this Section 2.2 shall be made if such adjustment would result in an increase of the Per Share Anti-Dilution Price then in effect**.

2.3 Dividends and Distributions. If the Company at any time or from time to time after the date hereof declares, orders, pays or makes a dividend or other distribution (including any distribution of cash, securities (including, for the avoidance of doubt, the issuance of any stock purchase rights under the Rights Plan or otherwise) or other property, by way of dividend or spin-off, reclassification, recapitalization or similar corporate rearrangement or otherwise) or makes any payment on or with respect to its Equity Securities then, and in each such case, the Holder shall be entitled to receive an amount in cash, securities or other property as if this Warrant had been exercised in full and converted to Warrant Shares in accordance with the provisions of Section 1.1 (without giving effect to Section 1.2) immediately prior to the close of business on the day immediately preceding the record date; provided, however, that to the extent that the Holder's right to convert, exercise or exchange Equity Securities received under this Section 2.3 would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to convert, exercise or exchange such Equity Securities Right to such extent and the right to convert, exercise or exchange such Equity Securities to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, at which time or times the Holder shall be granted such right (and any right to convert, exercise or exchange Equity Securities granted, issued or sold on such initial Equity Security or on any subsequent Equity Security to be held similarly in abeyance) to the same extent as if there had been no such limitation).

2.4 No Further Adjustment . Except as otherwise set forth in this Warrant, no adjustment to the Per Share Anti-Dilution Price shall be made for any dividend which, at the time of calculation of the Per Share Anti-Dilution Price, shall have been declared but unpaid.

3. CONSOLIDATION, MERGER, ETC.

3.1 Adjustments for Consolidation, Merger, Sale of Assets, Reorganizations, etc. If after the date hereof the Company shall (a) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation of such consolidation or merger, (b) permit any other Person to consolidate with or merge into the Company and the Company shall be the continuing or surviving Person but, in connection with such consolidation or merger, the Warrant Shares shall be changed into or exchanged for cash or securities of any other Person or any other property, (c) Transfer all or substantially all of its properties or assets to any other Person or (d) effect a capital reorganization or reclassification of the Warrant Shares and/or its Equity Securities or a conversion to a new domicile (other than a capital reorganization or reclassification to the extent that such capital reorganization or reclassification results in the issuance of Additional Common Shares for which adjustment in the Per Share Anti-Dilution Price is provided in Section 2.2), then, and in the case of each such transaction, proper provision shall be made so that upon the basis and the terms and in the manner provided in this

Warrant, the Holder, upon the exercise of this Warrant at any time after the consummation of such transaction, shall be entitled to receive (after giving effect to the payment of the Per Share Warrant Exercise Price), in lieu of the Warrant Shares issuable upon such exercise prior to such consummation, the greatest amount of cash, securities or other property to which the Holder would actually have been entitled as an equity holder upon such consummation if the Holder had exercised the rights represented by this Warrant immediately prior thereto, subject to adjustments (subsequent to such consummation) as nearly equivalent as possible to the adjustments provided for in Sections 2, 3 and 4.

3.2 Assumption of Obligations. Notwithstanding anything contained in this Warrant or in the Note Purchase Agreement to the contrary, the Company will not effect any of the transactions described in Section 3.1 unless, prior to the consummation thereof, each Person (other than the Company) that may be required to deliver any cash, securities or other property upon the exercise of this Warrant as provided herein shall assume, by written instrument delivered to, and reasonably satisfactory to, the Holder, (a) the obligations of the Company under this Warrant (and if the Company shall survive the consummation of such transaction, such assumption shall be in addition to, and shall not release the Company from, any continuing obligations of the Company under this Warrant) and (b) the obligation to deliver to the Holder such cash, securities or other property as, in accordance with the foregoing provisions of this Section 3, the Holder may be entitled to receive, and such Person shall have similarly delivered to the Holder an opinion of counsel for such Person, which counsel and opinion shall be reasonably satisfactory to the Holder, stating that this Warrant shall thereafter continue in full force and effect and the terms hereof (including all of the provisions of this Section 3) shall be applicable to the cash, securities or other property that such Person may be required to deliver upon any exercise of this Warrant or the exercise of any rights pursuant hereto. Nothing in this Section 3 shall be deemed to authorize the Company to enter into any transaction requiring the consent of the Purchaser or any of its Affiliates (or any other Holder) in any Transaction Document.

4. OTHER DILUTIVE EVENTS. If any event shall occur as to which the provisions of Sections 2 or 3 are not strictly applicable but with respect to which the failure to make any adjustment would not fairly protect the Holders or the antidilution rights represented by this Warrant in accordance with its essential intent and principles, then, in each such case, at the request of the Holder, the Company shall appoint a firm of independent investment bankers of recognized national standing (which shall be completely independent of the Company and shall be reasonably satisfactory to the Holder), which shall give its opinion upon the adjustment, if any, on a basis consistent with the essential intent and principles established in Sections 2 and 3, necessary to preserve, without dilution, the purchase rights or rights to the issuance of additional Equity Securities represented by this Warrant. Upon receipt of such opinion, the Company will promptly mail a copy thereof to the Holder and shall make the adjustments described therein.

5. NO DILUTION OR IMPAIRMENT. The Company shall not, by amendment of its Articles or through any consolidation, merger, reorganization, transfer of assets, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against dilution or other impairment. Without limiting the generality of the foregoing, the Company (a) will not permit the par value of any Warrant Shares to exceed the amount payable therefor upon such exercise, (b) will take all such action as may be reasonably necessary or appropriate in order that the Company may validly and legally issue the Warrant Share and (c) will not take any action that results in the total number of Warrant Shares issuable upon exercise of the Warrant exceeding the total number of Common Shares then authorized by the Company's Articles and available for the purpose of issuance upon such exercise.

6. NOTICES OF CORPORATE ACTION. If at any time prior to the expiration date of the Warrants and prior to their exercise in full, the Company agrees or commits to any taking by the Company

of a record of the holders of any class of its Equity Securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any Equity Securities of the Company or any other property, or to receive any other right, then the Company will deliver to the Holder a notice, not less than 10 days prior to the proposed occurrence of such event, specifying the expected date of such event, together with all material information relating thereto, and shall promptly notify the Holder of all material developments relating thereto or as otherwise requested by the Holder. Additionally, within 5 days following the written request of the Holder, the Company shall provide to the Holder its calculation of the Per Share Anti-Dilution Price, along with supporting documentation relating thereto.

7. REGSTRATION RIGHTS.

7.1 Generally. If any Registrable Securities required to be reserved for purposes of exercise of this Warrant require registration with or approval of any governmental authority under any federal or state law (other than the Securities Act) before such Registrable Securities may be issued, then the Company will, at its sole expense and as expeditiously as possible, cause such Registrable Securities to be duly registered or approved, as the case may be.

7.2 Shelf Registration Rights. On or prior to the Filing Deadline, the Company shall prepare and file with the Commission a registration statement covering the resale of all of the Registrable Securities not already covered by an existing and effective registration statement for an offering to be made on a continuous basis pursuant to Rule 415 or, if Rule 415 is not available for offers and sales of the Registrable Securities, by such other means of distribution of Registrable Securities as the Holders may reasonably specify (the "Initial Registration Statement"). The Initial Registration Statement shall be on Form S-3 (except if the Company is then ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on such other form available to register for resale the Registrable Securities as a secondary offering). The Company shall use its commercially reasonable efforts to cause the registration statement to become effective within forty-five (45) days after the filing thereof. The Company shall use its commercially reasonable efforts to keep a registration statement for the resale of all Registrable Securities continuously effective until the earlier of (i) such time as all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holder and (ii) the date on which the Holder no longer holds Registrable Securities.

7.3 Expenses. The Company will pay Registration Expenses (as defined in this Section 7.3) in connection with all registrations (which, for purposes of this section, shall include any qualifications, notifications and exemptions). "**Registration Expenses**" means all reasonable expenses incident to the Company's performance of or compliance with Section 7, including all registration and filing fees (including fees of the Commission and a national stock exchange or national securities market), all fees and expenses of complying with state securities or blue sky laws, all word processing, duplicating and printing expenses, messenger and delivery expenses, the fees and disbursements of counsel for the Company and of its independent public accountants, and premiums and other costs of policies of insurance against liabilities arising out of the public offering of such securities. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by Section 7 (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. All underwriting discounts, selling commissions, fees and disbursements of Holder's Counsel (as defined below), and stock transfer taxes and other non-Registration Expenses applicable to the sale of the Registrable Securities of the Holders shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

7.4 **Deemed Underwriter.** The Company agrees that, if a Holder or any of its Affiliates could reasonably be deemed to be an "underwriter," as defined in Section 2(a)(11) of the Securities Act, in connection with any registration of the Company's securities of any Holder or any of its Affiliates pursuant to this Warrant, and any amendment or supplement thereof (any such registration statement or amendment or supplement a "**Deemed Underwriter Registration Statement**"), then the Company will cooperate with such Holder or Affiliate in allowing such Holder or Affiliate to conduct reasonable and customary "underwriter's due diligence" with respect to the Company and satisfy its obligations in respect thereof. In addition, at applicable Holder's request, the Company will furnish to such Holder, on the date of the effectiveness of any Deemed Underwriter Registration Statement and thereafter from time to time on such dates as such Holder may reasonably request (a) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to such Holder, and (b) an opinion, dated as of such date, of counsel representing the Company for purposes of such Deemed Underwriter Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, including a standard "10b-5" statement for such offering, addressed to such Holder. The Company will also permit legal counsel to the applicable Holder to review and comment upon any such Deemed Underwriter Registration Statement at least ten (10) Business Days prior to its filing with the Commission and all amendments and supplements to any such Deemed Underwriter Registration Statement within a reasonable number of days prior to their filing with the Commission and not file any Deemed Underwriter Registration Statement or amendment or supplement thereto in a form to which such Holder's legal counsel reasonably objects.

7.5 **Obligations of the Company**. In connection with the Company's obligations hereunder, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the Commission a registration statement with respect to the Registrable Securities and use commercially reasonable efforts to cause such registration statement to become effective and, unless the Holders of a majority of the Registrable Securities registered thereunder notify the Company otherwise; provided, that, the Company shall furnish, at least five (5) Business Days before filing such registration statement, a prospectus relating thereto or any amendments or supplements relating to such a registration statement or prospectus, to counsel selected by the Requisite Holders (the "**Holder's Counsel**"), copies of all such documents proposed to be filed for such counsel's review and comment (it being understood that such five (5) Business Day period need not apply to successive drafts of the same document proposed to be filed so long as such successive drafts are supplied to such counsel in advance of the proposed filing by a period of time that is customary and reasonable under the circumstances) and not file any such registration statement, prospectus or amendment or supplement thereto in a form to which Holder's Counsel reasonably objects;

(b) subject to the last paragraph of this Section 7.5, prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement;

(c) notify in writing the Holder's Counsel promptly (x) of the receipt by the Company of any notification with respect to any comments by the Commission with respect to such registration statement or prospectus or any amendment or supplement thereto or any request by the Commission for the amending or supplementing thereof or for additional information with respect thereto, (y) of the receipt by the Company of any notification with respect to the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or

prospectus or any amendment or supplement thereto or the initiation of any action threatening any proceeding for that purpose and (z) of the receipt by the Company of any notification with respect to the suspension of the qualification of such Registrable Securities for sale in any jurisdiction or the initiation of any action threatening the qualification of such Warrant and/or Registrable Securities for sale in any jurisdiction;

(d) furnish to each Holder of Registrable Securities covered by such registration such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act and such other documents as such Holder may reasonably request in order to facilitate the disposition of the Registrable Securities owned thereby;

(e) use commercially reasonable efforts to register and/or to qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as may be required for the Holder to sell securities under the registration statement or as shall be reasonably requested by the Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto (x) to qualify to do business in any such states or jurisdictions, (y) to file a general consent to service of process in any such states or jurisdictions or (z) to subject itself to taxation in any such states or jurisdictions;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and, at the request of such Holder, prepare and furnish to such Holder a reasonable number of copies of a supplement to or amendment of such prospectus so that, as thereafter delivered to any offeree of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(g) provide a transfer agent and registrar (which may be the same entity and which may be the Company) for such Registrable Securities;

(h) use commercially reasonable efforts to cause such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if no such securities are so listed, use commercially reasonable efforts to cause such Registrable Securities to be listed on the New York Stock Exchange or the NASDAQ Stock Market; and

(i) subject to all of the other provisions of this Warrant, use commercially reasonable efforts to take all other steps necessary to effect the registration of the Registrable Securities contemplated hereby.

The Company may suspend the use of a prospectus included in any registration statement filed pursuant to this Section 7 if the Company is then in possession of material, non-public information, the disclosure of which the Board has reasonably determined in good faith would have a material adverse effect upon the Company. The Company shall promptly notify all Holders of Registrable Securities covered by such registration of any such determination by the Board and, upon receipt of such notice, each such Holder shall immediately discontinue any sales of securities pursuant to such registration statement. Upon such suspension, the Company shall take all commercially reasonable steps to cause the condition that caused

such suspension to cease to exist as soon as practicable (but such efforts need not include the abandonment of any proposed transaction). The Company hereby agrees that no such suspension shall last more than forty-five (45) days without the prior written consent of the Requisite Holders, provided that such right to suspension shall be exercised by the Company not more than twice in any twelve (12)-month period.

7.6 Obligations of the Holder. At least seven (7) Business Days prior to the first anticipated filing date of the Initial Registration Statement, the Company will notify the Holder of the information the Company reasonably requires from the Holder (including a selling stockholder questionnaire) which shall be completed and delivered to the Company promptly upon request and, in any event, within five (5) Business Days prior to the applicable anticipated filing date. The Holder further agrees that it shall not be entitled to be named as a selling securityholder in any registration statement, or use the prospectus contained in such registration statement, for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company such requested information (including the selling stockholder questionnaire). If a Holder of Registrable Securities returns such requested information (including the selling stockholder questionnaire) after the above deadline, the Company shall use its commercially reasonable efforts to take such actions as are required to name such Holder as a selling security holder in the registration statement or any pre-effective or post-effective amendment thereto and to include (to the extent not theretofore included) in such registration statement the Registrable Securities identified in such requested information. Each Holder acknowledges and agrees that the information provided to the Company as described in this Section 7.6 will be used by the Company in the preparation of the registration statement filed pursuant to this Section 7 and hereby consents to the inclusion of such information in the Registration Statement.

7.7 Indemnification.

(a) In connection with any registration, subject to Section 7.7(d) below, the Company shall indemnify and hold harmless each Holder that is a selling holder of Registrable Securities and each of its Affiliates, each underwriter (as defined in the Securities Act), and directors, officers, employees and agents of any of them, and each other Person who participates in the offering of such securities and each other Person, if any, who controls (within the meaning of the Securities Act) such seller, underwriter or participating Person (collectively, the "**Holder Indemnified Person**") against any losses, claims, damages or liabilities (collectively, the "**liability**"), joint or several, to which such Holder Indemnified Person may become subject under the Securities Act or any other statute or at common law, insofar as such liability (or action in respect thereof) arises out of or is based upon (w) any untrue statement or alleged untrue statement of any material fact contained, on the effective date thereof, in any registration statement under which such securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus used in connection with any offering, including but not limited to, any free writing prospectus used by the Company, the underwriters or the Holders, or (x) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (y) any violation by the Company of the Securities Act, any state securities or "blue sky" laws or any sale or regulation thereunder in connection with such registration, or (z) any information provided by the Company or at the instruction of the Company to any Person participating in the offer at the point of sale containing any untrue statement or alleged untrue statement of any material fact or omitting or allegedly omitting any material fact required to be included in such information or necessary to make the statements therein not misleading. Except as otherwise provided in Section 7.7(c) the Company shall reimburse each such Holder Indemnified Person in connection with investigating or defending any such liability; provided, however, that the Company shall not be liable to any Holder Indemnified Person in any such case to the extent that any such liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged

omission made in such registration statement, preliminary or final prospectus, or amendment or supplement thereto, free writing prospectus, or other information, in reliance upon and in conformity with information furnished in writing to the Company by such Holder Indemnified Person specifically for use therein; and provided further, however, that the Company shall not be required to indemnify any Holder Indemnified Person against any liability arising from any untrue or misleading statement or omission contained in any preliminary prospectus if such deficiency is corrected in the final prospectus or for any liability which arises out of the failure of any Holder Indemnified Person to deliver a prospectus as required by the Securities Act

(b) In connection with any registration, subject to Section 7.7(d) below, a Holder selling any Registrable Securities included in such registration being effected shall indemnify and hold harmless each other selling holder of any Registrable Securities, the Company, its directors and officers, each underwriter and each other Person, if any, who controls (within the meaning of the Securities Act) the Company or such underwriter (collectively, the "**Company Indemnified Persons**" and together with the "**Holder Indemnified Persons**," collectively, the "**Indemnified Persons**"), against any liability, joint or several, to which any such Holder Indemnified Person may become subject under the Securities Act or any other statute or at common law, insofar as such liability (or actions in respect thereof) arises out of or is based upon (x) any untrue statement or alleged untrue statement of any material fact contained, on the effective date thereof, in any registration statement under which securities were registered under the Securities Act at the request of such selling Holder, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, any free writing prospectus used in connection with such offering, including but not limited to, any free writing prospectus used by the Company, the underwriters, or the Holders, or (y) any omission or alleged omission by such selling Holder to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (z) any information provided at the instruction of the Company to any Person participating in the offer at the point of sale containing any untrue statement or alleged untrue statement of any material fact or omitting or allegedly omitting any material fact required to be included in such information or necessary to make the statements therein not misleading, and in the case of (x), (y) and (z) to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in such registration statement, preliminary or final prospectus, amendment or supplement thereto, free writing prospectus or other information, in reliance upon and in conformity with information furnished in writing to the Company by such selling Holder specifically for use therein. Such selling Holder shall reimburse any Holder Indemnified Person in connection with investigating or defending any such liability; provided, however, that in no event shall the liability of any Holder for indemnification under this Section 7 in its capacity as a seller of Warrants and/or Registrable Securities exceed the lesser of (i) that proportion of the total of such losses, claims, damages, expenses or liabilities indemnified against equal to the proportion of the total securities sold under such registration statement which is being held by such Holder, or (ii) the amount equal to the proceeds to such Holder of the securities sold in any such registration; and provided further, however, that no selling Holder shall be required to indemnify any Person against any liability arising from any untrue or misleading statement or omission contained in any preliminary prospectus if such deficiency is corrected in the final prospectus or for any liability which arises out of the failure of any Person to deliver a prospectus as required by the Securities Act.

(c) In the event the Company, any selling Holder or other person receives a complaint, claim or other notice of any liability or action, giving rise to a claim for indemnification under Section 7.7(a) or Section 7.7(b) above, the person claiming indemnification under such paragraphs shall promptly notify the person against whom indemnification is sought of such complaint, notice,

claim or action, and such indemnifying person shall have the right to investigate and defend any such loss, claim, damage, liability or action.

(d) If the indemnification provided for in this Section 7.7 is held by a court of competent jurisdiction to be unavailable to an Indemnified Person with respect to any loss, claim, damage, expense or liability referred to therein, then the indemnifying party, in lieu of indemnifying such Indemnified Person hereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such any loss, claim, damage, expense or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and of the Indemnified Person, on the other hand, in connection with the statements or omissions that resulted in such any loss, claim, damage, expense or liability as well as any other relevant equitable considerations; provided, however, that in no event shall any contribution by a Holder under this Section 7.7(d) when combined with any other amounts paid by such Holder pursuant to this Section 7 exceed the lesser of (a) that proportion of the total of such losses, claims, damages, expenses or liabilities indemnified against equal to the proportion of the total securities sold under such registration statement which is being held by such Holder, or (b) the amount equal to the proceeds to such Holder of the securities sold in any such registration. The relative fault of the indemnifying party and of the Indemnified Person shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the Indemnified Person and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) The obligations of the Company and Holders under this Section 7.7 shall survive the completion of any offering of securities in a registration statement under this Section 7 or otherwise (and shall survive the termination of this Warrant).

8. PUT OF WARRANTS

8.1 Put Right.

(a) At any time at the Holder's sole discretion, the Holder may demand that the Company purchase all of this Warrant (or the underlying Warrant Shares) at an aggregate price of $1 (the "**Redemption Price**") by delivery of a written notice to the Company (the date such notice is delivered to the Company shall hereinafter be referred to as, the "**Put Demand Date**"). Subject to the other provisions of this Section 8.1, the Redemption Price shall be payable to the Holder in immediately available funds on the day immediately following the Put Demand Date, upon surrender of this Warrant to the Company at its Chief Executive Office, by wire transfer to any account in the United States of America specified by written notice to the Company or by any other means agreed between the Holder and the Company.

(b) Upon surrender of the Warrant in accordance with the procedures set forth in Section 8.1(a), the right to purchase Warrant Shares represented by the Warrant shall terminate and the Warrant shall represent the right of the Holder to receive only the applicable aggregate Redemption Price from the Company in accordance with Section 8.1. The Holder's right to demand redemption of this Warrant pursuant to this Section 8.1 shall be referred to herein as the Holder's "**Put Right**."

9. AVAILABILITY OF INFORMATION . The Company shall comply with the reporting requirements of Sections 13 and 15(d) of the Exchange Act and shall comply with all public information reporting requirements of the Commission (including Rule 144) from time to time in effect and relating to

the availability of an exemption from the Securities Act for the sale of any Restricted Securities. The Company shall also cooperate with the Holder of any Restricted Securities in supplying such information as may be necessary for the Holder to complete and file any information reporting forms presently or hereafter required by the Commission as a condition to the availability of an exemption from the Securities Act for the sale of any Restricted Securities. The Company shall furnish to each Holder, promptly upon their becoming available, copies of all financial statements, reports, notices and proxy statements sent or made available generally by the Company to its securityholders, and copies of all regular and periodic reports and all registration statements and prospectuses filed by the Company with any securities exchange or with the Commission.

10. RESERVATION OF EQUITY SECURITIES, ETC . The Company shall, if applicable, at all times reserve and keep authorized and available, solely for issuance and delivery upon exercise of this Warrant, the number of Warrant Shares from time to time issuable upon exercise in full of this Warrant. All Registrable Securities issuable upon exercise of this Warrant shall be duly authorized and, when issued upon such exercise, shall be validly issued and, in the case of shares, fully paid and nonassessable, with no liability on the part of the Holder.

11. OWNERSHIP, TRANSFER AND SUBSTITUTION OF WARRANTS

11.1 Ownership of Warrants. The Company may treat any Person(s) in whose name this Warrant is registered on the register kept at the Chief Executive Office as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, except that, if and when this Warrant is properly assigned in blank, the Company may (but shall not be obligated to) treat the bearer thereof as the owner of this Warrant for all purposes, notwithstanding any notice to the contrary. This Warrant, if properly assigned, may be exercised by the new holder (as the Holder hereunder) without a new Warrant first having been issued subject to applicable securities laws and Section 1.6 hereof.

11.2 Office; Transfer and Exchange of Warrants.

(a) The Company shall maintain an office (which may be an agency maintained at a bank) in the State of California where notices, presentations and demands in respect of this Warrant may be made upon it. Such office shall be the Company's "**Chief Executive Office**," until such time as the Company shall notify the Holders of any change of location of such office within the State of California.

(b) The Company shall cause to be kept at its Chief Executive Office a register for the registration and transfer of this Warrant. The names and addresses of the Holder, the transfer thereof and the names and addresses of any transferees of this Warrant shall be registered in such register. The Person(s) in whose names this Warrant shall be so registered shall be deemed and treated as the owner and Holder thereof for all purposes of this Warrant, and the Company shall not be affected by any notice or knowledge to the contrary.

(c) Subject to the transfer restrictions referred to in the legend herein and Section 1.6 hereof, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the Holder, upon surrender of this Warrant with a properly executed assignment (in the form of Exhibit II hereto) at the Company's Chief Executive Office. Upon such surrender, the Company at its expense will execute and deliver to or upon the order of the applicable Holder a new Warrant or Warrants of like tenor, in the name of the Holder or as the Holder (upon payment by the Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces therefor for the number of Warrant Shares called for on the face or faces of the Warrant or Warrants so surrendered.

11.3 **Assistance in Disposition of Warrant or Warrant Shares**. Notwithstanding any other provision herein, in the event that it becomes unlawful for the Holder to continue to hold this Warrant, in whole or in part, or some or all of the Warrant Shares held by it, or restrictions are imposed on the Holder by any statute, regulation or governmental authority which, in the judgment of the Holder, make it unduly burdensome to continue to hold the Warrant or Warrant Shares, the Holder may sell or otherwise dispose of the Warrant or Warrant Shares (subject to any restrictions on transfer described herein), and the Company agrees to provide reasonable assistance to the Holder in disposing of the Warrant or Warrant Shares in a prompt and orderly manner and, at the request of the Holder, to provide (and authorize the Holder to provide) financial and other information concerning the Company to any prospective purchaser of the Warrant or Warrant Shares owned by the Holder.

11.4 **Equity Conversion.** If at any time after October 1, 2020, the Holder gives the Company written notice of the Holder's desire to convert this Warrant or any Warrant Shares (the "Existing Securities"), the Company will use its commercially reasonable efforts to cause, within forty-five days of the Company's receipt of such notice, all of the Existing Securities to be converted on a one-to-one basis into a warrant or other Equity Securities, as applicable, in each case having the same rights, preferences, privileges, and restrictions as the applicable Existing Securities ("Non-Voting Securities") except that the holders of Non-Voting Securities will not have any right to vote on matters voted on by the Stockholders, except that the Company shall not, directly or indirectly, without the written consent of the Holder: (i) amend the Articles, (ii) reclassify any debt or Equity Securities, or consummate any corporate restructuring or reorganization, in any manner that disproportionately and adversely affects the rights, preferences or privileges of any Holder as compared to other holders of Equity Securities of the same class(es) represented by this Warrant (treating voting and non-voting Equity Securities as the same class), (iii) enter into, amend, modify, supplement, waive or fail to enforce any agreement, transaction, commitment or arrangement with or for the benefit of any of the Company's or any of its subsidiary's officers, directors, employees, equityholders or Affiliates or with any individual related by blood, marriage or adoption to any such individual or with any entity in which any such Person or individual owns a beneficial interest; provided, that, this clause (c) shall not apply to (1) agreements or other transactions between or among the Company and its wholly-owned subsidiaries, (2) the Company's (or its subsidiaries') performance of its obligations in accordance with the terms of existing agreements then in effect and (3) such entry into or amendments to agreements where the Company reasonably demonstrates that such agreement or amendment is on terms no less favorable to the Company than those that might be obtained at the time from an unaffiliated third party, (iv) commit or agree to any of the foregoing or (v) permit any of its subsidiaries to take any action which, if taken by the Company, would require the Holder's consent. If the Holder gives the Company written notice at least forty-five days prior to a Widely Dispersed Offering by the Holder or its transferees, the Company will use its commercially reasonable efforts to cause each Non-Voting Security to be automatically converted on a one-to-one basis into that number of Existing Securities only upon the disposition thereof in connection with such Widely Dispersed Offering. For purposes of this Warrant, a "Widely Dispersed Offering" means (1) a widespread public distribution, (2) a private placement in which no one party acquires the right to purchase 2% or more of any class of voting Equity Securities (as such term is used for purposes of The Bank Holding Company Act of 1956, as amended) of the Company, (3) an assignment to a single party (e.g., a broker or investment banker) for the purpose of conducting a widespread public distribution on behalf of the Holder or its transferees, or (4) to a party who would control more than 50% of the voting Equity Securities of the Company without giving effect to the Non-Voting Securities disposed by the Holder or its transferees.

11.5 **Replacement of Warrants**. Upon receipt of reasonable evidence of the loss, theft, destruction or mutilation of any Warrant and, in the case of any such loss, theft or destruction of any Warrant held by a Person other than a Purchaser or any other institutional investor to whom the Purchaser may Transfer this Warrant, upon delivery of indemnity satisfactory to the Company in form and amount

or, in the case of any such mutilation, upon surrender of such Warrant for cancellation at the Company's Chief Executive Office, the Company at its sole expense will execute and deliver, in lieu thereof, a new Warrant of like tenor and dated the date hereof.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchaser as follows:

(a) each of the representations and warranties of the Credit Parties set forth in the Note Purchase Agreement are true and correct as of the date hereof, each such representation and warranty being hereby incorporated by reference herein, *mutatis mutandis*, for all purposes;

(b) the Company is not party to any contract, agreement or other arrangement which conflicts with the terms of this Warrant or any of the rights conferred to the Holder, or obligations imposed on the Company, hereby;

(c) subject to the accuracy of the representations and warranties of the Holders, the offer, sale, issuance and delivery of this Warrant in accordance with the terms herein will be exempt from the registration provisions of the Securities Act;

(d) subject to the accuracy of the representations and warranties of the Holders, the issuance of the Warrant Shares upon the exercise of this Warrant in accordance with the terms herein will be exempt from the registration provisions of the Securities Act;

(e) immediately after giving effect to transactions contemplated by this Warrant, (i) the Company has duly authorized the issuance of the Warrant Shares and has reserved them and made them available for issuance and delivery upon exercise of this Warrant, (ii) the outstanding Equity Securities consists solely of this Warrant and the Equity Securities set forth on Schedule I hereto and (iii) each of the Company's subsidiaries is directly or indirectly wholly-owned by the Company; and

(f) the number of Common Shares outstanding as of the date hereof on a fully diluted basis, which includes, without duplication, all Common Shares (i) issuable upon exercise of Options outstanding or (ii) issuable upon conversion or exchange of Convertible Securities (including this Warrant) outstanding (assuming exercise of any outstanding Options therefor) is 13,327,055.

12.2 Representations and Warranties of the Holders. Each Holder represents and warrants to the Company and to each other Holder, as of the date such Person becomes a Holder, as follows:

(a) Organization and Qualification. Such Holder, if an entity, is a corporation, limited partnership or limited liability company, in either case duly organized, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Status of the Holders. If such Holder is an entity, corporation, limited partnership or limited liability company, such Holder has not been formed for the specific purpose of acquiring the Securities pursuant to this Warrant.

(c) Authority; Enforceability. Such Holder has all requisite power and authority to execute and deliver this Warrant and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of such Holder for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Company, this Warrant constitutes the legal, valid and binding obligation of such Holder enforceable against such Holder in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(d) Conflicts. Such Holder is not party to any contract, agreement or other arrangement which conflicts with the terms of this Warrant or any of the rights conferred to the Company, or obligations imposed on such Holder, hereby.

(e) Accredited Investor; Securities Laws Compliance.

(i) Such Holder (x) understands the term "accredited investor" as used in Regulation D and (y) is an "accredited investor" (as defined in Regulation D under the Securities Act) and (z) has such knowledge, skill and experience in business and financial matters, based on actual participation, that it is capable of evaluating the merits and risks of an investment in the Company and the suitability thereof as an investment for such Holder.

(ii) Except as otherwise contemplated by this Warrant, such Holder is acquiring this Warrant and any Warrant Shares for investment for its own account, not as a nominee or agent, and not with a view to any distribution or public offering of any part thereof in violation of applicable securities laws, and that the Holder has no present intention of selling, granting any participation in or otherwise distributing the same. By acknowledging this Warrant, the Holder further represents that the Holder does not have any contract, undertaking, agreement, or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to the Warrant or any of the Warrant Shares.

(iii) Such Holder understands that neither the Warrants nor the Warrant Shares have been, and will not be, registered under the Securities Act or any state securities law, by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act and such laws and that the Warrants and any Warrant Shares must be held indefinitely unless they are subsequently registered under the Securities Act and such laws or a subsequent disposition thereof is exempt from registration. Such Holder agrees that any certificates representing its Warrant Shares will bear the following legend and that such Warrant Shares will not be offered, sold or transferred in the absence of registration or exemption under applicable securities laws:

"THE SECURITIES REPRESENTED HEREBY (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE PLEDGED, SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS AND (B) ARE SUBJECT TO THE TERMS OF AND PROVISIONS OF A PURCHASE WARRANT, DATED OCTOBER 1, 2020, BY AND AMONG

CAPSTONE TURBINE CORPORATION (THE "COMPANY") AND, FOR THE LIMITED PURPOSES SET FORTH THEREIN, SPECIAL SITUATIONS INVESTING GROUP II, LLC (AS SUCH WARRANT MAY BE SUPPLEMENTED, MODIFIED, AMENDED OR RESTATED FROM TIME TO TIME, THE "WARRANT"). A COPY OF THE WARRANT IS AVAILABLE AT THE OFFICES OF THE COMPANY."

(iv) Such Holder has sufficient knowledge and experience in business and financial matters and with respect to investment in securities of companies similar to the Company so as to enable it to analyze and evaluate the merits and risks of the investment contemplated hereby and is capable of protecting its interest in connection with this transaction. Such Purchaser is able to bear the economic risk of such investment, including a complete loss of the investment.

(v) Disclosure of Information. The Holder acknowledges that it has received all the information it considers necessary or appropriate for deciding whether to invest in the Warrants and the Warrant Shares.

(vi) Such Holder is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act, including the Rule 144 condition that current information about the Company be made available to the public.

13. DEFINITIONS. As used herein, unless the context otherwise requires, the following terms have the respective meanings set forth below. All capitalized terms used and not defined below or otherwise defined herein shall have the respective meanings set forth in the Note Purchase Agreement:

"**Affiliate**" means, with respect to any person, any other person which directly or indirectly controls, is controlled by, or is under common control with, such person.

"**Appraiser**" means an independent nationally recognized investment banking firm mutually agreeable to the Holder and the Company. If the Holder and the Company cannot agree on an Appraiser within fifteen (15) days after the applicable Valuation Request, then, the Company, on the one hand, and the Holder, on the other hand, shall each select an Appraiser within fifteen (15) days of the applicable Valuation Request. Each such Appraiser shall then independently determine the applicable Fair Market Value within thirty (30) days after the applicable Valuation Request (or if the Holder or the Company fails to timely select an Appraiser as contemplated in the immediately preceding sentence, the Appraiser timely selected by the Company or the Holder, as applicable, shall make such determination). Other than with respect to securities that are publicly traded, the prevailing market prices for any security or property will not be dispositive of the Fair Market Value thereof. If each of the Holder and the Company timely selects an Appraiser and (a) the difference between the determinations of Fair Market Value by the Appraisers is less than twenty percent (20%), then the average of such determinations shall be the conclusive and binding determination of the applicable Fair Market Value or (b) the difference between the determinations of Fair Market Value by the Appraisers is equal to or more than twenty percent (20%), then the Appraisers shall jointly select one independent Appraiser to determine the Fair Market Value, and the selection of the new Appraiser and its determination of Fair Market Value shall be made within sixty (60) days after the applicable Valuation Request. Any and all fees, costs and other expenses of the Appraiser(s) shall be borne by the Company. The determination of the Fair Market Value pursuant to this definition and the definition of Fair Market Value shall be conclusive and binding on all applicable parties.

"**Articles**" means the Company's Certificate of Incorporation, as described in the Note Purchase Agreement as of the date hereof, as the same may be amended, restated or otherwise modified from time to time in accordance with the terms thereof (and as permitted by this Warrant).

"**Bloomberg**" means Bloomberg Financial Markets.

"**Board**" has the meaning set forth in the Articles.

"**Business Day**" means any day other than a Saturday or a Sunday or a day on which commercial banking institutions in New York are authorized or obligated by law or executive order to be closed. Any reference to "days" (unless Business Days are specified) shall mean calendar days.

"**Closing Sale Price**" means, with respect to the Common Shares, the last trade price for the Common Shares on the Nasdaq Stock Market, as reported by Bloomberg Financial Markets, or, if such the Nasdaq Stock Market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00 P.M., New York City time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for the Common Shares on a particular date on any of the foregoing bases, the Closing Sale Price of the Common Shares on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Board shall use its good faith judgment to determine the fair market value. The Board's determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

"**Commission**" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"Common Share" means the shares of the Company's common stock, par value $0.001, per share.

"**Company**" has the meaning given to such term in the introduction to this Warrant and shall include any Person that shall succeed to or assume the obligations of the Company.

"**Company Group**" means the Company and its Affiliates.

"**Equity Securities**" means, with respect to the Company, all equity securities or other equity interests authorized from time to time, and any other securities, options, interests, participations or other equivalents (however designated) of or in the Company, whether voting or nonvoting, including options, warrants, phantom equity, equity appreciation rights, convertible notes or debentures, equity purchase rights, and all agreements, instruments, documents and securities convertible, exercisable, or exchangeable, in whole or in part, into any one or more of the foregoing. The Equity Securities, as of the date hereof, consist of Common Shares and the other Equity Securities set forth on Schedule I hereto.

"**Exchange Act**" means the Securities Exchange Act of 1934, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"**Fair Market Value**" means as to securities or other property, the fair market value of such securities or property as mutually agreed upon by the Company and the Holders, assuming such securities or property is to be sold in an arm's length transaction between a willing seller and a willing buyer as a going concern, without any Impairment Deductions (but, for the avoidance of doubt, taking into account any liquidation preference, redemption or similar right relating to this Warrant, to the extent applicable to the valuation in question), at the time of the transaction requiring the applicable determination of Fair Market Value pursuant to this Warrant (each such transaction, a "**Valuation Event**"). If the Company and the Holder are unable to agree on any calculation of Fair Market Value in accordance with the foregoing provisions within fifteen (15) days after the occurrence of any Valuation Event, then, upon the written request of either the Holder or the Company delivered at any time thereafter (the "**Valuation Request**"), the Fair Market Value of such securities and/or other property will be determined by the Appraiser in accordance with this definition and the definition of Appraiser.

"**Filing Deadline**" means, with respect to the Initial Registration Statement required to be filed pursuant to Section 7.2, March 31, 2021.

"**Holder**" means each and every holder or beneficial owner of any portion of this Warrant or any of the Warrant Shares, which shall initially be the Purchaser. For purposes of simplicity, this Warrant has been drafted in contemplation of one Holder. In the event that, at any given time, there shall be more than one Holder, (a) references to "Holder", this "Warrant" and "Warrant Shares" shall mean each Holder and the portion of this Warrant and the Warrant Shares held by each such Holder, (b) all notices shall be delivered to each Holder in accordance with Section 22 and (c) with respect to any action, approval or consent of the Holder required or otherwise permitted pursuant to the provisions hereof (including Section 6), such action, approval or consent shall be deemed to have been taken, received or otherwise obtained if such action, approval or consent is taken, received or otherwise obtained by or from Requisite Holders, except that each Holder may, on an individual basis, exercise its portion of the Warrant. Without in any way limiting the foregoing, the term "Holder" shall include the Purchaser and each of their respective successors and/or assigns that at any time holds or otherwise owns any portion of this Warrant or the Warrant Shares.

"**Impairment Deductions**" means, with respect to the determination of the Fair Market Value of any securities or other property, any deduction for (d) liquidity considerations, (e) minority equityholder status or (f) any liquidation or other preference or any right of redemption in favor of any Equity Securities (other than any such preference or right in favor of this Warrant).

"**Majority-in-Interest**" means holders of Equity Securities of the Company accounting for fifty-one percent (51%) or more of the voting power of all of the Equity Securities.

"**Note Purchase Agreement**" means that certain Note Purchase Agreement, dated as of February 4, 2019 by and among the Company, certain of its subsidiaries, the Purchasers party thereto, and Goldman Sachs Specialty Lending Holdings, Inc., as collateral agent (as amended, restated or otherwise modified from time to time).

"**Person**" means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any federal, state, county or municipal governmental or quasi-governmental agency, department, commission, board, bureau, instrumentality or similar entity, foreign or domestic, having jurisdiction over either the Company or any Holder.

"**Principal Trading Market**" means the trading market on which the Common Shares are primarily listed on and quoted for trading, and which, as of the date hereof is The NASDAQ Stock Market.

"**Purchaser Group**" means the Purchaser and its Affiliates.

"**Registrable Securities**" means, (i) the Warrant Shares and (ii) any securities issued or issuable upon any conversion, exercise, stock split, dividend or other distribution, merger, consolidation, exchange, recapitalization or similar event with respect to the foregoing (including, for the avoidance of doubt, securities issued or issuable pursuant to Section 2 or 3 hereof); and provided, further, that with respect to a particular Holder, such Holder's Warrant Shares shall cease to be Registrable Securities upon the earlier to occur of the following: (A) a sale pursuant to a registration statement or Rule 144 (in which case, only such securities sold by the Holder shall cease to be a Registrable Security); and (B) may be distributed pursuant to Rule 144 (or any successor rule) without limitation.

"Requisite Holders" means the Holder or, in the event that there are multiple Holders, the Holder or Holders that own or otherwise hold more than fifty percent (50%) of the aggregate Registrable Securities.

"Restricted Securities" means all of the following: (a) any Warrants bearing the legend or legends contained herein or substantially similar thereto, (b) any Warrant Shares that have been issued upon the exercise of this Warrant and that are evidenced by a certificate or certificates bearing the applicable legend or legends contained herein or substantially similar thereto and (c) unless the context otherwise requires, any Warrant Shares that are at the time issuable upon the exercise of this Warrant and that, when so issued, will be evidenced by a certificate or certificates bearing the applicable legend or legends contained herein or substantially similar thereto.

"**Rights Plan**" means the NOL Rights Agreement, dated May 6, 2016, between Capstone Turbine Corporation and Broadridge Financial Solutions, Inc. successor-in-interest to Computershare Inc. and any similar agreement.

"Sale Transaction" means any transaction pursuant to which (a) the Company sells or disposes (in one or a series of related sales or dispositions) of all or substantially all of the assets of the Company on a consolidated basis (other than inventory in the ordinary course of business), including any sale or disposition of the securities or assets of the subsidiaries of the Company, (b) the Company engages in any merger, consolidation, combination or similar transaction, (in one or a series of related transactions), such that the Majority-in-Interest immediately prior to the transaction or transactions will, immediately after such transaction or transactions, no longer constitute the Majority-in-Interest, (c) the Company engages in any transaction or series of related transactions that results in any change of control of the Company (as the term "control" is defined in Rule 405 the Securities Act), whether such change of control occurs through the sale of assets, Equity Securities or otherwise or (d) any other transaction constituting a "Change of Control" under the Note Purchase Agreement.

"Securities Act" means the Securities Act of 1933, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be amended and in effect at the time.

"**Stockholder"** means each holder of the Company's Equity Securities.

"**Trading Day**" means a day on which the Principal Trading Market is open for trading.

"**Transaction Documents**" means this Warrant, the Note Purchase Agreement, and any document contemplated hereby or thereby.

"Transfer" means any direct or indirect sale, transfer, issuance, assignment, pledge or other disposition or conveyance of Equity Securities.

"Warrant" means this Purchase Warrant for Equity Securities, as the same may be amended, restated or otherwise modified from time to time, together with any and all replacement and/or substitute warrants issued with respect hereto.

"**Warrant Shares**" means any Equity Securities issued or issuable in connection with the exercise of this Warrant (as may be adjusted pursuant to the terms hereof) and shall include any Equity Securities into which such Warrant Shares shall have been changed or any Equity Securities resulting from any reclassification of such Warrant Shares, and all other Equity Securities of any class or classes (however designated) of the Company that entitle the Holder to a share (without limitation as to amount) of dividends or distributions of the Company.

"**Weighted Average Price"** means the dollar volume-weighted average price for the Common Shares on the Principal Trading Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Trading Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Trading Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.).

14. RESERVED.

15. INFORMATION RIGHTS. For so long as this Warrant is outstanding or the Purchaser or its Affiliates holds Equity Securities, the Company shall, at any time when the Company is not subject to Section 13(a) or 15(d) of the Exchange Act, or has not filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act, provide the Holder with copies of any and all information that the Company is required to deliver pursuant to Sections 5.1(b) and 5.1(c) of the Note Purchase Agreement (as of the date hereof and regardless of any termination thereof), subject to limitations set forth in Section 5.1(t) of the Note Purchase Agreement.

16. MULTIPLE HOLDERS; VOTING RIGHTS; NO LIABILITIES AS A STOCKHOLDER

16.1 Multiple Holders. In the event that there shall be multiple Holders, each Holder agrees that (a) no other Holder will by virtue of this Warrant or exercise thereof be under any fiduciary or other duty to give or withhold any consent or approval under this Warrant or to take any other action or omit to take any action under this Warrant and (b) each other Holder may act or refrain from acting under this Warrant as such other Holder may, in its discretion, elect.

16.2 No Liabilities As a Stockholder. Nothing contained in this Warrant shall be construed as imposing any obligation on any Holder to purchase any securities or as imposing any liabilities on any Holder as a holder of Equity Securities, whether such obligation or liabilities are asserted by the Company or by creditors of the Company.

17. NO EFFECT ON LENDER RELATIONSHIP. The Company acknowledges and agrees that, notwithstanding anything in this Warrant to the contrary, nothing contained in this Warrant shall affect,

limit or impair the rights and remedies of the Purchaser or any of its Affiliates (a) in its or their capacity as a lender or as agent for lenders to the Company or any of its subsidiaries pursuant to any agreement under which the Company or any of its subsidiaries has borrowed money, including the Note Purchase Agreement, or (b) in its or their capacity as a lender or as agent for lenders to any other Person who has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (x) its or any of its Affiliates' status as a Holder, (y) the interests of the Company or its subsidiaries or (z) any duty it may have to any holder of Equity Securities (including any other Holder, in the event that there shall be multiple Holders), except as may be required under the applicable loan documents or by commercial law applicable to creditors generally. No consent, approval, vote or other action taken or required to be taken by the Holder in such capacity shall in any way impact, affect or alter the rights and remedies of the Purchaser or any of its Affiliates as a lender or agent for lenders.

18. CORPORATE OPPORTUNITIES AND CONFLICTS OF INTEREST

18.1 **General**. In recognition and anticipation (a) that the Purchaser will be a significant equityholder of the Company, (b) that the Purchaser Group may, directly or indirectly, through ownership interests in a variety of enterprises, engage in activities that overlap with or compete with those in which the Company Group, directly or indirectly, may engage, (c) that the Purchaser Group may have an interest in the same areas of corporate opportunity as the Company Group and (d) that, as a consequence of the foregoing, it is in the best interests of the Company Group that the respective rights and duties of the Company Group and of the Purchaser Group, and the duties of any other Person in service to the Company Group who are also directors, officers or employees of the Purchaser Group, be determined and delineated in respect of any transactions between, or opportunities that may be suitable for both, the Company Group, on the one hand, and the Purchaser Group, on the other hand, the provisions of this Section 18 shall to the fullest extent permitted by law regulate and define the conduct of certain of the business and affairs of the Company Group in relation to the Purchaser Group and the conduct of certain affairs of the Company Group as they may involve the Purchaser Group, their respective officers, directors and employees, and the power, rights, duties and liabilities of the Company Group and its officers, directors and equityholders in connection therewith. The Stockholders and any Person purchasing or otherwise acquiring this Warrant or any Warrant Shares, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Section 18.

18.2 **Duties of the Purchasers**. Each of the Company and each Holder (on its behalf and on behalf of its respective Affiliates) acknowledges and agrees that, notwithstanding anything to the contrary in this Warrant or otherwise (including any actions or omissions by representatives of the Purchaser Group in whatever capacity):

(a) nothing herein or therein shall create a fiduciary duty of the Purchaser Group, or any officer, director or employee of the Purchaser Group, to the Company Group or any of its equityholders;

(b) nothing herein or therein be construed as the Purchaser Group acting as a financial advisor, agent or underwriter to the Company Group or otherwise on behalf of the Company Group unless retained to provide such services pursuant to a written agreement (separate from any Transaction Document);

(c) except as otherwise agreed in writing pursuant to a written agreement (separate from any Transaction Document), the Purchaser Group, to the fullest extent permitted by law has no duty to refrain from (i) engaging in the same or similar activities or lines of business as the

Company Group or (ii) doing business with any client, customer or vendor of the Company Group; and

(d) if the Purchaser Group acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company Group and the Purchaser Group, then each of the Company and each Holder (that is not a member of the Purchaser Group), to the fullest extent permitted by law, renounces any interest or expectancy in such business opportunity and waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Company Group and, in the case of any such corporate opportunity, the Purchaser Group shall to the fullest extent permitted by law not be liable to the Company Group, any Stockholder or any Holder (or any of their respective Affiliates) or any other equity holder of the Company Group, as an equity holder of the Company by reason of the fact that the Purchaser Group acquires or seeks such corporate opportunity for themselves, direct such corporate opportunity to another Person or otherwise does not communicate information regarding such corporate opportunity to the Company Group.

18.3 Corporate Opportunities Defined. For purposes of this Section 18, "corporate opportunities" shall include, but not be limited to, business opportunities that the Company Group is financially able to undertake, that are, from their nature, in the line of the Company Group's business, that are of practical advantage to it and that are ones in which the Company Group, but for the provisions of Section 18.2, would have an interest or a reasonable expectancy, and in which, by embracing the opportunities, the self-interest of the Purchaser Group or their officers or directors will be brought into conflict with that of the Company Group.

19. NON PROMOTION. The Company agrees that it will not (and will cause its Affiliates not to), without the prior written consent of the Purchaser, in each instance, (a) use in advertising, publicity, or otherwise any name of the Purchaser Group, or any partner or employee of the Purchaser Group, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the Purchaser Group, except as required for any filings pursuant to applicable federal and state securities laws or (b) represent, directly or indirectly, that any product or any service provided by the Company Group has been approved or endorsed by such Purchaser Group.

20. USE OF LOGO. Each of Company and its Affiliates grants the Purchasers permission to use any name or logo of the Company Group in any marketing materials of the Purchaser Group. The Purchaser Group shall include a trademark attribution notice giving notice of the Company Group's ownership of its trademarks in the marketing materials in which the Company Group's name and logo appear.

21. LOCK-UP LIMITATIONS . Notwithstanding anything in this Warrant, none of the provisions of this Warrant shall in any way limit the Purchaser Group from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of their business. Notwithstanding anything to the contrary set forth in this Warrant, any restrictions set forth in this Warrant shall not apply to equity interests acquired by the Purchaser Group following the effective date of the first registration statement of the Company covering Equity Securities to be sold on behalf of the Company in an underwritten public offering

22. NOTICES

22.1 Manner of Delivery. Any notice or other communication in connection with this Warrant shall (a) if delivered personally, be deemed received upon delivery; (b) if delivered by telecopy or electronic mail, be deemed received on the Business Day of confirmation; (c) if delivered by certified

mail, be deemed received upon actual receipt thereof or three Business Days after the date of deposit in the United States mail, as the case may be; and (d) if delivered by nationally recognized overnight delivery service, be deemed received the Business Day after the date of deposit with the delivery service.

22.2 **Place of Delivery**. Any notice or other communication in connection with this Warrant shall be delivered to the following address (a) if to the Holder, to the address set forth on the signature page hereto (or any other address that the Holder may designate by written notice to the Company in accordance with this Section 22) with a copy of such notice delivered by electronic mail, (b) if to the Company, to the attention of its Chief Executive Officer or President at its Chief Executive Office; provided, however, that the exercise of any Warrant shall be effective only in the manner provided in Section 1.

23. WAIVERS; AMENDMENTS . Any provision of this Warrant may be amended or waived with the written consent of the Company and the Holder (or, for the avoidance of doubt, if there are multiple Holders, then the Holder or Holders constituting the Requisite Holders). Any amendment or waiver effected in compliance with this Section 23 shall be binding upon the Company and the Holder. In the event that there shall be multiple Holders, the Company shall give prompt notice to each Holder of any amendment or waiver effected in compliance with this Section 23. No failure or delay of the Company or the Holder in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereon or the exercise of any other right or power. No notice or demand on the Company in any case shall entitle the Company to any other or future notice or demand in similar or other circumstances. The rights and remedies of the Company and the Holder hereunder are cumulative and not exclusive of any rights or remedies which it would otherwise have.

24. INDEMNIFICATION.

24.1 **Generally**. Without limitation of any other provision of this Warrant or any agreement executed in connection herewith, the Company agrees to defend, indemnify and hold the Holder, its respective affiliates and direct and indirect partners (including partners of partners and stockholders and members of partners), members, stockholders, directors, officers, employees and agents and each person who controls any of them within the meaning of Section 15 of the Securities Act, or Section 20 of the Exchange Act (collectively, the "**Holder Indemnified Parties**" and, individually, a "**Holder Indemnified Party**") harmless from and against any and all damages, liabilities, losses, taxes, fines, penalties, reasonable costs and expenses (including reasonable fees of a single counsel representing the Holder Indemnified Parties), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any such Holder Indemnified Party ("**Losses**"), based upon, arising out of, or by reason of (i) any breach of any representation or warranty made by the Company in this Warrant or any other agreement executed in connection herewith, (ii) any breach of any covenant or agreement made by the Company in this Warrant or in any other agreement executed in connection herewith, or (iii) any third party or governmental claims relating in any way to such Holder Indemnified Party's status as a security holder, creditor, director, agent, representative or controlling person of the Company or otherwise relating to such Holder Indemnified Party's involvement with the Company (including any and all Losses under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, which relate directly or indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto), including in connection with any third party or governmental action or claim relating to any action taken or omitted to be taken or alleged to have been taken or omitted to have been taken by any Holder Indemnified Party as security holder, director, agent, representative or controlling person of the Company or otherwise, alleging so-called control person liability or securities law liability;

provided, however, that the Company will not be liable to the extent (and then solely to such extent) that such Losses arise from and are based on (a) an untrue statement or omission or alleged untrue statement or omission in a registration statement or prospectus which is made in reliance on and in conformity with written information furnished to the Company by or on behalf of such Holder Indemnified Party, or (b) conduct by a Holder Indemnified Party which constitutes fraud or willful misconduct.

24.2 Other Indemnitors. The Company hereby acknowledges that certain of the Holder Indemnified Parties have certain rights to indemnification, advancement of expenses or insurance provided by the Purchaser Group (collectively, the "Other Indemnitors"). The Company hereby agrees that (i) to the extent legally permitted and as required by the terms of this Warrant (or by the terms of any other agreement between the Company and a Holder Indemnified Party), (1) the Company is the indemnitor of first resort (i.e., its obligations to each Holder Indemnified Party are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by any Holder Indemnified Party are secondary) and (2) the Company shall be required to advance the full amount of expenses incurred by a Holder Indemnified Party and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement, without regard to any rights that a Holder Indemnified Party may have against the Other Indemnitors and (ii) the Company irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims for contribution, subrogation or any other recovery of any kind in respect of any of the matters described in clause (a) of this sentence for which any Holder Indemnified Party has received indemnification or advancement from the Company. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of any Holder Indemnified Party with respect to any claim for which a Holder Indemnified Party has sought indemnification from the Company shall affect the foregoing and that the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Holder Indemnified Party against the Company.

24.3 Certain Limitations. If the indemnification provided for in Section 24.1 above for any reason is held by a court of competent jurisdiction to be unavailable to a Holder Indemnified Party in respect of any Losses referred to therein, then the Company, in lieu of indemnifying such Holder Indemnified Party thereunder, shall contribute to the amount paid or payable by such Holder Indemnified Party as a result of such Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Holder, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Holder in connection with the action or inaction which resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the Company and the Holder shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Holder and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

24.4 Other. Each of the Company and the Holder agrees that it would not be just and equitable if contribution pursuant to Section 24.2 were determined by pro rata or per capita allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The rights to indemnification provided to the Purchaser (and any other Person who becomes a Holder) and the other Holder Indemnified Parties in this Section 24 shall survive the termination, exchange, exercise or transfer of this Warrant (or Warrant Shares, as applicable). The Holder Indemnified Parties are express third party beneficiaries of the terms of this Section 24.

25. MISCELLANEOUS.

25.1 Expenses. Except as otherwise provided in this Warrant, the Company shall pay all reasonable expenses of the Holder, including reasonable legal expenses, in connection with the preparation of the Warrant, any waiver or consent hereunder or any amendment or modification hereof (regardless of whether the same becomes effective), or the enforcement of the provisions hereof.

25.2 Successors and Assigns. All the provisions of this Warrant by or for the benefit of the Company or the Holder shall bind and inure to the benefit of their respective successors and assigns.

25.3 Severability. In case any one or more of the provisions contained in this Warrant shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, in lieu of any such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Warrant a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be legal, valid and enforceable, unless the requisite parties separately agree to a replacement provision that is valid, legal and enforceable.

25.4 Equitable Remedies. Without limiting the rights of the Company and the Holder to pursue all other legal rights available to such party (including equitable remedies) for the other parties' failure to perform its obligations hereunder, the Company and the Holders each hereto acknowledge and agree that the remedy at law for any failure to perform any obligations hereunder (or any failure to observe the terms of this Warrant by any Stockholder) would be inadequate and that each shall be entitled to specific performance, injunctive relief or other equitable remedies in the event of any such failure.

25.5 Continued Effect. Notwithstanding anything herein to the contrary, the rights and benefits conferred on the Holder pursuant to the provisions hereof (including Section 2, Section 3, Section 4, and Section 5 and any covenants made by the Company) shall continue to inure to the benefit of, and shall be enforceable by, the Holder, notwithstanding the surrender of the Warrant to, and its cancellation by, the Company upon the full or partial exercise or repurchase hereof. The Holder shall be entitled to retain a copy of this Warrant as evidence of the continued effect of the provisions hereof. The Company covenants and agrees not to become party to any contract, agreement or other arrangement which adversely impacts or affects any of the rights conferred to the Holder, or conflicts with the obligations imposed on the Company, hereby.

25.6 Governing Law. THIS WARRANT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW.

25.7 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

25.8 **Construction**. The section headings used herein are for convenience of reference only and shall not be construed in any way to affect the interpretation of any provisions of this Warrant. The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant. Terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Warrant clearly requires otherwise, words importing the masculine gender include the feminine and neutral genders and vice versa. The terms "include," "includes" or "including" mean "including without limitation." The words "hereof," "hereto," "hereby," "herein," "hereunder" and words of similar import, when used in this Warrant, refer to this Warrant as a whole and not to any particular section or article in which such words appear. Except to the extent expressly provided herein, the Holder's exercise of any rights under this Warrant, including with respect to the granting or withholding of any consent required hereunder, may be done at the sole discretion of the Holder.

25.9 **Counterparts**. This Warrant may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together, shall be deemed to be one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the date hereof.

COMPANY:

CAPSTONE TURBINE CORPORATION

By: /s/ Darren Jamison
Name: Darren Jamison
Title: President & CEO

The undersigned is executing this Warrant as of the date hereof to make the representations and warranties set forth in Section 12.2 of this Warrant and to evidence its consent to, and, to the extent applicable, its agreement to be bound by, the provisions of Sections 6, 14, 16, 17 and 18 of this Warrant (and the defined terms referenced therein) for the benefit of the Company and each other Holder.

PURCHASER:

SPECIAL SITUATIONS INVESTING GROUP II, LLC

By: /s/ Justin Betzen
Name: Justin Betzen
Title: Authorized Signatory

Address for Notices:

Special Situations Investing Group II, LLC
200 West Street
New York, New York 10282
Attn: AmSSG Legal Department

with a copy to (which shall not constitute notice):

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attn: Marc Rotter

SCHEDULE I

Shares Outstanding (as of September 30, 2020)	11,073,286
Outstanding Awards	453,609
Outstanding Options	8,923
September 19 Warrants	765,000
April 16 Warrants	217,875
October 16 Warrants	54,000
Fully diluted shares (as of September 30, 2020)	12,572,693
February 4, 2019 Warrants	463,067
This Warrant	291,295
Total fully diluted shares after transaction	13,327,055

EXHIBIT I

FORM OF SUBSCRIPTION

[To be executed only upon exercise of Warrant]

To [_____]

The undersigned registered Holder of the within Warrant hereby irrevocably exercises such Warrant for, and purchases thereunder, _____ Common Shares and herewith makes payment of $_____ therefor, and requests that the certificates for such Common Shares be issued in the name of, and delivered to _____, whose address is _____.

Dated:

_____

(Signature must conform in all respects to name of Holder as specified on the face of Warrant)

_____

(Street Address)

_____

(City) (State) (Zip Code)

EXHIBIT II

FORM OF ASSIGNMENT

[To be executed only upon transfer of Warrant]

For value received, the undersigned registered Holder of the Warrant (the "**Transferor**") hereby sells, assigns and transfers unto _____ (the "**Transferee**") the rights represented by such Warrant to purchase a number of shares of duly authorized, validly issued, fully paid and nonassessable Common Shares of CAPSTONE TURBINE CORPORATION (the "**Company**"), to which and such Warrant relates, and appoints _____ as its attorney-in-fact to make such transfer on the books of the Company maintained for such purpose, with full power of substitution in the premises. The Transferee makes the representations and warranties set forth in Section 12.2 of the Warrant, and consents to, and, to the extent applicable, agrees to be bound by, the provisions of Sections 14, 16, 17 and 18 of the Warrant (and the defined terms referenced therein) for the benefit of the Company and each other Holder.

Dated: _____ __, _____

Transferor:

_____

(Signature must conform in all respects to name of Holder as specified on the face of Warrant)

_____

(Street Address)

_____

(City) (State) (Zip Code)

Transferee:

_____

(Signature must conform in all respects to name of Holder as specified on the face of Warrant)

_____

(Street Address)

_____

(City) (State) (Zip Code)